

IBRAHIM IDRIS

V.

- 1. ALL NIGERIA PEOPLES PARTY (ANPP)**
- 2. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
- 3. RESIDENT ELECTORAL COMMISSIONER, KOGI STATE & OTHERS**

AND

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & 22 OTHERS

V.

ALL NIGERIA PEOPLES PARTY & 47 ORS. AND

- 1. ALL NIGERIA PEOPLES PARTY**
- 2. PRINCE ABUBAKARAUDLJ**

V.

INEC & 50 OTHERS AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION
2. RESIDENT ELECTORAL COMMISSIONER, KOGI STATE
3. ELECTORAL OFFICER, ADAVI L.G.A.
4. ELECTORAL OFFICER, AJAOKUTA L.G.A.
5. ELECTORAL OFFICER, ANKPA L.G.A.
6. ELECTORAL OFFICER, BASSA L.C.A.
7. ELECTORAL OFFICER, DEKINA L.G.A.
8. ELECTORAL OFFICER, IB A. J I L.G.A.
9. ELECTORAL OFFICER, IDAII L.G.A.
10. ELECTORAL OFFICER, IGALAMELA-ODOLU, L.G.A
12. ELECTORAL OFFICER, IJUMU L.G.A.
13. ELECTORAL OFFICER, KABBA-BUNNU L.G.A.
14. ELECTORAL OFFICER, KOGI L.G.A.
15. ELECTORAL OFFICER, LOKOJA L.G.A.
16. ELECTORAL OFFICER, MOPA MURO L.G.A.
17. ELECTORAL OFFICER, OFU L.G.A.
18. ELECTORAL OFFICER, OGORI-MAGONGO L.G.A.
19. ELECTORAL OFFICER, OKEHI L.G.A.
20. ELECTORAL OFFICER, OKENE L.G.A.
21. ELECTORAL OFFICER, OLAMABORO L.G.A.
22. ELECTORAL OFFICER, OMALA L.G.A.
23. ELECTORAL OFFICER, YAGBA EAST L.G.A.
24. ELECTORAL OFFICER, YAGBA WEST L.G.A.

V.

1. ALL NIGERIA PEOPLES PARTY (ANPP)
2. IBRAHIM IDRIS
3. SENATOR MOHAMMED
4. ACTION CONGRESS
5. ABUDAN LA MI
6. AFRICAN DEMOCRATIC CONGRESS (ADC)

7. SALIU IBRAHIM
 8. ALL PEOPLE GRAND ALLIANCE (APCA)
 9. KHALIDA.OGBECHE
 10. AFRICAN RENAISSANCE PARTY (ARP)
 11. ROTIMI OBADOFIN
 12. DEMOCRATIC PEOPLE ALLIANCE (DPA)
 13. REV. PROF. YUSUF AMEH OBAJE
 14. DEMOCRATIC PEOPLES PARTY (DPP)
 15. CHIEF (DR.) JACOB J. ABDULLAHI
 16. FRESH PARTY (FRESH)
 17. COL, AHMADU USMAN SULEIMAN (RID)
 18. MOVEMENT FOR THE RESTORATION AND DEFENCE OF DEMOCRACY (MRDD)
 19. SIMON IS AH IJAJA
 20. NATIONAL DEMOCRATIC PARTY (NDP)
 21. OMEREONO MARTINS
 22. PROGRESSIVE ACTION CONGRESS (PAC)
 23. HON. DUROSINMI JOSIAH MESEKO
 24. PROGRESSIVE PEOPLE ALLIANCE (PPA)
 25. MOHAMMED ALHAJI YAKUBU
 26. PEOPLE SOLIDARITY PARTY (PSP)
 27. MOMOH JIMOH EYE SULEIMAN
 28. REPUBLICAN PARTY OF NIGERIA (RPM)
- COURT OF APPEAL (PORT HARCOURT DIVISION)

CA/A/EP/309/07

VICTOR AIMEPOMO O. OMAGE, J.C.A. (Presided and Read the Leading Judgment)

AMIRU SANUSI, J.C.A.

JEAN OMOKRI, J.C.A.

MARY PETER-ODILI, J.C.A.

MOJEED ADEKUNLE OWOADE, J.C.A.

WEDNESDAY, 6TH FEBRUARY, 2008

ACTION - Election petition - Grounds for petition - Non-qualification of petitioner as candidate for election - Allegation of- Whether can be raised as defence to petition - Respondent .seeking to rely thereon - Proper step therefor.

ACTION - Election petition - Parties to election petition - Political party whose nominated candidate was unlawfully excluded from contesting election and candidate so excluded - Right of to present election petition.

ACTION - Locus stanch - Meaning of- How determined.

ACTION - Parties to an action - Election petition - Who can present - Who may be made respondent thereto - Unsuccessful candidate at election - Whether needs be made respondent to petition.

APPEAL - Decision of Election Tribunal - Appeal by IN EC - When improper - Attitude of court thereto.

APPEAL - Grounds of appeal - Basis of- What it should challenge.

APPEAL - Judgment of court - Error therein - Whether every error will result in its reversal on appeal - When error will lead to its reversal.

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CONSTITUTIONAL LAW - Access to court – Right of citizen thereto - Baa is of.

CONSTITUTIONAL LAW - Hierarchy of courts - Supreme Court of Nigeria - Status of- Decision of- Bindingness of on all courts and persons in Nigeria.

COURT - Order of court - Bindingness of until set aside.

COURT - Hierarchy of courts - Supreme Court of Nigeria - Status of - Decision of - Bindingness of on all courts and persons in Nigeria.

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ELECTION - Conventions, Congresses and primary elections -Notice of- Duty on political party to serve on INEC.

ELECTION - Election - What amounts to - Constituent elements of.

ELECTION - Nomination of candidate for election - What amounts to.

ELECTION - Participation in election by political party - What amounts to.

ELECTION - Primaries of political parties - Notice of- Duty on parties to serve on INEC - Section 85, Electoral Act, 2006.

ELECTION - Primary election - What is.

ELECTION PETITION - Address for service and name of occupier thereof in election petition - Effect - Whether a mere irregularity - Paragraph 4, First Schedule to Electoral Act, 2006.

ELECTION PETITION - Decision of Election Tribunal - Appeal by INEC - When improper - Attitude of court thereto.

ELECTION PETITION - "Election" within the context of section 137(1)(b) of the 1999 Constitution - Meaning of.

ELECTION PETITION - Filing of election petition - Fees and security for costs payable in respect of election petition -Assessment of - Whose duty - Where assessed fees paid by petitioner - Whether petitioner can be penalized for nonpayment of correct fees.

ELECTION PETITION - Grounds for petition - Non-qualification of petitioner as candidate for election - Allegation of- Whether can be raised as defence to petition - Respondent seeking to rely thereon - Proper step therefor.

ELECTION PETITION - Locus standi in election petition - Candidate validly nominated but unlawfully excluded from contesting election - Whether has locus standi to present petition.

ELECTION PETITION - Locus standi in election petition - Political party whose nominated candidate was unlawfully excluded from contesting election and candidate so excluded - Whether each has locus standi to sue

ELECTION PETITION - Nomination and unlawful exclusion from election - Allegation of - Onus of proof thereof – How discharged.

ELECTION PETITION - Non-compliance with provisions of Electoral Act, 2006 relating to election petitions Power of court to invalidate petition on ground of- Discretionary nature of - When exercisable.

ELECTION PETITION - Parties to an election petition - Who can present election petition - Who may be made respondent thereto Unsuccessful candidate at election - Whether needs

be made respondent to petition.

ELECTION PETITION - Parties to election petition - Political party whose nominated candidate was unlawfully excluded from contesting election and candidate so excluded - Right of to present petition.

ELECTION PETITION - "Petitioner" in section 145(1)(d), Electoral Act, 2006 - Meaning of - Whether includes candidate at tin election.

*ELECTION PETITION - Reply - Reply to answer to election petition - When petitioner entitled to file - What it should not contain. *

ELECTION PETITION - Security for costs in respect of election petition - Non-payment - Effect of.

[EVIDENCE - Admissions - Formal admission - How made - Fact admitted - Whether needs further proof.

EVIDENCE - Judicial notice - Laws - Decisions of the Supreme Court of Nigeria - Power and duty of court to take judicial notice of.

EVIDENCE - Presumptions - Presumption of law - Nature of -Rationale there for - When arises - When can he rebutted.

EVIDENCE - Proof - Allegation of valid nomination and unlawful exclusion from election - Onus of proof thereof - How discharged.

EVIDENCE - Proof- Witness statement on oath - Nature of- Whether evidence - When facts deposed become evidence.

EAIR HEARING - Principle of fair hearing - What it postulates -What constitutes.

INTERPRETATION OF STATUTES - Electoral Act, 2006 -Paragraph 45 of the First Schedule thereto - Purport and intendment of- What it envisages by deeming election petition separate petitions against each respondent thereto.

INTERPRETATION OF STATUTES - Provision in a statute -Provision in schedule thereof- Where in conflict - How resolved - Which prevails.

INTERPRETATION OF STATUTES - Provisions of a statute - Need to construe as a whole.

JUDGMENT AND ORDER - Doctrine of stare deices - Operation of.

JUDGMENT AND ORDER - Judgment in rem - What amounts to -Effect of- Judgment in personam -What amounts to - Effect of.

JUDGMENT AND ORDER - Judgment of court - Error therein -Whether every error will result in its reversal on appeal - When error will lead to its reversal.

JUDGMENT AND ORDER - Null order - Meaning and effect of.

JUDGMENT AND ORDER - Order of court - Bindingness of until set aside.

JUDGMENT AND ORDER - Supreme Court of Nigeria - Decision of - Bindingness of on all courts and persons in Nigeria.

JUDICIAL PRECEDENT - Stare decisis - Doctrine of- Operation of

JUDICIAL PRECEDENT-Stare decisis - Supreme Court of Nigeria- Decision of- Bindingness of on all courts in Nigeria.

JURISPRUDENCE - Ignorance of one's right - Whether precludes exercise of.

JURISPRUDENCE - Ignorance of the law - Whether a valid defence.

LOCUS STANDI - Locus standi - Meaning of- How determined Candidate validly nominated but unlawfully excluded from contesting election - Whether has locus standi to present petition.

LOCUS STANDI - Political party whose nominated candidate was unlawfully excluded from contesting election and candidate so excluded - Whether each has locus standi to sue.

MAXIM - "Ignorantia juris non prejudicat juri" - Meaning of.

MAXIM - "Ignorantia juris quod quisque tenetur scire nernine excusant" - Meaning of.

MAXIM - "Ubi jits ihi reinedium" - Meaning and Application of.

NOTABLE PRONOUNCEMENT - On When an appeal by Independent National Electoral Commission against decision in election petition is improper.

POLITICAL PARTIES - Conventions, Congresses and primary elections - Notice of- Duty on political party to serve on IN EC.

POLITICAL PARTIES - Political party - Registration of- Effect of.

PRACTICE AND PROCEDURE - Admissions - Formal admission -How made - Fact admitted - Whether needs further proof.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal -Basis of- What it should challenge.

PRACTICE AND PROCEDURE - Filing of election petition - Fees and security for costs pavahle in respect of election petition -Assessment of - Whose duty- Where assessed fees paid by petitioner - Whether can be penalized for non-payment of correct fees.

PRACTICE AND PROCEDURE - Filing of election petition -Address for service and name of occupier thereof in election petition - Effect - Whether a mere irregularity - Paragraph 4, First Schedule to Electoral Act, 2006.

PRACTICE AND PROCEDURE - Judgment in rem - What amounts to - Effect of- Judgment in personam - What amounts to - Effect of.

PRACTICE AND PROCEDURE - Judgment of court - Error therein - Whether every error will result in its reversal on appeal -When error will lead to its reversal.

PRACTICE AND PROCEDURE - Locus standi - Meaning of- How determined.

PRACTICE AND PROCEDURE - Non-compliance with provisions of Electoral Act, 2006 relating to election petitions - Power of court to invalidate petition on ground of - Discretionary nature of - When exercisable.

PRACTICE AND PROCEDURE - Null order or proceeding - Effect of.

PRACTICE AND PROCEDURE - Order of court - Bindingness of until set aside.

PRACTICE AND PROCEDURE - Parties to an action - Election petition - Who can present - Who may be made respondent thereto - Unsuccessful candidate at election - Whether needs-be made respondent to petition.

PRACTICE AND PROCEDURE - Pleadings in election petition -Reply - Reply to answer to election petition - When petitioner entitled to file - What it should not contain - Paragraph 16, First Schedule to the Electoral Act, 2006.

PRACTICE AND PROCEDURE - Pleadings - Traverse - Where defendant avers that he "is not in position to admit or deny" a fact in plaintiff's pleading - Effect.

PRACTICE AND PROCEDURE - Security for costs in election petition - Non-payment of - Effect of.

PRACTICE AND PROCEDURE - Technicalities - Attitude of court thereto - Duty on court not to adhere to technicality at the expense of justice.

PRACTICE AND PROCEDURE - Witness statement on oath - Nature of- Whether evidence - When facts deposed become evidence.

PRINCIPLES OF INTERPRETATION - Interpretation of statutes -Provisions of a statute - Need to construe as a whole.

PRINCIPLES OF INTERPRETATION - Interpretation of statutes -Provision in a statute - Where in conflict with provision in schedule of the statute - How resolved - Which

prevails.

SI ARE DEC/SIS - Decision of the Supreme Court - Bindingness of on all courts in Nigeria.

STARE DECISIS - Doctrine of stare decisis - Operation of.

STATUTE - Interpretation of statutes - Provision in a statute - Where in conflict with provision in schedule of the statute - How resolved - Which prevails.

STATUTES - Provisions of a statute - Need to construe as a whole.

WORDS AND PHRASES - "Election" within the context of section 137(1)(b) of the 1999 Constitution - Meaning of.

WORDS AND PHRASES - "Ignorantia juris non prejudicat juri" - Meaning of.

WORDS AND PHRASES - "Ignorantia juris quod quisque tenetur scire nenhne e\cusanl" - Meaning of.

WORDS AND PHRASES - Judgment in rein - Judgment in personam - Meanings of and distinction between.

WORDS AND PHRASES Locus standi - Meaning of.

WORDS AND PHRASES - Nomination of candidate for election- What amounts to.

WORDS AND PHRASES - "Participate" - Meaning of WORDS AND PHRASES - Primary election - What is.

WORDS AND PHRASES - "Petitioner" in section 145(1)(d), Electoral Act, 2006 - Meaning of.

WORDS AND PHRASES - "Ubi jus ibi remedium" - Meaning of.

Issues:

1. Whether the 1st respondent and the 2nd petitioner have locus standi to present a petition in respect of the gubernatorial election held in Kogi State on 14/4/07.
2. Whether the dismissal of the preliminary objection after striking out of the name of the 2nd petitioner from the petition occasioned a miscarriage of justice having regard to the circumstances of the case.
3. Whether the petition of the 1st respondent was competent having regard to the fact that the P' respondent stated its solicitor's address as its address for service, and paid filing fees, hearing fees and security for costs in respect of only the 1st appellant notwithstanding that fourteen of the candidates who contested in the election were also joined as respondents to the petition.
4. Whether the tribunal was right when it relied on the reply to answer to the petition, and the further witness statement on oath filed in respect of the same.
5. Whether the tribunal was right when it held that the appellants could not raise the issue of qualification of the 2nd petitioner before the tribunal.
6. Whether the tribunal was right when it applied and followed the decision of the Supreme Court in Action Congress v. INEC (2007) 12 NWLR (Pt.1048) 222 in deciding the 1st respondent's petition in its favour.
7. Whether the tribunal was right when it held that the 1st respondent proved its petition and was entitled to the reliefs sought therein.

Facts:

The Independent National Electoral Commission (INEC) is the body charged with the duty

of organizing and supervising elections to elective government offices in Nigeria. It announced that it would conduct election to the office of Governors of the States in Nigeria on 14/04/07.

In preparation for the election, various political parties nominated candidates to contest in the election. In Kogi State, the All Nigeria Peoples Party (ANPP), which is one of the registered political parties in Nigeria, nominated Prince Abubakar Audu as its candidate for the Governorship election, and forwarded his name to INEC while the Peoples Democratic Party (PDP) nominated Ibrahim Idris as its candidate, and also submitted his name to INEC.

At a point in time, Prince Audu Abubakar became apprehensive that INEC was about to exclude him from contesting the election. Consequently, he sought and obtained an *ex parte* order of injunction from the High Court of Kogi State. The order restrained INEC from excluding Prince Audu Abubakar from contesting the election.

However, on 13/4/07. INEC wrote a letter to its officers. It directed its officers to delete the name and logo of ANPP. and the name and picture of Prince Audu Abubakar from the ballot papers for the election. And the directive was duly complied with by officers of INEC.

Eventual. the election held on 14/4/07, and INEC declared and returned Ibrahim Idris Audu the candidate duly elected as the Governor of Kogi State. ANPP and Prince Audu Abubakar were aggrieved. They filed a petition as 1st and 2nd petitioners respectively. They sued INEC and its officers who took part in the conduct of the election (1st -23rd respondents), and Ibrahim Idris (24th respondent). They also joined fourteen of the candidates who contested but lost at the election, as respondents to their petition. They alleged, in a nutshell, that they were unlawfully excluded from the election, and they sought the following reliefs:

- "(i) That the election held on 14th April. 2007 into the office of Governor of Kogi State and the return of the 24th respondent, Idris Ibrahim as the winner by the 1st and 2nd respondents in the said gubernatorial election be declared void and same a nullity by virtue of the provisions of Electoral Act. 2006 and the Constitution of the Federal Republic of Nigeria.
- (ii) An order for fresh election to be conducted by the 1st to 23rd respondents for the Governorship seat of Kogi State forthwith, having the 2nd petitioner as candidate for the said election having been sponsored and nominated by the 1st petitioner and screened and cleared by the 1st and 2nd respondents."

In their respective answers to the petition, the 1st - 23rd respondents and the 24th respondent to the petition raised preliminary objections to the *locus standi* of the petitioners. They also challenged the qualification of the 2nd petitioner as a candidate for the election on the ground that he was indicted for fraud by an administrative panel. Furthermore, they challenged the competence of the petition on grounds of defect in form and non-payment of appropriate filing fees, hearing fees and security for costs. The 1st - 23rd respondents to the petition, however, averred that they were not in a position to admit or deny the petitioners' averment that the 1st respondent to the petition (INEC) wrote a letter directing its officers to delete the name and logo of the petitioners from the ballot papers used during the election.

In response, the petitioners filed a reply to the 1st – 23rd and 24th respondents' answers to the petition on the issue of the 2nd petitioner's qualification as a candidate for the election. They also filed further witness statement on oath in rebuttal of the 1st – 23rd and 24th respondents' answer to the petition, and to adduce evidence in response to a request for particulars of a fact averred in their petition.

At the hearing of the petition, evidence relied on by parties was admitted by mutual consent of the parties, and the evidence included the letter written by INEC to r- officers.

In its judgment, the tribunal upheld the preliminary objection to the effect that the 2nd petitioner had no locus standi to file petition in respect of the election held on 14/4/07 on the ground that he did not take part in the election. On the other hand, it held that the 1st petitioner (ANPP) had locus standi to file the petition. Furthermore the tribunal held that the objection to the petition on grounds of form and non payment of filing fees hearing fees and security for costs, if true, amounted to mere irregularities which did not affect the petition. Consequently, objection. The tribunal also found that the 2nd petitioner was validly nominated by the 1st petitioner (ANPP) for the election, and held, on the basis of the Supreme Court decision Action Congress v. INEC (2007) 12NWLR(Pt. 1048) 222, that the 1 respondent to the petition (INEC) had no power to exclude a candidate from an election on the strength of an indictment of that candidate by an administrative panel. Accordingly, the tribunal upheld the petition and granted the reliefs sought by the petitioners.

Dissatisfied with the judgment of the tribunal, the 24th respondent appealed to the Court of Appeal. The 1st - 23rd respondents to the petition were also dissatisfied with the judgment of the tribunal, and they appealed to the Court of Appeal.

The 1st petitioner, which was made 1st respondent to the aforesaid appeals, and the 2nd petitioner were both dissatisfied with the decision of the tribunal to the effect that the 2nd petitioner lacked *locus standi* to file a petition in respect of the election held on 14/4/07. Consequently, they filed a cross appeal against that part of the judgment of the tribunal.

In determining the appeal, the Court of Appeal considered the provisions of sections 144 and 145(1) of the Electoral Act, 2006; paragraphs 2 (4), 16, 45 and 49 of the First Schedule to the Electoral Act, 2006. They provide as follows:

"144(1) An election petition may be presented by one or more of the following persons:

- (a) a candidate in an election;
- (b) a political party which participated in the election.

(2) The person whose election is complained of is in this Act referred to as the respondent but if the petitioner complains of the conduct of an electoral officer, a presiding officer, a returning officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a respondent and shall be joined in the election petition in his or her official status as a necessary party PROVIDED that where such officer or person is shown to have acted as an agent of the Commission, his non-joinder as aforesaid will not on its own operate to void the petition if the Commission is made a party."

"145(1) An election may be questioned on any of the following grounds:

- (a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- (b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act: that the respondent was not duly elected by majority of lawful votes cast at the election: or
- (c) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."

Paragraphs 2(4), 16(1), 45 and 49(1) of the First Schedule to the Electoral Act, 2006:

"2(4) If no security is given as required by this paragraph, there shall be no further proceedings on the election petition."

"16(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the Registry, within five (5) days from the receipt of the respondent's reply, a

petitioner's reply in answer to the new issues of fact, so however that:

- (a) the petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him; and
 - (b) The petitioner's reply does not run counter to the provisions of subparagraph (1) of paragraph 14 of this Schedule.
- (2) The time limited by subparagraph (I) of this paragraph shall not be extended."
- " 45. Two or more candidates may be made respondents to the same petition and as the case may, for the sake of convenience be heard at same time but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the respondents."
- "49(1) Non-compliance with any of the provisions of this Schedule, or with a rule of practice for the time being operative, except otherwise stated or implied, shall not render any proceeding void, unless the tribunal or court so directs, but the proceeding may be set aside wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the tribunal or court may deem fit and just.
- (2) An application to set aside an election petition or a proceeding resulting therefrom for irregularity or for being a nullity, shall not be allowed and unless made within a reasonable time and when the party making the application has not taken any fresh step in the proceedings after knowledge of the defect.
 - (3) An application to set aside an election petition or a proceeding pertaining thereto shall show clearly the legal grounds on which the application is based.
 - (4) An election petition shall not be defeated by an objection as to form if it is possible at the time the objection is raised to remedy the defect either by way of amendment or as may be directed by the tribunal or court.

An objection challenging the regularity or competence of an election petition shall be heard and determined before any further steps in the proceedings if the objection is brought immediately the defect on the face of the election petition is noticed.

Held (*Unanimously dismissing the appeals and allowing the cross- appeal*)

1. On Determinant of proper parties to an election petition

It is the Electoral Act that determines persons entitled to present election petitions, and the respondents to such petitions. (*P. 109, para. B*)

2. On Who can present election petition -

By the provision of section 144(1) of the Electoral Act, 2006, the person or persons who are competent to present an election petition are:

- (a) a candidate in the election; and/or
- (b) a political party which participated in the election.

In the instant case, the 1st respondent was a political party duly registered by INEC after it satisfied all the condition, laid down by INEC vide the Electoral Act and the 1999 Constitution, and it participated in the election in dispute by nominating its candidate, the 2nd petitioner, for the disputed election but its candidate was barred from contesting the election by INEC. On the other hand, the 2nd petitioner, by virtue of his nomination for the election, was a candidate at the election notwithstanding that he was barred from contesting the election. In the circumstance, either of the 1st respondent or its candidate, the 2nd petitioner, whom it nominated and fielded, could present a petition in respect of the disputed election. And the tribunal erred when it held that the 2nd petitioner could not present

a petition against the election. [*P. P. A. v. Scmiki (2007) 17 NVVLR (Pt. 1064) 453* referred to.] (*P. 101, paras. B-II*) Per SANUSI, J.C.A. at pages 101-102, paras. B-B: "The 1st respondent now cross-appellant is a registered political party duly registered by the 2nd set of appellant obviously after the former satisfied all the conditions laid down by INEC *vide* the Electoral Act and the Constitution of the Federal Republic of Nigeria. There is no gain saying therefore that it participated at the election in dispute, in that INEC allowed and approved its participation in the election held on 14/4/2007 through Prince Abubakar Audu the 2nd respondent/petitioner who was nominated, screened and cleared by his party to contest the election on its platform. By the provisions of section 144(1) (a) and (b) of the Act, both the ANPP i.e the cross-appellant and the 2nd petitioner/respondent have the *locus standi* to present a petition before an election Tribunal against INEC on ground of any action/ omission of the latter, especially in this instant case where INEC unlawfully excluded him from participating in the election. Similarly, the party i.e ANPP/1st respondent now cross-appellant also has the *locus standi* to present a petition even independently provided that a candidate it nominated after under going the process of conducting primaries elections which is an exercise of voting or choosing through popular votes of a candidate by party members or person the party wants to field to contest the election on its ticket.

In the case of *f/A r. Saraki (supra)* this court held that in tl}e context of section 144(1) (b) of the Electoral Act 2006, a political party which participated in an election may present a petition. Here, all that a party needs to do in order to obtain *locus standi* to present a petition is simply to shpw that it *actually participated in (lie election* being challenged. This participation may include participation by itself or through its approved or authorized agent. To my mind, either the party (in this case the ANPP/cross appellant) or the candidate it nominated andfielded, i.e. the 2nd respondent/petitioner, can present an election petition. The issue of not being voted for at the election is not an impediment towards him or it from bringing a petition I am therefore of the view that both of the 1st respondent/cross appellant and the 2nd respondent/petitioner have *locus standi* to present the election petition, contrary to the judgment of the Tribunal. The 2nd petitioner by the provisions of section 144(1) (a) Was a valid candidate in the election and had the necessary *locus standi* to present the petition as he did."

3. *On Categories of persons who ma\ he sued as*

respondent in an election petition -By virtue of section 144(2) of the Electoral Act, 2006, the persons who may be respondents to an election petition are:

- (a) the person whose election is complained of;
- (b) the Electoral Officer, or a Presiding Officer, or a Returning Officer, or any other person who took part in the conduct of the election and whose conduct is complained of.

In other words, section 144(2) of the Act provides for two categories of respondents to an election petition. The first, which it terms "the respondent" is the person whose election is complained of, and who could also be referred to as the statutory respondent or the person or persons who won the election. The second is "deemed

respondent", which covers the various officers that were involved in the conduct of the election. This class of persons could also be termed as official or nominal respondents. Accordingly, a person whose election is not complained of cannot be a statutory respondent under section 144(2) of the Act, and (here cannot legally or statutorily be a petition strictly so called against them because section 144(2) of the Act does not contemplate the filing of a petition against losers in an election. In the instant case, the fourteen candidates who contested but lost to the 1st appellant at the election were not statutory respondents to the 1st respondent's petition. [*Owuru v. INEC* (1999) 10 NVVLR (Pt. 622) 201 referred to.] (Pp. 89, paras. D-F; 109, paras. C-F; 141-142, paras. C-D)

4. *Who is a proper respondent to an election petition*

Paragraph 45 of the First Schedule to the Electoral Act, 2006, which provides that where two or more candidates are made respondents to the same petition, the case, for the sake of convenience, may be heard at the same time but for all purposes (including the taking of security) shall be deemed to be a separate petition against each of the respondents, envisages that the inclusion of such multiple "respondents" in the same petition shall be deemed to have made the election petition a separate petition against each of the respondents. But by section 144(2) of the Act, the person whose election is complained of is the person referred to as the respondent. It is therefore clear that the deemed separate petition arising from the operation of paragraph 45 of the First Schedule to the Act must be in regard to each of the respondents elected or returned in the election in question. Such will normally happen only where multiple candidates within the same electoral area are returned or elected in their respective constituencies, for example, National Assembly candidates. A petitioner, say, a political party, which participated in the election may file a single petition against those elected or returned candidates but the election petition "shall be deemed to be a separate petition against each of the respondents". In other words, the Act does not envisage a situation in which a petition is presented against the loser of an election. In the instant case, the 1st respondent's petition was against the appellant who was declared elected or returned at the election held on 14/4/07, and not against the fourteen candidates who lost at the disputed election but were joined as respondents in the petition. In the circumstance, the tribunal was right when it held that the 1st respondent was not obliged to pay filing fees and security for costs in respect of those candidates. [*Ilharir. v. w/(2003) 14 NVVLR (PL 841) 446; Onuorah v. Okeke* (2005) 10 NVVLR (Pt.932) 40; *Obiekwe v. Obi* (2005) 10 NVVLR (1H, 932) 60 referred to.] (Pp. 89, paras. A-II: 89-90, paras. H-B; 107-108, paras. G-C; 108-109, paras. E-F) Per OMOKR1, J.C.A. at page 110, paras. B-E:

"Having regard to the foregoing, by the revenue collector's receipt No. 2004199103 issued on 9/5/07 which showed that the petitioners paid the sum of N10,320.00 in respect of this petition to the registry of the Tribunal, it is my considered view that the petitioners have satisfied the provisions of paragraph 2 of the first schedule to the Electoral Act, 2006. Since there is only one petition filed by the petitioners before the Tribunal they were only obliged to pay security for costs in respect of only one petition. By the provisions of paragraph 2(2) of the first schedule to the Electoral Act, 2006, the security for costs shall be of such amount not less than N5,000,00 as the Tribunal or court may order. There is nothing in the record to show that the Tribunal made any order for the payment of security for costs which is different from the one stipulated in paragraph 2(2) aforesaid. In the circumstances and having regard to the fact that under paragraph 36(1)

of the first schedule to the Electoral Act, 2006, the petitioners were obliged to pay only the sum of not less than N 1,000.00 and by paragraph 36(2) they were also obliged not to pay more than N2,000.00, the petitioners having paid the sum of N 10,430.00 complied with the requirement of the law."

5. *On Who can may present election petition on ground of unlawful exclusion of a validly nominated candidate from an election -*

By virtue of sections 144(1) and 145(1)(d) of the Electoral Act, 2006, when read together, both the person who was validly nominated, screened and cleared by the Electoral body (INEC) to contest an election but was later unlawfully excluded from contesting the election, and the political party that nominated the person for the election are entitled to present an election petition. In the instant case, both the 1st respondent and the 2nd petitioner could present an election petition in respect of the gubernatorial election held in Kogi State on 14/4/07. [*Adebusuyi v. Oduyove* (2004) 1 NWLR (Pt. 854) 406; *P.P.A. v. Saraki* (2007) 17 NWLR (Pt. 1064) 453; *Okonkwo v. INEC* (2004) 1 NWLR (Pt. 854) 242; *Okon v. Bob* (2004) 9 NWLR (Pt. 854) 378; *Obasanjo v. Buhari* (2003) 17 NWLR (Pt. 850) 510 referred to.] (*Pp. 114, paras. B-E;] 14-115, para. H-A*)

Per OMOKRI, J.C.A. at pages 114-115, paras. E-A: "So a petition can be Field by the candidate or by the political party which participated at the election or by the two of them jointly. By the provisions of section 144(1) (a) & (b) a political party can present a petition alone or jointly with its candidate at the election. In *Buhari & Ors. v. Obasanjo Ors.* \ EPR 112 at 130; (2005) 2 NWLR (Pt. 910) 241, it was held thus:

'Here for a political party to qualify as a petitioner, it only needs to participate at the election and no more, and participation simply means "taking part" not in any specified way. This may include participation by the political party itself or through its authorized agent.' Also in *Obasanjo v. Buhari* (2003) 17 NWLR (Pt. 850) 510, the Supreme Court held that sponsorship of a candidate in an election is enough to qualify a political party as having participated in an election. This court has also held that under section 134(1)(d) of the Electoral Act, 2002. which is in *pari materia* with section 145(1)(d) of the Electoral Act, 2006, a political party can present an election petition complaining of valid nomination but unlawful exclusion. See *Okonhvo v. INEC (supra): Okon r. lloh (supra)* and *Asin\e v. INEC (supra)*. See also *P.P.A. v. Saraki & Ors, (supra)*. " Per ODILI, J.C.A. at page 132, paras. E-G:

"It is difficult to agree with the decision of the lower Tribunal that the cross-appellant lacked the *locus stand!* to sue for which he had to be struck out of the suit. The absurdity that enured thereafter was that the tribunal could not gel to the meat of the matter nor make a final decision without the interest of the cross-appellant being factored and protected. Therefore he had sufficient interest and was a necessary party and ought not to have had his name struck out of the petition. Put differently the suit or matter could not have been effectually and finally determined without him and so he was a necessary party. That is to underscore the fact that section 144 cannot be taken in the peculiar circumstances without being linked with section 145(1)(d) of the Electoral Act, 2006. See *Chiimeze v. Masi* (1989) 1 NWLR (Pt. 97) 254; *Okafor \: Nnaife* (1973) 3 SC 85."

Per OWOADE, J.C.A. at page 148, paras. K-II:

"The political party as the ANPP in this case would be said to have participated in the elections having registered and presented candidates for the same, its participation cannot be affected by the fact that it was thereafter excluded from the 2007 Governorship Election in Kogi State. Thus, in spite of its exclusion from the Governorship Election in Kogi State the provision relating to *locus standi* in section 144(1)(b) nevertheless enures in its favour, indeed without any assistance from section 145 of the Act."

6. *On Right of political party whose nominated candidate was unlawfully excluded from contesting election to present petition —*

The right which entitles a political party to present a petition before an election tribunal is the complaint that its candidate was validly nominated but was unlawfully excluded from the election. This is because by virtue of section 32(1) of the Electoral Act, 2006 and the provisions of the 1999 Constitution, a political party has a right to present a candidate at an election. (*P. 66, paras. E-F*)

Per OJAGE, J.C.A. at pages 66-67, paras. C-G:

"The grouse of the political party is that its validly nominated candidate was unlawfully excluded. This gives the 1st petitioner a *locus standi*, because the right of the ANPP to participate in the election and protect its right and interest has been infringed and breached by INEC whose decision excluded its candidate the 2nd petitioner. This gives the 1st petitioner *locus standi*. In fact, the wrong needs to be remedied if we believe *the dictum* that wherever there is a wrong, there is a remedy at law - "*Ubi jus ibi rewedium*." It was Chief Gani Fawebinmi (SAN), a social commentator, while complaining about the inadvisability of representing a political party, who wrote thus that 'politics is about interests, articulation and democracy is about the peoples interests and freedom of choice'. When therefore, a political party has articulated its interests which it believed and nominated a candidate for an election, the right of that political party is assaulted and abused when its nominated candidate is prevented from contesting the projected election. The party therefore has a right to sue particularly as the 1999 Constitution directs that "no association other than a political party shall canvass for votes for any candidate at any election". Upon the registration of a political body, it becomes a body corporate with perpetual right of succession and may sue and be sued. Why should the ANPP not have a *locus standi*? as alleged by the 1st appeal and the INEC in the election for the seat of Governor which took place on 14th April, 2007. It has. The ANPP had duly groomed its candidate, presented him before INEC, who screened him; after the ANPP itself had screened the candidate who had passed through the needle's eye, to qualify and on the eve of the election, the same body INEC which had screened the candidate, without informing the candidate that he had other hurdles to cross excluded him from the election. The sponsor of such a candidate should be in a position not only to cry foul, it should have the right to complain and seek redress in a court of law. There exists therefore the *locus standi* of the ANPP in the said Tribunal. To further illustrate the solidity of the *locus standi* of the ANPP in the said election, I am in agreement and employ in this judgment the scenario pointed by the 1st respondent in his respondents brief of a child who registered for an examination with an examining body, and was given receipt which acknowledged his eligibility. Through no fault of his own, he was debarred from taking the examination on the day of the examination. Surely such a candidate will have a right of redress in a court of law."

7. *On Proof of valid nomination and unlawful exclusion from election -*

In order to prove that a petitioner was validly nominated by his political party but was unlawfully excluded from an election, the petitioner must show the following:

- (a) that he was validly nominated by his political party;
- (b) that an election was conducted;
- (c) that a winner was declared: and
- (d) that his name was not included in the list of the contestants.

In the instant case, having regard to the evidences adduced and the facts admitted by the appellants, the 1st respondent and the 2nd petitioner proved all the elements required to establish their case that the 2nd petitioner was validly nominated by the 1st respondent to contest the election held on 14/4/07 but was unlawfully excluded from contesting the election by INEC. [*Kffiong v. Ikpeme* (1999) 6 NWLR (Pt. 606) 206 referred to.] (P. 123, paras. C-D) Per OMOKKI, J.C.A. at pages 123-124, paras. E-A; 124, paras. E-F:

"Firstly, the 1st respondent proved that the 2nd petitioner was duly nominated and sponsored by the 1st respondent as shown in exhibits A2, A3 and A5 which are (he certified true copies of the 2nd petitioner's nomination forms 001 and 002. The 1st appellant in paragraph 2 of their joint brief admitted paragraph 1 of the petition of the 1st respondent and 2nd petitioner, to the extent that the 1st petitioner nominated the 2nd petitioner to contest the gubernatorial election held on 14/4/07 in Kogi State, Therefore, it is not in dispute that the 2nd petitioner was validly nominated. It is not also in dispute that the election was conducted and concluded on 14/4/07. See paragraph 10 of the petition which 'was admitted by the 2nd appellant, INEC, in their joint reply in paragraph 16. See pages 349 - 350, vol. 1, of the record. Still under the same paragraph 16, INEC admitted that the 1st appellant, Alh. Ibrahim Idris was elected and declared the winner of the election. See also exhibit 'A4\ the certified true copy of the 2nd appellant's (INEC) form ICC 8E, which is for the declaration of result, tendered by the 1st respondent. The 1st respondent tendered exhibits A10-A11, the letter written by the 2nd appellant directing its official to delete the name of the 2nd respondent from the ballot paper. The said letter was dated on 13/4/07, just a day before the election of 14/4/07. See paragraphs 10 and 11 of the petition... From the foregoing, it could be seen clearly that the elements of the 1st respondent's petition before the tribunal have been proved having regard to the exhibits tendered and the admission of the appellants."

8. *On Whether non-qualification of petitioner for election can be raised as defence to election petition* -By virtue of section 145(1)(a) of the Electoral Act, 2006, the qualification of a candidate to contest an election is a ground on which a petition can be presented. Consequently, that ground cannot be raised as a defence to a petition. And any respondent to an election petition who intends to rely. on that ground must file a cross-petition. In the instant case, the appellants who sought to challenge the 2nd petitioner's qualification ought to have filed a cross-petition. (Pp. 97-98. paras. 11-B)
9. *On Meaning of "locus standi" -*
Locus standi is the right to sue in a court of law, to claim a right due under the law. In other words, *locus standi* is a legal right and not a favour given to litigants. [*Egolum v. Ohasanjo* (1999) 7 NWLR (Pt.611) 355; *Buhari v. Obasanjo* (2005) 13 NWER (Pt.941) 1; *P.P.A. v. Saraki* (2007) 17N\VLRL (1t.1064) 453; *Atlehiisuyi v. Odiiyoye* (2004) 1 NWER (Pt. 854) 406 referred to.] (Pp. 67-68, paras. G-A; 128, paras. D-E)

10. *On What court looks at in determining whether a party has locus standi —*
 In order to determine whether a party has *locus standi* in a suit, the totality of the averments in the pleading or petition, in case of an election petition, must be considered to ascertain whether or not the party has sufficient interest, and how such interest arose. Where it is shown that the plaintiff or petitioner has interests which have been or are in danger of being violated, invaded or adversely affected by the act of the defendant or respondent, in case of an election petition, the complaint of such plaintiff or petitioner would be deemed to have shown sufficient interest to give the plaintiff or petitioner *locus standi* to litigate over the subject matter in issue. In the instant case, the 1st respondent had a right to field the 2nd petitioner, its candidate, at the election held on 14/4/07 but was barred from doing so by INEC. It was also shown that the 2nd petitioner, the candidate the 1st respondent validly nominated for the election, was excluded from contesting the election by INEC. In the circumstance, the 1st respondent and its candidate, the 2nd petitioner, had *locus standi* to present their petition. And the tribunal was right when it so held. [*Owodunni v. Registered Trustees C.C.C.* (2000) 10 NWLR (Pt.675) 315; *Yusufu v. Govt, Edo State* (2001) 13 NWLR (Pt. 731) 517 referred to.] (Pp. 66, paras. E-F- 92-93, paras. G-C; 101, paras. D-F)
11. *On Constituent elements of an election –*
 "Election" is a process of choosing by popular votes, a candidate for a political office in a democratic system of government. And it is not restricted to what happens on the day of the polls. It entails the process constituting accreditation, voting, collation, recording on all relevant INEC forms and declaration of results. [*Ojukwu v. Obasanjo* (2004) 12 NWLR (Pt. 886) 169; *P.P.A. v. Saraki* (2007) 17 NWLR (Pt. 1064) 453 referred to.] (Pp. 127, 1'inas I! (.'; J63, paras. E-H)
12. *On Meaning of "election " under 1999 constitution –*
 The word "election" in the context of section 137(1)(b) of the 1999 Constitution means the process of choosing by popular votes a candidate for a political office in a democratic system of government. And the process starts from the voting by party members to choose a candidate to represent the party at ward level and the primaries up to the polling day when the candidates are presented by the parties to the electorate. (P. 163, paras. E-F)
13. *On What constitutes "primary election" –*
 Primary election is an exercise of choosing, through popular votes by party members, the candidate a political party wants to field to contest an election on its ticket. (P. 101, para. F)
14. *On What amounts to nomination of a candidate for election -*
 Nomination for an election entails sending the candidate's name to the electoral body after the candidate had been screened by his party, and an election conducted by his party. (Pp. 93, para. D-E; 114, para. B)
15. *On How a political party can substitute its candidate for an election -*
 By virtue of section 34 of the Electoral Act, 2006, once a political party sends the name of a candidate to INEC as its nominated candidate for an election, the political party cannot withdraw the candidate or substitute the candidate with another candidate unless and until it presents or adduces verifiable reasons for the withdrawal or

substitution of the candidate, and that must be done within the period specified by the Act. [Ugwu v. Ararwnc (2007) 12 NWLR (Pt, 1048) 367 referred to.] (P. 93, paras. F-G)

16. *On Duty on political parties to serve notice of convention, congresses ant! primary elections on INEC*

Section 85 of the Electoral Act, 2006, requires that INEC be informed or invited to witness the congresses, or conventions, or the primary election of political parties where the parties decides to conduct the same. {P. 93, para. E}

17. *On Altitude of court to technicalities -*

Courts abhor and have moved from undue reliance on technicality to doing substantial justice. In other words, the duty of the court is not to give undue prominence to technicality at the expense of justice. [Nwobodo v. Oiwh (1984) I SCNLR 1; Nwole v. Iwuagwu (2004) 15 NVVLR (Pt.895) 61; Owuru v. INEC (1999) 10 NVVLR (Ft. 622) 201 referred to.] (Pp. 91, para. B; 111-112, paras. II-E)

18. *On whether every error in judgment of court will lead to its reversal on appeal -*

It is not every slip of error in law committed by a court that will result in an appeal against its judgment being allowed. A slip or an error that will have the result of an appeal being allowed must be fatal in the sense that it must have occasioned a miscarriage of justice and substantially affected the result of the judgment. In the instant case, the Court of Appeal held that the dismissal of the appellants' preliminary objection was a slip by the tribunal, which did not cause any miscarriage of justice. Consequently, it refused to set aside the judgment solely on that ground. {Chafe v. Chafe (1996) 6 NVVLR (Pt.456) 417; Ndulue v. Ibezim (2002)12 NVVLR (Ft. 780) 139; Eadlallah v. Aremi Textiles Ltd. (1997) 8 NWLR (Pt. 518) 546; Adewumi v. A.-G., Ekiti State (2002) 2 NWLR (Pt. 751) 474 referred to.] (Pp. 65. paras. B-C; 86-87, paras. E-A; 105, paras. A-E)

19. *On Right of access of citizen to court -*

The Nigerian Constitution affords a complainant the opportunity to vent his grouse in a court of law, on the principle that wherever a wrong is alleged, there must be an avenue for redress as encapsulated in the maxim "*ubi jus ibi remedium*" meaning: where there is a wrong there is in a remedy. In the instant case, section 145(l)(d) of the Electoral Act gave the 2nd petitioner a right against unlawful exclusion from election. Consequently, the 2nd petitioner must have unhindered access to court to protect that right. In the circumstance, the 2nd petitioner had *locus standi* to file his petition, and the Tribunal erred when it held otherwise and struck out the petition. (P.D.P. v. INEC(1999) 11 NVVLR (Pt.626) 200 referred to. (Pp. 79, para. E; 128, paras. A-D)

20. *On Legal personality of a registered political parts-*

Upon the registration of a political body, it becomes a body corporate with perpetual right of **succession and may sue and be sued.** (P. 67. para. C)

21 *On Effect of failure to pay security for costs in election petition -*

Where non-compliance in an election petition relates only to non-payment of security for costs, it is considered a mere irregularity and curable. Consequently, it does not lead to the cancellation of an election petition. In the instant case, the tribunal was not in error when it held that the 1st respondent's non-compliance, if any, with the provision of paragraph 2 of the First Schedule to the Electoral Act, 2006, relating to payment of security for costs amounted to a mere

irregularity. (*Buyi v. Ibrahim* (2006) 8 NVCLR (Pt.981) 1 referred to.] (Pp. 144-145, paras. C-A)

22. *On Exercise of power of tribunal to invalidate election petition on grounds of non compliance with provisions of Electoral Act, 2006*

-Although the mandatory word "shall" is used in the provisions of the Electoral Act, 2006, the Act also vests discretion in the court or tribunal to cure non-compliance with its provisions relating to election petitions if an application to do so is made in good time: or to treat any such non compliance as an irregularity, which will not lead to the cancellation of the petition notwithstanding whether the complaint is about non payment of adequate fees, or about non-payment of security for costs, or about failure to give adequate address of the petitioner at the foot of the petition. In the instant case, the appellants' complaints about the 1st respondent's failure to pay the appropriate filing fee and security for costs, and to state adequate address of the 1st respondent at the foot of the petition, though unfounded, were not sufficient to render the 1st respondent's petition incompetent. (Pp. 63-64, paras. G B)

23. On Responsibility for assessment of fees and security for costs in respect of election petition-
Assessment of filing fees, hearing fees and security for costs payable in respect of an election petition is made by the registry of the tribunal, and not by the petitioner or his solicitor. Consequently, if a petitioner pays the fees assessed by the registry of the tribunal, the petitioner should not bear the brunt of non payment of correct or appropriate fees. In other words, once a petitioner pays the fees, which was adjudged payable or assessed as payable by the registry of the tribunal, the petitioner should be absolved of any blame; that is, his petition should not be struck out because of the mistake of the registry. (Pp. 110-111, paras. G-A)

24. On Meaning of "petitioner" in section 145(I)(d) of the Electoral Act, 2006-
The word "petitioner" as used in section 145(I)(d) of the Electoral Act, 2006, can only mean a political party, because a political party is not a candidate at an election and it cannot be nominated for an election. Furthermore, a political party can nominate a candidate but a candidate cannot nominate a political party. (Pp. 113-114, paras. f-A)

25. On Need to construe provisions of a statute as a whole-
In interpreting a statute, regard must be given to the entire enactment in order to understand its purport and meaning. In the instant case, section 144(1) of the Electoral Act. 2006 cannot be read in isolation of section 145(1)(d) of the Act. And once the provisions in both sections are construed together, it becomes clear that the law gives a political party and its candidate independent recognition in respect of filing an election petition. [*oyeniran v. Egbetola* (1997) 5 NWLR (Pt. 504) 122; *ugwu v. Ararume* (2007) 12 NWLR (Pt. 1048) 367; *Adah v. NYSC* (2001) 1 NWLR (Pt.963)65; *Tukur v. Govt. of Gondola State* (No.2) (1989) 4 NWLR (Pt. 117) 517; *A.-G., Bendel State v. A.-G., Federation* (1982) 3 NCLR 1; *A.-G.. Lagos State v. A.-G., Federation* (2004) 18 NWLR (Pt. 904) 1 referred to.] (Pp. 114, paras. D-F: 132. paras. B-D).

Per OMOKRI, J.C.A. al page 113. Paras. C-H:

"I am in agreement with the 1st respondent that the provisions of section 144(1)(a) & (b) must be construed together with section 145(1)(d).At this juncture it becomes necessary to examine the provisions. Section 144(1) (a) & (b) of the Electoral Act provides:

'An election petition may be presented by one or more of the following persons:

- a) A candidate at an election.
- b) A political party which participated at the election'.

From the above clear provisions a candidate at an election can present an election petition. Similarly a political party which participated at the election can present an election petition and both can do so together or separately, one acting independently of the other.

Also section 145(1) (d) provides:

"An election may be questioned on any of the following grounds, that is to say:

- a)
- b)
- c)
- d) That the petitioner or its candidate has validly nominated but was unlawfully excluded from the election."

The expression "petitioner or its candidate" surely and certainly indicates that both the political party

- and its candidate have locus standi."
26. On Principles governing interpretation of statutes -
A court, when interpreting a statute, should not attach to the provisions of the statute a meaning that the words of the statute cannot reasonably bear. (P. 132. para. A)
 27. On Resolving contradiction between provision in a statute and the schedule to the statute -
The provisions in the schedule to a statute cannot override the provisions enacted in the body of the statute. Thus, where there is a conflict between the provisions in the body of the statute, and those in the schedule, the former prevail over the latter. In the instant case, the provision of paragraph 45 of the First Schedule to the Electoral Act, 2006 must be read subject to the provision of section 144(2) of the Act. And when that is done, it is conclusive that the word "respondent" in paragraph 45 of the First Schedule to the Electoral Act is referable only to the statutory respondents stated in section 144(2) of the Act. [Oputeh v. Ishida (1993) 3 NWLR (pt. 279) 34 referred to] (Pp. 109-110, paras. f-A)
 28. On Binding effect of order of court until it is set aside -
An order made by a court remains valid and in force for all intents and purposes until it is vacated or set aside on appeal. In the instant case, the tribunal was right when it held that the order of injunction made by the High Court of Kogi State restraining INEC from barring the 1st respondent and the 2nd petitioner from contesting the election held on 14/4/ 07 was binding on INEC until vacated, or set aside on appeal. [U.T.B. v. Koleoso (2006) 18 NVVLR (Pt. 1010) 1; Ndigwe v. Nwude (1999) 11 NWLR (Pt. 626) 314; In Re: Diamond Bank Ltd. (2002) 17 NWLR (Pt.795) 170; Ijebuode Local Government v. Adedeji Balogun Co. Ltd. (1991) 1 NWLR (Pt. 166) 136; UBA v. onagoruwa (1996) 3 NWLR (Pt. 439) 709; Komolafe v. Omole (1993) 1 NWLR (Pt. 268) 213 referred to.] (Pp. 116. paras. B-C; 129-130, paras. E-C) Per OMOKRI, J.C.A. at page 122, paras. D-F:
 29. On Meaning and effect nullity-
A nullity is, in law, a void act, which has no legal consequence. A proceeding which has been declared! a nullity is void and without any legal effect or consequence whatsoever. Just as it does not confer any title whatsoever, it does not also impose any obligation or liability on any person or make any party liable to suffer any penalty or disadvantage. In the instant case, the nullification of the decision of the Court of Appeal in INEC v. Action Congress (2007) 6 N VVLR (Pt. 1029) 142 by the Supreme Court meant the decision of the Court of Appeal never was and the appellants could not rely on the same. [saleh v. Mungono (2003) 1 NWLR (Pt. 801) 221; Okafor v. A-G., Anambra Slate (1991) 6 NWLK (Pt. 200) 659 referred to.] (Pp. 119-120, paras. F-A)
 30. On Status of the Supreme Court of Nigeria –
The Supreme Court of Nigeria is the highest and final appellate court in Nigeria, and its decision is binding on every court, authority or person in Nigeria. (P. 120, para. D)
 31. On Aim of requirement of address for service on petitioner in election petition -
The aim of paragraph 4(4) of the First Schedule to the Electoral Act, 2006 is to ensure that documents meant for service on a petitioner are served on and received by him. And where a petition is presented by a counsel on behalf of a petitioner, the address of the legal practitioner suffices for the purpose and intendment of paragraph 4(4) aforesaid, because once a party engages a counsel to prosecute his case and the counsel appears before the court, all processes meant for the petitioner are served on the counsel and not on the party, unless a situation arises which demands direct service on the party. In the instant case, the tribunal was right when it held that the address of the I5' respondent's petition sufficed for the purpose and intendment of paragraph 4(4) of the First Schedule to the Electoral Act, 2006. And, more so, in that it did not occasion any miscarriage of justice. [Adun v. Osunde (2003) 16 NWLR (Pt. 847) 643; Egolum v. Obasanjo (1999) 7 NWLR (Pt. 611) 355 referred to.] (P. 111, paras. D-H)
 32. On Whether failure to state address for service on petitioner and occupier thereof in an election petition is a mere irregularity -
Although paragraph 4(4) of the First Schedule to the Electoral Act, 2006, provides that an address of the petitioner for service at which documents intended for the petitioner may be left and its occupier shall be stated at the foot of an election petition, the use of the word "shall" in the provision of the paragraph is simply directory and not mandatory.

Consequently, non-compliance with the provision of the paragraph amounts to an irregularity, especially if the provision of the paragraph is read together with paragraph 4(5) of the First Schedule to the Act, which gives latitude or discretion to the tribunal to give contrary order even in a situation where the petitioner fails to provide the address for service. In the instant case, the 1s' respondent indicated its solicitor's address as its address for service at the foot of its petition. Accordingly, the tribunal was right when it held that the 1s' respondent substantially complied with the provision of paragraph 4(4) of the First Schedule to the Electoral Act, 2006. (Pp. 90-91, paras. F-B)

33. On Meaning of "participate" -
"Participate" means to receive or have a part or share of; to partake of, experience in common with others; to have or enjoy a part or share in common with others. It also means to partake, as to "partake" in a discussion, or in a pension or profit sharing plan. (P. 149, paras. A-B)
34. On what amounts to participation in an election by a political party -
A political party participates in an election by nominating and sponsoring its candidate for the election. (P. 114, para. A)
35. On Nature of witness statement on oath-
A witness's statement on oath is in the nature of pleadings, which cannot be equated with evidence because pleadings are not evidence. Consequently, evidence must be adduced in proof of a witness statement on oath otherwise it is useless. [Durosaro v. Ayorinde (2005) 8 NWLR (Pt. 927) 407; Shittu v Fashawe (2005) 14 NWLR (Pt. 946) 671; Iwuoha v. NIPOST Ltd. (2003) 8 NWLR (Pt. 822) 308 referred to.] (Pp. 97, paras. C-D; 153, paras. F-G)
36. On When petitioner entitled to file reply to answer to an election petition -
By virtue of paragraph 16 of the First Schedule to the Electoral Act, 2006, a petitioner, like a plaintiff in a regular court, can file a reply or a defence to meet fresh issues raised in an answer to the petition. What the petitioner cannot do is to raise or introduce fresh or new issues, extraneous to those raised in the answer to the petition. In the instant case, the appellants raised fresh issues in their answers to the 1st respondent's petition, and also called on the 1st respondent to furnish them with further particulars of a fact pleaded by the 1st respondent in its petition. In the circumstance, the tribunal was right when it allowed the 1st respondent to file a reply to the appellants' answer to the 1st respondent's petition, and to file further evidence in rebuttal of the fresh issues raised in the appellants' answer to the 1st respondent's petition. [Kankia v. Maigeimi (2003) 6 NWLR (Pt.817) 496; Iwuoha v. NPOST Ltd. (2003) 8 NWLR (Pt. 822) 308 referred to.] (Pp. 96, paras. G H; 117. paras. F-G; 154. paras. B-D)
39. On Effect of traverse that 'defendant is not in a position to admit or deny' an averment -
A traverse to the effect that 'a defendant is not in a position to admit or deny an averment' by a plaintiff is deemed to be an admission of the plaintiff's averment. In the instant case, the traverse by INEC that it was not in a position to admit or deny the 1st respondent's averments in respect of the letter written by INEC barring the 2nd petitioner from contesting the election held on 14/4/0, amounted to an admission of the 1st respondent's averments. [Atolagbe v. Shorum (1985) 1 NWLR (Pt. 2) 360; Lewis Peat (N.R.I.) Ltd. v. Akhimien (1976) 1 SC 157; Owosho v. Dada (1984) NSCC 568 referred to.] (P. 124, paras. A-E)
38. On Nature of formal admissions and whether facts admitted needs further proof -
Formal admissions may take the form of clear admissions filed or made by a party to a civil proceedings or by his counsel in the course of trial of a civil suit; and they are made by a party to a civil proceeding so as to relieve the other party of the necessity of proving the matters admitted. Accordingly, when both parties have agreed about a particular matter in their pleadings such matter need not be proved and they should accept such agreed fact as established. In other words, facts admitted need no further proof. In the instant case, the 1st respondent's witness statement on oath was admitted in evidence by consent of the parties. Furthermore, the 2nd set of appellants admitted that INEC wrote letters to its officers directing that the name and logo of the 1st respondent and its candidate be deleted from ballot papers issued to all voters at the disputed election. In the circumstance, the 1st respondent was relieved of formal proof of its case that its candidate was unlawfully excluded from the election by INEC. [Edokpolo & Co. Ltd. v. Ohenhen (1994) 7 NWLR (Pt. 385) 511; Kamalu v. Umunna (1997) 5 NWLR (Pt. 505) 321; Ajomale v. Yadaut (No.2) (1991) 5 NWLR (Pt. 191) 266;

Okoebor v. Police Council (2003) 12 NWLR (Pt. 834) 444 referred to.] (Pp. 161 162, paras. F-D; 99-100, paras. H-B)

39. On Power and duty of court to take judicial notice of laws and decisions of Supreme Court of Nigeria -
A court of law is perfectly entitled to take judicial notice of all laws, including the pronouncement of the Supreme Court. In the instant case, the existence of the judgment of the Supreme Court in Action Congress v. IN EC (2007) 12 NWLR (Pt.1048) 222 was a fact in issue under section 52 of the Evidence Act Cap. 112, Laws of the Federation of Nigeria, 1990 and the tribunal rightly took judicial notice of the pronouncement of the Supreme Court in the case to the effect that INEC had no powers to disqualify any candidate from contesting an election on the basis of an indictment not made by a court of law (P. 155, paras. F-H)
40. On Presumptions of law —
Presumptions of law are, in reality, rules of law and a part of the law itself, and a court may draw the inference whenever the requisite facts are developed in the pleadings. They are usually founded upon reasons of public policy, social convenience and safety, which are warranted by the legal experience of courts in the administration of justice. They are mandatory deductions, which the law directs to be made, having regard to rules of law and practice laid down for the use of courts. They are procedural devices which take the place of evidence in certain cases. Accordingly, while some presumptions have been established as conclusive rules of law, otherwise called irrefutable presumptions of law, others are only prima facie evidence and may be rebutted, however, in the absence of such rebuttal the presumptions stand. In the instant case, from the moment the Supreme Court delivered its judgment in Action Congress v. INEC (2007) 12 NWLR (Pt.1048) 222 an irrefutable presumption of law arose in favour of the 1st respondent and the 2nd petitioner, which entitled the tribunal to discountenance all evidence of indictment of the 2nd petitioner that was not made by a court of law. (P. 156, paras. A-F)
41. On Nature and effect of judgment in rem –
A judicial decision in rein is one which determines the jural status of a person or thing in relation to the world generally and is conclusive for or against everybody. It is unlike a decision in personam, which determines the jural relation of a person to one another. In the instant case, the judgment of the Supreme Court in Action Congress v. INEC (2007) 12 NWLR (Pt.1048) 222 in which the court held, whilst interpreting section 182(l)(i) of the 1999 Constitution, that INEC had no power to bar any candidate from contesting an election on the basis of an indictment of that candidate by a government or administrative panel of inquiry, is a judgment in rein, that is binding on all occasions where there is need to apply the provision of section 182(l)(i) of the 1999 Constitution! Furthermore, it is immaterial that the judgment was delivered after the election held on 14/4/07. In the circumstance, the tribunal rightly followed the precedent laid down in the judgment of the Supreme Court. (Pp. 120-121, paras. G-C; 159-160, paras. H-A)
42. On Operation of doctrine of stare decisis -
**Under the doctrine of stare decisis, an existing interpretation of law by one court, before the conclusion of an issue in controversy, yields to the interpretation of the same law by a court of superior jurisdiction. In the instant case, as at the time the tribunal delivered its judgment on whether or not INEC had power to exclude the 1st respondent's candidate from the election held on 14/4/07, the subsisting of the Supreme Court in Action Congress v. INEC (2007) 12 NWLR (PL 1048) 222, in which the Supreme Court decided that INEC lacked the power to disqualify a candidate at an election. The tribunal was therefore right when it followed the Supreme Court decision and held that the disqualification and exclusion of the 1st respondent's candidate from the election by INEC was unlawful, null and void. (Pp. 75, paras. E-H; 95, paras. C-F; 115-116, paras. E-A) Per OMOKRI, J.C.A. at pages 115-116, paras. E-A; 119-121, paras. C-F:
"On the issue of Action Congress & Anor. v. INEC, my brief answer to that is that following the well established principle of stare decisis and judicial precedent, the Supreme Court having set aside the decision of the Court of Appeal and affirmed the decision of the Federal High Court, which declared that INEC lacks the power to disqualify candidate at election, the Tribunal was bound by it and so are we. The feeble attempt to persuade the court that the case of INEC & Ors. v. A.C. (supra) was decided by this court on 3/4/07 before the election**

were held on 14/4/07 whereas the decision of the Supreme Court was given after the election is a distinction made in futility because it has no meaningful impact on the case of the appellants. The issues in both cases revolve around the interpretation of section 182 of the 1999 Constitution. It is not a case of accrued rights under an existing law. Section 182 has always been there.

The central issue here is that the Supreme Court has decided in *Action Congress & Ors. v. INEC* (supra) that an indictment is no more than an accusation until pronounced upon by the court. Therefore, INEC has no right to disqualify a candidate. In my considered view, that decision sufficiently settles the issue of qualification or disqualification raised by the appellants in this appeal. The Tribunal was right to hold that the disqualification and exclusion of the 2nd petitioner was unlawful, null and void. I find no merit in this issue. See *Clement v. Iwuanyamvu* (1989) 3 NWLR (Pt. 107) 39 at 54 and *Dalhatn v. Turaki* (2003) 15 NWLR (PL 843) 310 at 336...

On issue No. 6, the appellants contended that the Tribunal was wrong in the application of the doctrine of stare decisis to the case before it in relation to the Supreme Court's decision in the case of *A.C. & Ors. v. INEC* (supra). Let me say straight away that the trial Tribunal had no option than to follow, apply and enforce the decision of the Supreme Court in *A.C. & Ors. v. INEC* (supra). It would have been judicial suicide for the Tribunal to prefer a decision of the Court of Appeal which has been set aside by the Supreme Court. So the question of the Tribunal overruling the decision of this court, as submitted, by the appellants did not arise at all and it is not an issue at all. Following the doctrine of stare decisis. The Tribunal was bound to follow the decision of the Supreme Court and not that of this court in the circumstances. The Supreme Court having nullified the decision of this court is affirming the decision of the Federal High Court, Abuja. Which declared that INEC lacks the power to disqualify candidates? It is ridiculous to argue, as the appellants did, that the decision of the Supreme Court should be disregarded on the ground that the position of the law at the time of the election was the decision of the Court of Appeal and that the decision of the Supreme Court came later and too late. They argued further that INEC had no option than to obey the decision of the Court of Appeal in disqualifying the 2nd petitioner. That submission is a mere straw in the wind that must go with the wind. I am not persuaded by it, I have, instead, chosen to be guided by the age long rule of judicial hierarchy and accord respect to the pronouncement of the Supreme Court in the matter. The appellants alluded to the fact that the trial Tribunal took a swipe at the Court of Appeal by declaring null and void the decision in *INEC vs. A.C. & Ors.* (Supra). The Tribunal has no jurisdiction to declare the judgment of the Court of Appeal null and void and it never did, rather it was the Supreme Court of Nigeria that set aside the judgment. All that the Tribunal did was to obey and say the obvious. It should be noted that the Tribunal was still hearing this matter when the Supreme Court set aside the judgment of this court in *INEC v. A. C. & Ors.* (Supra). The only valid judgment in existence at the time of the hearing and the delivery of the judgment of the Tribunal was the judgment of the Supreme Court. It would have been a case of impertinence, insubordination and disrespect for the trial Tribunal to ignore the decision of the Supreme Court."

43. On What principle affair hearing postulates -

Fair hearing, in essence, means giving equal opportunity to the parties to be heard in litigation before the court. Where parties are given equal opportunity to be heard they cannot complain of breach of the principles of fair hearing. In the instant case, the appellants were allowed to tender and adopt their witness statements on oath together with exhibits, and they addressed the tribunal. In the circumstance, they were given equal opportunity to prove their defence just as the 1st respondent was given to prove its petition. [*INEC v. Musa* (2003) 3 NVVLR (Pt.806) 72 referred to.] (Pp. 117-18. paras. H-A)

44. On Basis of a ground of appeal —

A ground of appeal should be founded on a breach of a known law but not on a remark made by the court in its judgment that is not related to the ratio decidendi of the decision of the court. [*Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 660) 228; *Re: Shyllon* (1994) 6 NVVLR (Pt. 353) 735; *N.D.I.C. v. Akahall & Sons Co. Ltd.*, (2004) 6 NVVLR (Pt.869) 245; *SBM Serv (Nig.) Ltd. v. Okon* (2004) 9 NVVLR (Pt.879) 529 referred to.] (Pp. 61, para. H; 62. paras. B-C; 125, paras. D-E)

45. On whether ignorance of the law can be used as a defence -
The maxim "ignorantia juris quod quisque tenetur scire ne in excusatur" means ignorance of law excuses no man and, indeed, furnishes no ground in law or equity. (P. 151, paras. G-1)
46. On whether ignorance of one's right precludes exercise of his right -
The maxim "ignorantia juris sui non prejudiciali juri" means ignorance of one's right does not prejudice the right. (P. 151, para. H)
47. NOTABLE PRONOUNCEMENT:
 On when appeal by INEC is improper –
 Per OMADE, J.C.A. at pages 73-75, paras. D-H

"Before I consider the issues in the Cross Appeal, I must express my own view, that it seems most strange to me that INEC would lead the other statutory respondents to waste public money to appeal against the decision of the Tribunal which founded its decision on the interpretation of the law by a Supreme Court existing at the time of the decision of the Tribunal. A party who appeals is seeking certain reliefs. What relief is INEC seeking by its appeal? It does not seem to me that it was set up to justify or vindicate itself in order to show it is infallible. In this case, it is not in error in its decision at the time of the election, it is that the interpretation of the court of law which gives INEC powers has changed at the time of the sitting of the Tribunal to the election and at the time powers of INEC was founded on the power of INEC who then relied on the interpretation of the law by the Court of Appeal, so does the Tribunal which sat to decide the issue as to the propriety of the exercise of the power of INEC to exclude the tribunal also finds itself compelled to obey the current and existing interpretation of the same law by a court of superior jurisdiction. It is a legal calling of law called the rule of stare decisis, whereby an existing interpretation of law by one court, before the conclusion of the issue in controversy yields to the interpretation of the same law by a court of superior jurisdiction. In the light of the above, as the issue in controversy has not been closed, it is in my view neat, just and right for the issue to be determined on the consideration of an existing law. For the avoidance of doubt, it seems certain to me that the 1st appellant's complaint was not that the principle of stare decisis not inappropriate cases the appellants brief show the belief as in the observation of Okafor v. Attorney General Anambra State (1999) 7 SCNJ 192; reported as Ndigwe v. Nwude (1999) 11 NWLR (Pt. 626) 314 per Achike, JSC, which decision was echoed by Kalgo in A.-G., Lagos State v. A.-G., Federation (2003) 12 NWLR (Pt. 833), which decision of the Supreme Court direct that a right acquired by a litigant in a decision of court remain vested irrespective of the change in the law. In the instant appeal, what is in issue is not a change in the law. Section 182(1) (i) of the 1999 Constitution remains valid, effective and binding. The issues which have arisen since the election of 14/3/07 took place are (1) The interpretation of section 182(1)(i) of the Constitution which was given a definite and contrary meaning to the meaning adduced to the said direction since the election took place, and before the issues in controversy are closed... It is the practice and law in the event that the interpretation given to the law by a court of a lower jurisdiction must yield to the interpretation of the same law given by a court of superior jurisdiction, before the issues thereon are closed and right on the claim closed. The issues and rights in the instant case cannot be said to be closed, see section 149 Electoral Act, 2006 when an appeal is pending on the decision earlier made and the law section 182(1)(i) remain valid. One may then ask INEC, quo Vadis? Which means in English, 'whither goest thou?? Or what do you seek? In which direction is INEC going.'"

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- A.-G... Federation v. A.N.P.P. (2003) 18 NWLR (Pt. 851) 182
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Akeredolu v. Akinremi (1989) 3 NWLR (Pt. 108) 164
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 Electoral Act, 2002; Ss. 131(1), 133(1) & (2), 134(1) (d) and Schedule 1, paragraph 45
 Electoral Act, 2006; Ss. 32(1), (2), (3), (4), 33, 34, 36(1) & (2), (3), (4), 38, 39, 85, 144, 145, 149 and
 Schedule 1, paragraphs 2(1)-(4), 3(1) & (2), 4, 14(11), 16(i) & (2), 27(2), 26 45 and 49(1)
 Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, Ss. 52, 73, 74 and 75
 Election Tribunal and Court Practice Directions, 2007 (as amended)

Nigerian Rules of Court Referred to in the Judgment:

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Black's Law Dictionary, 6th Edition
 Law and Practice of Evidence in Nigeria by Afe Babalola, p. 361

Appeal:

These were two appeals and a cross appeal against the judgment of the Governorship and Legislative

House Election Tribunal, Kogi State which nullified the election of the appellant. The Court of Appeal, in a unanimous decision, dismissed the appeals and allowed the cross appeal.

History of the case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Abuja
Names of Justices that sat on the appeal: Victor Aimepomomo O. Omege, J.C.A. (Presided and Read the Leading Judgment); Amiru Sanusi. J.C.A. Jean Omokri. J.C.A.; Mary Peter-Odili, J.C.A.;
Mojeed Adekunle Owoade, J.C.A.

Appeal No.: CA/A/EP/309/07

Dale of Judgment: Wednesday. 6th February. 2008

Names of Counsel: Kanu Agabi (SAN); Chris Uche (SAN); Dr. Bello Fadile, Esq; Kabiru Fadile. Esq.; Efat Okon. Esq; Udienna Aw a [Miss]; Uche Ofodile. Esq.; Okna Merphy Enebeli. Esq.; Daracott-Osawe. Esq. and Egang Agabi. Esq.- for 1st to 23rd Appellants/Respondents.

Yusuf Ali (SAN) (with him. J. K. Gazama (SAN). P. A. Akubo (SAN). Shola Idowu. Esq.: Eleja K. K. Esq.: Oke S. A. Esq.; Bola Fabola, Esq.: Isaac Okpanachi. Esq.: P. D. Abalaka, Esq. Coffins I. Esq.; Umar Muhammed, Esq.; Oladokun D. Esq., Babekebe O. S. Esq., Stanley Atua Esq., J. S. Ajisola, Esq., M. T. Adekilekun Esq., Akoja Esq., Igeh A. O. Esq., Timothy Achinmugu Esq, J.C Abbah, Esq. - for the Appellant and 24th Cross Respondents.

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Tribunal:

Name of the Tribunal: Governorship and Legislation Houses Election Tribunal of Kogi State.

Date of Judgment: Wednesday, 10th October, 2007

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Alex A. Izinyon (SAN) [with him, Oladele Gbadeyan, Esq Bello K. Abu, Esq. C. S. Ekeocha, Esq.; P. M. Ayam, Esq.; N. Molemodile, Esq.; H. Abdurahman [Mrs.], G. Izinyon [Mrs] E. Oghojafor, Esq.; Ekpa Isaac, Esq.; A. I. Omachi, Esq. and John Adiele - for the 1st Respondent/Cross-Appellant.

Kanu Agabi (SAN); Chris Uche (SAN); Dr. Bello Fadile, Esq Kabiru Fadile, Esq.;Efat Okon, Esq; Udienna Awa [;Miss]: Uche Ofodile, Esq.: Okna Merphy Enebeli. Esq.; Daracott-Osawe Esq. and Egang Agabi. Esq. -for 1st to 23rd/Second set Appellants/Respondents

OMAGE, J.C.A.: (Delivering the Leading Judgment): In this appeal, there is a cross appeal and another' appeal by the parties joined as respondents to the main appeal by the main petitioner, the Political party called All Nigeria peoples party hereafter referred to as ANPP, and the candidate sponsored by the party Prince Abubakar Audu. Therefore, these are the petitions filed by the 1st and 2nd petitioners and the reply brief of the appellant named above were determined by the Tribunal on 9/7/07. The Tribunal which heard it against whose decision he appeals is the Governorship and Legislative House Election Tribunal which held after the election of 14/4/07 for the determination of the Governorship Candidate for Kogi State.

The 1st and 2nd petitioners filed separate briefs of different dates. It is the complaint of the 1st and 2nd respondents in the appeal, that on the eve of the election at about 12 midday, they received information that the body known as EFCC had informed the 2nd respondent before the tribunal that the 2nd petitioner had been indicted for fraud, and consequently was prevented from contesting in the election of the 14th April. 2007. Pursuance to the information, the 2nd respondent INEC deleted the name of the 2nd petitioner from the electoral papers. The petitioners averred that as a result of this, their prospective voters were disenfranchised. The election which held thereafter with fifteen candidates resulted in the victory of the appellant in this appeal. The 1st and 2nd petitioners were dissatisfied with the exclusion of the 2nd petitioner from the election and filed their election petition before the Tribunal referred to above.

The said Governorship and Legislative Houses Election Tribunal for Kogi State sat for about three and a half months and made a verdict on 10/10/07. The major conclusion of the hearing is on issues 6,7, and 9 before the tribunal, where the tribunal in volume 3 of its record on pages 1098 recorded thus:

"It is quite clear that the respondents have admitted that the 2nd petitioner was nominated by the 1st petitioner. Their contention is as to the validity of the nomination and that shall be determined in the succeeding paragraphs of this judgment. Still it is, however, to say at this juncture that having admitted the nomination of the 2nd respondent by the 1st respondent, this tribunal will be right to hold that the nomination in the absence of anything to the contrary is valid.the court of appeal in the case of *Effiong v. Ikpeme* (1999) 6 NWLR (Pt.606) p. 260 at 274-275 para. H. C.P. 277 para. G-H stated the elements to be proved by a candidate who claims to have been duly nominated but unlawfully excluded from the election. Those elements are: (1) that he was validly nominated by his party (2) that the election was conducted (3) that a winner was declared and that his name was not included in the list of contestants. It is our view that on the strength of the exhibits made available as well as the admissions of the respondent these elements have been proved. The nomination of the 2nd respondent by the 1st respondent has not been disputed either."

The tribunal referred on p. 1098, of volume 3 of the record, to section 75 of the Evidence Act, on the needlessness to prove what is admitted by the opposing party on litigation. "The Tribunal held further that, "The 1st - 23rd respondents in par. 16 of their joint reply admitted the fact of the election and return of the winner," and resolve thus, "Consequently, we do resolve the 1st issue in the affirmative. " "On issue No. 7 and 9, we intend to take these two issues together, that is to say whether or not the 1st respondent - INEC had the right and power to disqualify the 2nd petitioner (Prince Audu) from contesting the gubernatorial election for Kogi State held on the 14th April, 2007 and whether the disqualification was not unlawful. " The learned senior counsel to the 1-23 respondents and learned senior counsel to the 24th respondent seek to justify the exclusion of the 2nd respondent from the Governorship race on ground of the alleged indictment of the 2nd respondent by the following:

1. The Federal Government White Paper.
2. The Kogi State White Paper.
3. The Economic and Financial Crime Commission and the Code of Conduct Bureau.

The counsel submitted that on the basis of those indictments, the 2nd petitioner stood disqualified and the respondent acted in accordance with section 182(1)(i) of the Constitution of the Federal Republic of Nigeria, 1999. It is quite instructive to note that the respondents have quite cleverly avoided the issue of who disqualified the 2nd petitioner. They merely said he was not qualified but who disqualified him? And who is the proper authority to make the pronouncement as to his disqualification? The 1999 Constitution is subject to interpretation of the law courts. We venture to say therefore, that it is only the court that can interpret the Constitution and pronounce the 2nd petitioner disqualified. Meanwhile 1st and 2nd petitioner have now denied any of the indictment. The Justices of the tribunal referred to the judgment of *Umanah v. Attah* (2006) 1 EPR 594 at 637 E.G: (2006) 17 NWLR (Pt. 1009) 503. Where the appellate court ruled that "nothing short of conviction by a court of law would disqualify a candidate from contesting the election....."

The same section 182(1)(i) of the 1999 Constitution received judicial interpretation of the Apex Court in the case of *Okotie-Eboh v. James Manager* (2004) 18 NWER (Pt.905) 242, where the Supreme Court interpreted section 6(6)1 (i) of the Constitution with section 182(1)(i). Another Supreme Court decision decided that:

"An indictment is no more than an accusation that the judicial powers of Nigeria are by virtue of the Constitution of Nigeria, 1999 is vested in the court established under the Constitution, and that the Independent National Electoral Commission does not now possess the power to disqualify any candidate.

The power it had to do so under the Electoral Act, 2002 has been repealed."

See *Action Congress v. IN EC* (2007) 12 NWLR (Pt. 1048) p. 222 at 275. par. AC.

From the slate of pleadings, the 1st - 23rd respondents especially the 1st and 2nd respondents did not deny that on the 13th April, 2007, they had issued a directive to all their agents at the various polling units in Kogi State that the name of the 2nd petitioner should be deleted and disqualified. The reasons for the said disqualification have been clearly outlined in the pleading and evidence of the respondents. The later in the day contention of the 1st - 23rd respondents that the 2nd petitioner was not disqualified but simply not qualified appears to be an after thought which bothers on semantics, for if, "the 2nd petitioner was not qualified. Who is the proper authority to so hold? There is nothing before the tribunal to show that the respondent or anybody else had taken advantage of the opportunity provided by section 32(4) of the Electoral Act 2006 by filing action before a State High Court or Federal High Court against the 2nd petitioner for any false affidavit. "Tribunal observed that the respondent's failure to go to court on the reason for disqualifying 2nd petitioner robs the 2nd petitioner of the right of fair hearing.

The 1st tribunal then found that by disqualifying the 2nd petitioner, the 1st respondent had acted ultra vires and beyond the powers mistakenly believed to derive from section 182(1)(i) of the 1999 Constitution. The Tribunal cited the decision of the Adamawa State governorship and legislative Houses between All Nigeria Peoples Party &

Anor. v. Ahmed Mohammed m petition AD/LH/EPT/8/2007 which decision was based on the Supreme Court judgment of Action Congress & Anor v. Independent National Electoral Commission (2007) 12 NWLR (Pt. 1048) 222. The tribunal concluded thus, "It is our view that the 1st respondent having acted without authority and in clear breach of the provisions of section 36 of the 1999 Constitution had acted 'ultra vires' in its decision to exclude the 2nd petitioner and it is unlawful." The members and chairman of the tribunal ruled that no opportunity was given to the 2nd petitioner to present his view, nor opportunity given to the correspondent to find another candidate in consonance with section 39 of the Electoral Act as a result of which the tribunal held thus, "finally on issues 7 and 9, we are of the view that the 1st - 23rd respondents had no power to disqualify the 2nd petitioner and having excluded him, his exclusion is unlawful, null and void." We resolve the two issues in favour of the petitioner. Judgment is hereby entered in favour of the petitioner, as a consequence, we held that the election held on 14th April, 2007 to the office of the Governor of Kogi State and the return of the 24th respondent, Alhaji Ibrahim Idris as the winner by the 1st and 2nd respondents is hereby nullified in accordance with the provision of section 147(1) of the Electoral Act, 2006, it is hereby ordered that the 1st- 23rd respondents conduct a fresh election for the governorship seat of Kogi State, the duly sponsored nominated candidate of the petitioner in accordance with the provisions of per 27(2) of the 1 schedule to the Electoral Act 2006 " (Italics mine for emphasis

The 24th respondent was dissatisfied with the decision of the Kogi Slate Governorship Tribunal and has filed this appeal. The appellant filed twenty five grounds of appeal with copious particulars and formulated the following 7 issues for determination of the said ground. The grounds of appeal are contained on page 1132 inclusive of its page 1150 of volume 3 of the record of proceedings. The issues

Are

1. Whether the trial tribunal was not in error in dismissing the preliminary objection of the appellant and the 2nd - 24th respondents therein after having struck out the name of the 2nd petitioner. Prince Abubakar Audu;
2. Whether the trial tribunal was not in error in the way and manner it resolved the issues of non payment or improper payment of filing fees and security fee costs and the failure to furnish the petitioners address on the petitioner having regard to the applicable provisions of the Electoral Act.
3. Whether having regard to the provisions of section 145 of Electoral Act. the trial tribunal was not wrong in holding that the 1st respondent who did not participate in the election had requisite locus standi to present the petition and whether having rightly struck out the name of 2nd petitioner, the trial tribunal was not in error in delving into the issues of his alleged disqualification and alleged wrongful exclusion and pronouncing on same as unlawful, null and void;
4. Whether the trial tribunal was right in law in utilizing two further witnesses statement on oath of the 2nd petitioner together with the annexure thereto while failing to utilize at all the testimonies and exhibits tendered by the appellant and the 2nd - 24th respondents therein;
5. Whether the trial tribunal was not in error in holding that the appellant and other respondents before her cannot raise the issue of non qualification of the 2nd petitioner as a defence notwithstanding the case put forward by the petitioners before the tribunal;
6. Whether the trial tribunal was not in error in the view it took on the doctrine of stare decisis by relying on the Supreme Court decision in Act/on Congress & Anor v. INEC as against Court of Appeal decision of INEC v. A.C. & Anor delivered on 13/4/07: now reported in (2007) 6 NWLR (Pt. 1029) 142: and
7. Whether the trial tribunal was not in error in entering judgment for the petitioners when it did not prove its entitlement."

The issue for determination filed by the 1st respondent to the 1st appellant's brief are contained in part C of the respondent brief, they are:

1. Whether the dismissal of the preliminary objection after striking out the name of the 2nd petitioner, Prince Abubakar Audu occasioned any miscarriage of justice having regards to the existence of the case - cover ground 1 of the notice of appeal.
2. Whether the petition of the 1st respondent was competent having regards to the provisions of the Electoral Act. 2006, relating to payment of filing of fee security for costs and address for service/occupied covers grounds I. 3, 8, and 9, of the notice of appeal;
3. Whether the 1st respondent has the locus standi to present the petition having regards to the combined provisions of section 144(1)(b) and J45(1)(d), of the Electoral Act, 2006, covers grounds 2, 4, 5, 7, 11,14, 15. 16 and 17 of the notice of appeal;

4. Whether the learned tribunal was right in relying on further deposition evidence at the 2nd petitioner together with the annexure having regard to the provisions of the Electoral Act, 2006 and the Federal High Court Rules, 2000 applicable covering 6, 10 and 19;
5. Whether the learned tribunal was right in holding that the appellant cannot raise issue of qualification of the 2nd petitioner before the tribunal covering ground 20 of the notice of appeal;
6. Whether the learned tribunal was right in the application of stare decisis vis- vis the Supreme Court case SC 69 2007, A.C. v. I.N.E.C. (2007) 12 NWLR (Pt. 1048) 222 covering grounds 12 & 13 of the notice of appeal."

While on the consideration of issues formulated on grounds of appeal, the INEC, and its agents, the 2nd - 23rd respondents in the appeal of Ibrahim Idris also filed an appeal, and filed his appellants brief of argument on 15/11/07. By the way, all the briefs previously mentioned in this judgment were adopted in court on 14/1/08. So was the appellants' brief being a second main appeal in this presents. The appellant filed a notice of appeal dated 30th October, 2007 against the judgment of the Governorship and Legislative houses Election Tribunal - Kogi State.

The 2nd appeal is hereinafter described as INEC appeal and it is by INEC and its 23 Electoral Commissioners and Officers in the relevant Local Governments against the All Nigeria Peoples Party, and the appellant in the main appeal, and 28 others. In the brief filed on 15/11/07 the appellant formulated 7 issues for determination of the appeal. The issues are contained in the said brief on pages 6 - 8 of the INEC brief of argument read as follows:

1. Whether the Honourable Tribunal was right in assuming jurisdiction over the petition the same been grossly incompetent for failure to comply with mandatory provisions of the Electoral Act, 2006 arising from ground 1 of the notice of appeal;
 2. Whether the tribunal was right when it held that the 1st petitioner a political party which did not participate in the election being questioned had locus standi to question the election contrary to section 144 of the Electoral Act 2006, and in view of decision in Peter Okocha & Anor v. INEC unreported, and other judicial authorities grounds 2-8 of the notice of appeal.
- 3.1.3 Whether the Tribunal was right in holding that under the circumstances the appellant was wrong when it disqualified the 2nd petitioner on the basis of his indictment by both the Federal Government and the Kogi State Government in the light of section 182(1) of the Constitution and Interpretation of that section by the Court of Appeal in INEC v. Action Congress & Anor. (2007) 6 NWLR (Pt. 1029) 142 a judgment of the Court of Appeal highest subsisting authority on the issue at the time of the disqualification. Grounds 3 & 4 of the notice of appeal.
 - 3.1.4 Whether the Honourable Tribunal was competent to question the indictment of the 2nd petitioner by querying as it did the manner and method by which the panels of enquiry conducted their proceedings or arrived at their conclusions. Ground 5 of the notice of appeal.
 - 3.1.5 Whether the tribunal was right in holding that at all material times, the appellant had no authority to reject the candidacy of the 2nd petitioner on the ground that he was not eligible having regard to the provisions of section 182(1)(i) of the Constitution of Nigeria, 1999 and having regard to the decision in INEC v. Action Congress & Anor. (2007) 6 NWLR (pt.1029) 142 Ground 6 of the notice of appeal.
 - 3.1.6 Whether having had regard to the constitutionally prescribed period for the conduct of (lie elections and the jurisdiction of the tribunal as conferred by law which jurisdiction does not include a supervisory jurisdiction, the tribunal was right in holding that the 1st appellant should have deferred the election. Ground 7 notice of appeal.
 - 3.1.7 Whether the Honourable Tribunal did not misdirect itself in law when it refused to follow the relevant and persuasive decision delivered by the Governorship/ Legislative Houses Election Petition Tribunal – Asaba Delta State in a governorship election namely Peter Okocha & Anor. v. INEC & Ors. Petition v. EPT/DT//04/2007, but relied instead on the decision in House of Assembly elections, namely ANPP & Anor \: Hon. Ahmed Mohammed & Ors. Petition No. AD/LIU KP.1/8107 by the Election Petition Tribunal, Yobe, Adamawa State, (arising from ground 8)

In part C of the respondent brief to the INEC appeal, the 1st respondent raised

preliminary objection to grounds 7 and 8 of the grounds of appeal. The notice of objection is contained on page 9 of the brief, it will be considered after I have recorded the issues formulated in the said brief of the 1st respondent to 2nd appellants brief. The issues for determination are contained in part D of the 1st respondent brief. They are:

- (1) Whether the election petition of the 1st respondent was competent having regards to the provision of the Electoral Act, 2006 relating to the filing fees, security for costs and address for service/occupier cover ground 1 of the notice of appeal;
- (2) Whether the learned tribunal was right in holding that the 1st respondent had the requisite locus standi to file the petition having regard to the provisions of section 144(1) and section 145(1)(d) of the Electoral Act, 2006, covers ground 2 notice of appeal;
- (3) Whether the learned tribunal was right on how it treated the issue of indictment by the panels on the issue of disqualification of the 2nd petitioners (Cover grounds 3, 4 & 5, notice of appeal);
- (4) Whether the learned tribunal was right in the application of stare decisis vis-a-vis the application of the Supreme Court decision AC v. INEC(2007) 12 NWLR(Pt. 1048) 222 to decide the petition before It. Covering issue 6 of " the notice of appeal;
- (5) Whether the learned tribunal was right in holding that at least the 1st appellant should have deferred the election on the defect of the candidacy of the 2nd petitioner covers ground 7.

There are in fact three appeals in this presents; including the cross-appeal. However, under this heading 1 will consider first two main appeals. The appeal of Ibrahim Idris the brief of which was filed on 12/11/07, and the first respondent brief filed on 19/11/07; (2)The appeal filed by Independent National Electoral Commission, the brief of which was filed on 15/11/07; and the respondent brief of argument filed on 28/11/07. As a cross appeal is in fact another appeal, the cross appeal of the All Nigerian Peoples Party against the Independent National Electoral Commission and 50 Ors., and the joint brief of 1st - 23rd respondents and the cross respondent brief and his reply constitute another appeal which for the sake of clarity will be determined after the two main appeals have been considered. Before I consider the issues in the two briefs. I wish to consider and determine the preliminary objection raised by the 1st respondent to the brief of the INEC, the 2nd appellant. In part C' of the brief of the 1st respondent to the INEC issue for determination of the appeal quoted above, the 1st respondent has submitted that issues 7 and 8 thereof are incompetent and states further that as issue 2 thereof was formulated from grounds 2 and 8, the issue is incompetent and in any case will be determined. Ground 8 is struck out. 1st respondent counsel has submitted that ground 7 of the said INEC appeal is a side comment and observation of the learned Tribunal and not the *ratio decidendi* on which the decision is made. I have seen no plausible reply of the appellant to this issue, and do decide the objection solely on the respondents complaint since I am also of the view, strengthened by several decided authorities that a ground of appeal is not founded on the observation made by trial court. See *Abacha v. Fawehinmi* (2000) EWLR (Pt. 4) 533 at 594 perC; (2000) 6 NWLR (Pt. 660) 228. see also *Re: Shyllon* (1994) 6 NWLR (Pt. 353) 735. Ground 7 of the INEC issue on appeal is therefore struck out.

The 2nd complaint on which the 1st respondent raised objection is ground 8, on the expressed preference by the Tribunal of a decision of a superior court to that of a lower court as of a court of coordinate jurisdiction. The issue which could and does arise is as the issue

formulated complaining of any infraction of the law? What is its purpose? A ground of appeal should be founded on a breach of a known law, what law has the Tribunal breached for which its decision is called to question in ground 8 of the INEC's appellants ground of appeal as none *ex facie* been shown and in the absence of any reply by the INEC's appeal. I strike out ground 8 of the said INEC's ground of appeal, as incompetent. I do not agree that issue 2 is solely founded on ground 8 the latter objection is refused and overruled.

I have written above that the two sets of issues in the main appeals will be taken together, and treated with the response to them by the 1st respondent for ease of reference. I will categorise the first three issues in each case as preliminary, and the remaining 4 issues as crucial for the determination of the appeal. The preliminary issue named by me are issues which could determine whether an appellant appeal exist, or whether there is need to dismiss or determine the petition of the respondent, thus in the appeal of Ibrahim Idris, whether the trial Tribunal was not in error in dismissing the preliminary objection of the appellant; (2) Whether the Tribunal was not in error in the way and manner it resolved issues of new payment or improper payment of filing fees, and security for costs; and failure to furnish the petitioner's address. Issue No. 1 in INEC appeal asks whether the Honourable Tribunal was right in assuming jurisdiction over the petition the same been grossly incompetent for failure to comply with mandatory provisions of the Electoral Act, 2006. Ground 1. In the explanation of issue 1 formulated in the INEC's appeal, it was made clear that the mandatory provisions of the Electoral Act referred to is the non payment of appropriate filing fees, and submits as did in issue 2 of brief of Ibrahim Idris, that a petitioner who fails to pay (1) the appropriate filing fees (2) security for costs, non inclusion of (3) the petitioner's address, in each case of items 1 – 3, in the submission in the brief of the 1st appeal, should render "the petition fatally and irredeemably incompetent "for non compliance with the provisions of para 2(I)-(4) and paragraphs 45 of First Schedule to the Electoral Act. In paragraphs 3(4) of the 1st schedule to Electoral Act. 2006. It is subscribed thus. "The petitioner or his solicitor as the case may be shall at the time of presenting the election petition pay the fees for the services and publication of the petition and for certifying the copies and on default of the payment the election petition shall be deemed not to have been received, *unless the Tribunal or Court otherwise orders.*' (*italics mine for emphasis*)

In paragraph 4(4) and sub(5)of the 1st schedule lo the Electoral Act, it subscribes thus.

"At the foot of the election petition there shall be slated address for service, etc;
(5) If an address is not statedthe petition shall be deemed not to have been filed *unless the Tribunal or court otherwise orders.*

“In the judgment of the Tribunal recorded above, the Tribunal has ruled (1) *That the appropriate filing fees has been paid in the appeal by the 1st respondent, (2) The security fees is deemed appropriate: (3) That the address supplied at the foot of the petition by the 1st petitioner is in substantial compliance with the provisions of the Electoral Act.*

Besides in his response to the complaints of the two appellants the 1st respondent in different briefs responded to each brief and responded as follows; first, on the issue of filing fees, that the 1st respondent joined the two successful parties at the election, the 1st and 2nd respondent to the petition, and paid for them the sum of N10,000.00 at N5,000.00 for each, the other party for whom though joined are necessary parties or are statutory parties who did not win in the election - no payment need to be paid for them. As referred in the judgment of Buhari v. Yusuf, (2003) 14 NWLR (Pt. 841) 446 at 500 - 501. It is unthinkable that a party who did not win the election will be required to pay any fees. Consequently, there is no requirement for the petitioner to pay their fees or for that

matter also pay for their parties any security fee costs. The Supreme Court asks in *Buhari v. Yusuf, supra*, what for? They have nothing to lose since they did not win in the election. While it is true that the provisions of the Electoral Act, 2006 employed the mandatory word shall, in its statute, it also gives discretion to the court or tribunal **to cure its non-compliance if the application to do so is made in good time. See Ezeobi v. Nzeka (1989) 1 NWLR (Pt. 98) 478 at 487; or make the non compliance operate as an irregularity which does not need to lead to cancellation of the petition whether the complaint is on non payment of adequate fees; or (2) non payment of security fees or (3) failure to give adequate address of petitioner at the foot of the petition. The interpretation given to the provisions of the Electoral Act, 2006.** In answer thereto, issue 2 to Ibrahim Idris issue 1 and to issue 1 of the INEC's appeal, I rule that the learned Governorship Tribunal for Kogi State, was not in error, and was right to hold that the complaints of the two appellants in those issues did not qualify to render incompetent the petition filed by the 1st petitioner now 1st respondent to the appeal, and I resolve the issue in favour of the 1st respondent.

The next issue which comes into consideration is the complain of the 1st appellant. Ibrahim Idris. Which reads issue (1) *Whether the trial Tribunal was not in error dismissing the preliminary objection of the appellant and the 2nd - 24th respondents therein after having struck out the name of the petitioner Prince Abubakar Audu*". A clearer picture of the objection of the 1st appellant is shown by the submission in the said brief, which record thus on page 16 of the brief, *"One is at sea, as to flow the trial tribunal which struck out the names of two parties from the proceeding upon an objection would turn round to rule that the said objection overruled and dismissed."* The correct situation is that, the preliminary objection of the appellant to the petition which has been heard on which the reported objection has been ruled, was not dismissed in its entirety. The objection in fact succeeded in part, this is why the Tribunal struck out the names of the two parties on either side. The reason for striking their names is as recorded, for failure of the petitioner to comply with the mandatory provisions. It is now academic to rule that the names of the parties need not have been struck out if the tribunal had used its powers under the provisions of the 1st schedule to the Electoral Act, 2006. Nonetheless, the Tribunal was in error to say in its final ruling the words, "we hereby overrule the preliminary objection, and it is accordingly dismissed for lack of merits." The 2nd petitioner's objection was no longer at the hearing of the petition the tribunal dismissed absolutely the complaint of the appellant. The objection of the appellant was in fact allowed in part. In the final words of the decision of the tribunal on the determination of the preliminary Objection, the Tribunal made a slip. The above was the response of the 1st respondent to the 1st appellant complaint with which I agree. The issue which arises for determination therein is whether a miscarriage of justice was occasioned (hereby). Clearly, there was no miscarriage (if justice. In my view, the judgment of the tribunal which did not at any subsequent time in the judgment refer to the parties whose names have been struck out by them, did not mislead any reader, and, no miscarriage of justice was occasioned. The 1st appellant did not in fact refer to the 2nd petitioner as a respondent in his brief. This clearly shows that he felt bound by the decision of the tribunal and was not misled by the slip in the final phrase of the judgment. In *Gbafé v. Chafé* (1996) 6 NWLR (Pt. 455) 417 at 428. The Supreme Court issued this guidance, that it is not all the slips committed by a Judge in his judgment that will result in an appeal, it is clear that such a slip or error does not occasion a miscarriage of justice. I resolve therefore the

1st Issue of the 1st appellant in his brief in favour of the 1st respondent and refuse the complaint. The 2nd appellant i.e. INEC's appeal does not contain a similar complaint. The two appeals however, contain the same complaint against the judgment of the learned tribunal when they in each of its complaint to be quoted stated that the tribunal was in error when it enabled a political party which did not contest the election and so had no *locus standi* to challenge the election. Here is how the 1st appeal in its E issue 3, worded its complaint:

"Whether having regard to the provisions of section 145 of the Electoral Act, the trial tribunal was not wrong in holding that the 1st respondent who did not participate in the election had the required *locus standi* to present the petition and whether having rightly struck out the name of the 1st petitioner, the tribunal was not in error in delving into the issues of his alleged disqualification and alleged wrongful exclusion and pronouncing on same as unlawful and void."

In the 2nd appeal, in its issue 3.1.5, the INEC worded its complaint thus:

"Whether the tribunal was right when it held that the 1st petitioner, a political party which did not participate in the election being questioned had *locus standi* question the election contrary to section 144(1) of the Electoral Act, 2006, and in view of the decision in *Peter Okocha & Anot. v. INEC & Ors.* Unreported and other relevant judicial authorities."

Section 144(1) of the Electoral Act, 2006 subscribes the list of persons entitled to present an election petition to the Tribunal and states thus:

"An election petition may be presented by one or more of the following persons
(a) A candidate in an election
(b) A political party which participated in the election"

Section 145 of the Electoral Act, 2006, provides also the kind of complaint that the party complaining may take to the election tribunal in this case, it is in 145(1) (d):

"that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."

The complaint of the two appeals that the 1st petitioner, that is the ANPP having not participated in the election held on 14th April, 2007 had no *locus standi* to challenge the proceedings at the election and that the 1st petitioner does not fall within the ambit of section 144 of the Electoral Act and does not have a *locus standi*. The 1st respondent submitted that the two appellants are in error to so submit. On these issues of the 1st and 2nd appeals, it is necessary to consider the provisions of section 144(1) of the Electoral Act, 2006 and its relation to section 145 of the Act. One cannot exist in isolation of the other section. A party who has a right must found the right on a complaint which gives him the grouse upon which his right is based: this in turn is what gives him a standing to complain. The *locus standi* specifically. The right which entitles a complainant to present a petition to an Election Tribunal is the complaint that its candidate was validly nominated but was unlawfully excluded from the election. The party has a right to present a candidate - See 32(1) *Electoral Act, 2006 and the provisions of the 1999 Constitution*. It is evident that the remaining participant at the Tribunal is the 1st petitioner - a political party of the ANPP. I will not here discuss and consider the propriety of the exclusion of the 2nd petitioner - Prince Audu from participation in the tribunal, until the cross appeal is considered. The grouse of the political party is that its validly nominated candidate was unlawfully excluded; this gives the 1st petitioner a *locus standi*.

because the right of the ANPP to participate in the election and project its right and interest has been infringed and breached by INEC": whose decision excluded its candidate the 2nd petitioner. This gives the 1st petitioner a *locus standi*. In fact, the wrong needs to be remedied if we believe the term *dictum* that wherever there is a wrong, there is a remedy at law - "*Ubi jus ibi remedium.*" It was Chief Gani Eawehmmi (SAN). a social commentator while complaining about the inadvisability of 'representing a political party, who wrote thus that 'politics is about interests, articulation and democracy is about the people's interests and freedom of choice'. When therefore, a political party has articulated its interests which it believed and nominated a candidate for an election can project, the right of that political party is assaulted and abused when its nominated candidate is prevented from contesting the projected election, the party therefore has a right to sue. Particularly as the 1999 Constitution directs that association other than a political party shall canvass for votes for any candidate at any election". Upon the registration of a political body, it becomes a body corporate with perpetual right of succession and may sue and be sued, why should the ANPP not have a *locus standi* ? As alleged by the 1st appeal and the INEC in the election for the seat of Governor which took place on 14th April. 2007. It has. The ANPP had duly groomed its candidate, presented him before INEC. who screened him: after (he ANPP itself had screened the candidate who had passed through the needle's eye, to qualify and on the eve of the election, the same body INEC who had screened the candidate, without informing the candidate that he had other hurdles to cross excluded him from the election. The sponsor of such a candidate should be in a position not only to cry foul, it should have the right to complain and seek redress in a court of law. There exist therefore the *locus standi* of the ANPP in the said Tribunal. To further illustrate the solidity of the *locus standi* of the ANPP in the said election. I am in agreement and employ in this judgment the scenario pointed by the 1st respondent in his respondents brief of a child who registered for an examination with an examining body, and was given receipt which acknowledged his eligibility. Through no fault of his own. he was debarred from taking the examination on the day of the examination. Surely such a candidate will have a right of redress in a court of law. What is *locus standi*. Its meaning and implication has been determined by courts of superior jurisdiction in a line of decision one of them is in *Egolwn v. Obasanjo* (1999) 7 NWLR (Pt. 611) p. 355; *Bulwiri v. Obasanjo* (2005) 13 NWLR (Pt. 941.) 1 at 219; *PPA & ANORI: v. Dr. Bukola Saraki & Ors.* CA/1L/EPT/GOV/2/2007, now reported in (2007) 17 NWLR (Pt. 1064) 453 and the case of *(Mrs.) Bukola Adebuseyi v. Hon. Babatunde Odiyoye & Ors.* (2004) 1NWLR (Pt. 854) p. 406 a case in which this writer the privilege to participate in and wrote the lead judgment. *Locus standi*, right sue to claim a right due under the law, in a court of law. I hold and rule that the 1st petitioner had and has a right to claim for the denial by INEC, of its constitutional right to protect its right and interest upon by itself through the 2nd petitioner also a particular principle which Edmund Burke, a political writer in America in (he 186' says political parties are founded to pursue. I dismiss therefore the issue 3 of the 1st appeal and 3.1.2 of the 2nd appeal which complains that the 1st petitioner, a political party had no *locus standi* to challenge the election to the seat of Governor which took place on 14th April, 2007 and resolve the issue in favour of the 1st respondent in the appeal.

It is appropriate at this stage to treat in the appeals issues which ask whether the tribunal was right in holding that under the circumstances, the appellant i.e. INEC was wrong when it disqualified the 2nd petitioner on the basis of his indictment. See issue 3.1.3 of the 2nd Appeal; INEC's appeal. It is convenient to consider with the above issue 3.1.4 of the 2nd appeal. In proximate to those two issues of INEC's appeal No. 2, is the issue No. 6 of (he 1st appeal,

which states thus, whether (he trial Tribunal was not in error in the view it took on the doctrine of *stare decisis* by extending the benefit of the decision in the case of *Action Congress & Anor. v. INEC* to the petitioners while annulling the Court of Appeal decision of 3rd April, 2007."

For identification of issues treated together, they are INEC's appeal No. 3.1.3, 3.1.4 and the 1st appeals issue 6. Issue 3.13; 'whether the tribunal was right in holding that under the circumstances, the appellant was wrong when it disqualified the 2nd petitioner on the basis of his indictment by both the Federal Government and the Kogi State Government in the light of section 182(1) of Constitution and interpretation of that section by the Court of Appeal in *INEC r. Action Congress & Anor.* (2007) 6 NWLR (Pi. 1029) 142, a judgment of the Court of Appeal, the highest subsisting authority on the issue at the time of the disqualification; 3, 1.4; 'whether the Honourable Tribunal was competent to question the indictment of the 2nd petitioner by querying as it did, (he manner or method by which the panels of inquiry conducted their proceedings or arrived at their conclusion'.

On issue 6 of the 1st appeal, it asked whether the trial tribunal was not in error in her view on the doctrine of *stare decisis* by extending the benefit of the decision in the case of *Action Congress & Anor against INEC* to the petitioner and in annulling the Court of Appeal decision of 3rd April, 2007.

For a proper appreciation of the issues contained in the recited issues, it is good to start at the beginning of the issue in contention. In the 1st and 2nd appeals, there is a complaint, one, that the 2nd petitioner whose name has been struck out of the proceedings was disqualified from participating in the election which took place on 14/4/07. It is not in dispute that the 2nd respondent was sponsored for the said election by the 1st petitioner, the 1st respondent in this appeal.

In the 1st and 2nd appeals, it is claimed that the reason why the 2nd petitioner name was struck out of the proceedings before the tribunal is because he did not qualify to contest the election according to INEC acting on some allegations. The sponsor, (he 1st petitioner, and 1st respondent claim that the 2nd respondent had been screened even by the organs of the 2nd appellant, i.e. INEC. In any case as the sponsors of the 2nd petitioner, they are possessed of the right to canvass the claims of the 2nd petitioner whose name about been struck out from the proceedings before the tribunal the 1st and 2nd appeals. It is averred that the basis on which the 2nd petitioner's name was removed from the list of contestants for the election is because the 2nd petitioner was found liable; preferably because the 2nd petitioner was indicted by the Federal Government enquiry and the Kogi State Government enquiry. That as a result and acting on the provisions of section 182(1) of the Nigeria Constitution, the 1st and 2nd appellants declare that the 2nd petitioner no longer qualified for the election and was properly removed. It is the complaint in the briefs of the 1st & 2nd appellants that the learned tribunal had no jurisdiction and should not do the following which it did and so was in error,

- (1) Allow the 1st petitioner to present the complaint that would have been made had the 2nd petitioner being at the tribunal;
- (2) the reasons why the 2nd petitioner was so Indicted;
- (3) Allow the tribunal to assert that the 2nd appellant had no authority to declare invalid the candidacy of the 2nd petitioner, when the 2nd petitioner's name has been struck out of the proceedings. For the sake of clarity. I state here, the provisions of section.182(1) of the 1999 Constitution:

"No person shall be qualified for the election into the office of Governor of a State if he has been indicted for embezzlement or fraud, by a Judicial Commission of Inquiry or

an Administrative Panel of Inquiry, a Tribunals set up under the Tribunals of Inquiry Act, a Tribunal a Inquiry under law or under any other law by the Federal or State Governments which indictment has been accepted by the Federal or State Government."

As stated above, the complaint in the two appeals is that the Tribunal has no jurisdiction to question the application of such legislation cited by the 1st appellant, INEC which was the cause of *the* disqualification of the 2nd petitioner from the election of 14/3/07, are eventual reason why the appellant aver the 2nd petitioner having no participated in the election they caused the 2nd petitioner's name from participating in the Tribunal. At the risk or repetition in the two appeals they have complained that the 1st petitioner was in error to advocate the cause of the 2nd petitioner at the tribunal. In his response in the respondents' brief, the 1st respondent reiterated its involvement and dedication to the cause of the 2nd petitioner when the 2nd petitions was screened for the said election, the 1st petitioner thereafter had duty to present the grouse of the 2nd petitioner before the Tribunal, because in actual fact, the position in the election of the 2nd petitions! is the position of the 1st petitioner. The Tribunal which sat to hear the complaint of the parties and sat till 10th July, 2007, was obliged to hear the complaints made before it. That the tribunal in fact did not challenge or question the provisions of section 182(1)(d) of the Constitution, it merely avers that as the INEC' who made the order for exclusion of the 2nd petitioner employed the provisions and interpretation of" the sail section I82(1)(I) by the Court of" Appeal at the time when the election held, because it was the interpretation of the law available at the time of the election; so the tribunal in consideration of the superior existing, law at the time the Tribunal was sitting, it had also to employ for decision of the existing interpretation of the law. I have considered the submissions of all the parties in the two appeals; the Tribunal, in my view had a duty to receive the complaint made before it, by the 1st' respondent, not because the complaints relates to a party that was not. before the Tribunal, more because, the interests of the 1st petitioner would be jeopardized and denied if the Tribunal refused to hear him.

It is in fact correct to say that in giving the testimony before the Tribunal, (he 1st petitioner testified as to its missed opportunity to achieve its objective; and not necessarily testifying for the absent of the 2nd petitioner. Having read the briefs and the record of proceedings before the Tribunal, it is clear to me that the Tribunal did not question the provisions and applicability of section 182(1) (i) of the Constitution supplied above but asks whether the INEC had the right or jurisdiction to interpret and apply the said constitutional provisions in section 182(1) (i), as to the authority to determine the provisions of the said section. INEC it is true had deposed in its evidence before the Tribunal that it did not on its own as it could in the 2002 Electoral Act now abolished, decide to employ the Constitutional Provision and that INEC relied on the foremost judicial interpretation of section 182(1)(i) of the Constitution which gave it powers to invoke and enforce the constitutional provisions as in *INEC v. Action Congress & Anor.* (2007) 6 NWLR (Pt. 1029) 142. Where the Court of Appeal had ruled before the election held, that the INEC did not have need to resort to the court of law before could apply for enforcement the illustration of the said section 182(1) (i).

In the same month, after the delivery of election results before the Tribunal concluded its sittings, the Supreme Court in the case of *AC v. INEC* (2007) 12 NWLR (Pt. 1048) 222 ruled on the issue of need for court of law to interpret the provisions of section 182(1) of the Constitution and held that the judicial power reside in the courts of law not elsewhere the interpretation of the Constitution. *Set section 6 of the Constitution of Nigeria. 1999.* This is a judgment in *rein* not in *personam* and it applies on all occasions when the application of section 182(1) of the Constitution occurs. As the latest interpretation of the law on section 182(1) from a

more Superior Court of record, the Supreme Court, any Court of Law or Tribunal which rules contrary to its peril, if it ignores the latest interpretation of the law. Consequently, just as the 1st appellant have said in then brief that they had to contend with the latest interpretation of the law at the time of the order for exclusion of the 2nd petitioner whose removal from participating different from the ground on which an earlier decision was made. The conclusion and ruling on the foregoing is clear, that is to say the issues formulated by the 1st appellant on *stare decisis* on issue 6 and those of the 2nd appellant on issues 3.1.3 and 3.1.4 on the issue of (a) propriety and compliance ***of the Tribunal to look into the reasons given by the 2nd appellant*** To follow the persuasive decision of the Court of Appeal in the Tribunal conclusion. The issues are refused and dismissed by this court, the panel decision and effect on all issues will be pronounced at the end of the determination of all issues in this judgment.

It is time in this judgment to discuss and determine the 4th issue of the 1st appellant in his brief adopted on 14/1/08. The 1st appellant has recorded in his brief thus, "whether the trial tribunal was right in law in utilizing the further witness statement on oath of the 2nd petitioner together with annexure thereto while failing to utilize all the testimonies and exhibits tendered by the appellants and the 2nd - 24th respondents - herein". This issue of the 1st appellant Ibrahim Idris is in respect of the document on oath said to accompany the reply of the 2nd petitioner before the Tribunal. Paragraph 14(ii) and 16(i), (ii)b; 2 of the 1st schedule to the Electoral Act 2006 and the appropriate provisions of the Practice Direction of the Honourable President of the Court of Appeal deal with issues of processes and amendment of election petition. The respondent has relied on several legal authorities and submitted that the 1st petitioner who is also the 1st respondent to the appeal did not as feared by the 1st appellant improve on the existing petition by the alleged "*smuggling*" in its reply of a statement on oath. It was under the laws of pleadings entitled to do so to meet the allegations made against it in the defence before the Tribunal. This was done on a statement on oath. I have considered both the complaint and the submission, I hold the view that the 1st respondent to this appeal was right before the Tribunal to annex to its reply a statement or oath as it did; did refuse the objection to same by the 1st appellant The said issue is therefore dismissed. The 5th issue raised in his brief by the 1st appellant is whether the Tribunal was not wrong in law in allowing the 1st appellant to raise the issue of non qualification of the 2nd petition as a defence. The issue as to whether or not the 2nd petitioner has in my view being exhaustively dealt with in the judgment. To proceed to allow the 1st appellant to dilate on it in the Tribunal below, when the said Tribunal had as at that stage expressed its opinion on the issue of non qualification of the 2nd petitioner will enable the 1st appellant to re-open the issue. There must be an end to repetitious harmonizing of an issue which does not arise from across appeal. I am in agreement with the ruling of the Tribunal am' 1 dismiss the said issue 5 of the appellant in this appeal .In the foregoing, I have considered all the issues formulated in the brief of the 1st and 2nd appellants in their separate briefs which are convenient to be dealt with in these present at the same time. I have in this judgment resolved all the issues formulated by the 1st appellant and the 2nd appellant in each case against them; and affirm the decision of the Tribunal which sat on the matter of the seat of Governor for Kogi. In the judgment of the Tribunal which delivered its judgment on 10/10/07, the tribunal directed that a fresh election be conducted in which both the 1st respondent or 1st petitioner and the 2nd petitioner whose name was struck out from the proceedings should participate. The major reason given by the Tribunal is because the 2nd petitioner who had been a candidate at the 1st election and had been validly nominated by the I¹¹ petitioner but unlawfully excluded from the election. The two appeals are dismissed. I affirm the decision of the said Tribunal and direct that a fresh

election which includes the named parties be rescheduled and conducted.

Before I consider the issues in the cross appeal, I must express my own view, that it seems most strange to me that INEC, would lead the other statutory respondents to waste public money to appeal against the decision of the Tribunal which founded its decision on the interpretation of the law by a Supreme Court existing at the time of the decision of the Tribunal.

A party who appeals is seeking certain reliefs. What relief is INEC seeking by its appeal? It does not seem to me that it was set up to justify or vindicate itself in order to show it is infallible. In this case, it is not in error in its decision at the time of the election, it is that the interpretation of the court of law which gives INEC powers has changed at the time of the sitting of the tribunal to the election and at the time powers of INEC was founded on the power of INEC who then relied on the interpretation of the law by the Court of Appeal. So, does the tribunal which sat to decide the issue as to the propriety of the exercise of the power of INEC to exclude the tribunal also finds itself compelled to obey the current and existing interpretation of the same law by a court of superior jurisdiction? It is a legal calling of law called the rule of *stare de.cisis*, whereby an existing interpretation of law by one court, before the conclusion of the issue in controversy yields to the interpretation of the same law by a court of superior jurisdiction. In the light of the above, as the issue in controversy has not been closed, it is in my view neat, just and right for the issue to be determined on the consideration of an existing law. For the avoidance of doubt, it seem certain to me that the 1st appellant's complaint was not that the principle of *stare decisis* not inappropriate cases the appellants brie show the belief as in the observation of *Okafor v. Attorney General Anambra State* (1999) 7 SCNJ 192; reported as *Ndigwe v. Nwude*((1999) 11 NWLR (Pt. 626) 314, per Achike, JSC, which decision was echoed by Kalgo in *A-Lagos State v. A.-G., Federation* (2003) 12 NWLR (Pt. 833) I, which decision of the Supreme Court direct that right acquired by a litigant in a decision of court remain vested irrespective of the change in the law. In the instant appeal, what in issue is not a change in the law. Section 182(1) (i) of the 1999, Constitution remain valid, effective and binding. The issues which have arisen since the election of 14/3/07 took place are (1) The interpretation of section 182(1)(i) of the Constitution which was given a definite and contrary meaning to the meaning adduced to the said direction since the election took place, and before the issues in controversy are closed. Consequently, no right can be said to be vested. The issue in controversy cannot be said to be finally resolved when there exists a tribunal to adjudicate on the matter, and no rig can be said to be vested. The provision of Electoral Act is that the party declared to be the winner shall remain in seat until the conclusions of the hearing by the tribunal. Consequently, before the conclusion and final determination of issues in controversy after the election and pending the conclusion of the sitting of the Tribunal being constituted of legally trained people, the present is inevitable to the existing legal of the interpretation of section 182(1)(i) of 1999 Constitution of Nigeria. The use of the word, 'null and void' by the Tribunal on the decision of the Court of Appeal is unfortunate. The Tribunal is not possessed of such jurisdiction. The principle of *stare decisis* simply exists to enable I he decision of a higher court to supercede in its application. The decision of a lower court yields lo the supremacy of the decision of a higher court, where no right is vested.

I have written above that the judgment of the Supreme Court in the interpretation of the provisions of section 182(1)(i) is a, judgment in *rein*, because it is binding on all occasions where there| is need to determine whether the authorities in INEC possessed the power to remove a candidate indicted or impugned by a government or administrative inquiry. As the

Supreme Court recorded, an indictment is on an accusation, not a conviction. As a citizen is not deprived of his liberty or penalised on an accusation only. It should not be open to INEC or any non-judicial body to have power to penalize a candidate in an election. Henceforth, therefore any administrative body is bound to observe the enforcement of section 182(1) (i) as ruled by the interpretation of the Supreme Court in *AC & Anor. v. INEC*, suit No. SC 69/07 delivered on 16th April. 2007; now reported in (2007) 12 NWLR (Pt. 1048) 222.

In view of the foregoing and a rather detailed explanations of the issue of both appellants on these very crucial issue 6 of the 1st appellant issue 3, 4, 5. 3.1.3, 3.1.4, 3.1.5. of the appellants brief, the answers to the issues raised in the above are contained in the foregoing, however, I wish to refer to the issues and say specifically in issue 3.1.5 of the 2nd appeal, the tribunal did not rule that the INEC, 2nd appellant, had no authority to reject the candidacy of the 2nd petitioner for all times. If the 2nd petitioner was not eligible in accordance with the interpretation given in section 182(1)(i) of the Constitution of Nigeria, if the rejection is made according to the existing interpretation of the constitutional provision of section 182(1)(i) made by the Supreme Court in suit No. SC/69/07.

On issue 6 of the 1st appellant, the Tribunal was not in error in its view, in giving the benefit of the interpretation of section 182(I)(i) to the 2nd petitioner or 1st respondent to the appeal since the issues in controversy have not rested and no rights are vested section 149 of Electoral Act in the 1st appellant to whom award was made on the basis of interpretation of the law of section 182(1)0 of the Constitution and a court of superior jurisdiction has before the conclusion of the work of the Tribunal, given a different interpretation. It is the practice and law in the event that the interpretation given to the law by a court of a lower jurisdiction must yield to the interpretation of the same law given by a court of superior jurisdiction, before the issues thereon are closed and right on the claim closed. The issues and rights in the instant case cannot be said to be closed, see section 149 Electoral Act, 2006 when an appeal is pending on the decision earlier made and the law section 182(1)0 remain valid. One may then ask INEC, *quo vadis?* Which means in English, '*whither goest thou?*' Or what do you seek? In which direction is INEC going.

I now proceed to the cross appeal filed by the All Nigerian Peoples Party, ANPP, and *Prince Abubakar Audit against the Independent National Electoral Commission & 50 Ors.* The brief was filed on 6/11/07. They later filed their respondents' joint brief thereto on 22/11/07. There is only one issue formulated by the cross appellant for determination by this court. In the joint brief of the 50 respondents filed on 22/11/07, they also formulated the issue for determination. The issue for determination filed in (he cross appellants brief is,

"Whether the learned tribunal was right in holding that the 2nd petitioner lacks *locus standi* in presenting the petition having regard to the combined provision of sections 144(1) and 145(1)d of the Electoral Act, 2006 covering the only ground of appeal."

In the briefs of the 1 - 50 respondents, they formulated as follows, '*whether the 2nd cross-appellant was candidate in the April 14th, 2007 Gubernatorial Election of Kogi State, with locus standi to question that election*'. Distilled from the sole ground of appeal.

In pursuance of the cross appeal filed, the cross appellant referred to section 144(1) and 145(1) d of the Electoral Act, 2006, submitted that the Tribunal fell into an error when it held that the 2nd cross appellant lacked the *locus standi* to present the petition. He submitted that the 2nd petitioner in the main appeal, whose name was struck out filled prior to the election, INEC forms 001 and 002 exhibits 'A2 and A3'. Having done so the 2nd petitioner screening

by INEC was complete and was presented by the 1st petitioner to INEC as a candidate. Cross appellants submitted that due to the wrongful exercise of its powers INEC caused the removal of the name of the 2nd petitioner. The above was the basis of the complaint of INEC and the 50 cross respondents objection to the participation of the 2nd cross petitioner from participating in the Tribunal when the tribunal struck out the name of the 2nd petitioner.

In his submission, the brief of the cross appellant refer to the requisite provisions of the Electoral Act 144(1) and 145(1)(d) and submits that the current use of two sections is to use them conjunctively not disjunctively because when such is done, the section becomes operative for the intended purpose. That is to say, when section 144(1) provides that:

- (1) An election petition may be presented by one or more of the following persons;
 - (a) a candidate in an election;
 - (b) a political party which participated in the election.

And section 145(1)(d) subscribes that:

- (1) An election may be questioned on any of the following grounds,
 - (a)
 - (b)
 - (c)
 - (d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

It is not possible, counsel submitted for either a & b or a & b together to present an election without reading (d) into the right to challenge the exclusion of one or the other. The only one of a & b above which can be objected to is b. where he acts alone or with a, as in the instant case subject of the cross appeal. The cross appellant referred to the decision of the Court of Appeal in *Adebusuyi v. Oduyoye* (2004) 1 NWLR (Pt. 854) 406 and a recent one in *PPA & Anor v. Dr. Bukola Saraki & Ors.* CA/IE/EPT/GOV/2/2007; now reported in (2007) 17 NWLR (Pt. 1064) 453. The cross appellant submitted that the decision by Kalgo of the Supreme Court in *Irabor Oviawe v. Integrated Rubber* (1997) 3 SCNJ 29: (1997)3 NWLR (Pt. 492) 126 has given the cross appellant further support to believe that it is better to read and use the provisions of section 144(1) in conjunction with section 145(d). In the event, the counsel submitted that the Tribunal should not have struck out the name of the 2nd petitioner from the Tribunal, and the Tribunal was in error to do so. Counsel urged this court to rule that the 2nd petitioner was a proper party before the Tribunal. In response to the cross-appeal. INEC & 50 Ors. Submitted that the position of the cross appellant is not manifested by the provision of section 144 and 145(1) of the Electoral Act. That the two provisions of the Electoral Act be read disjunctively as done by the Appeal Court in *Okonkwo v. Ngige*, while interpreting the said provision in (2006) 8 NWLR (Pt. 981), where it was said that the word, 'candidate' therein refers to no other than the person who contested the election. He said the word, 'validly nominated' has no magic to it, because if a person is validly nominated to contest an election and he dies before the election, would such a person be a candidate? He urged the court to rule that the two sections of the provision of the Electoral Act, 144(1) and 145(T)(d) should be read separately and hold that the 2nd petitioner is not who participated in the election and so has no *locus standi* v. the Tribunal and cannot sustain an action in the Tribunal as a candidate.

I have considered the reasoning contained in the two submissions of the cross appellant and that of the cross respondent above. The clear issue to be determined in the cross appeal is whether the 2nd petitioner whose name was struck out from proceedings in the Tribunal on the successful argument made on the preliminary objection made by respondent in the

affidavit.

In order to determine whether or not the learned Tribunal was right when it struck out the name of the 2nd petitioner, it is imperative to look at the provisions of section 144(1) of the Electoral Act. The provision states class of persons who is or are entitled to present an election petition; and states certain conditions on which such petitioner may be prescribed. Those conditions are presented in section 145(1)(d) of the Electoral Act, 2006, a-d. a-c of the provisions do not concern us here. What concerns us is the provision of the Electoral Act 145(1)(d). It says, (d) *that the petitioner or its candidates was validly nominated but was unlawfully excluded from the election* in the canon of interpretation of statute. The sentence which commenced in section 144(1) continues to apply to the subsistence of the paragraph where the applicable situation is relevant. Thus, an election petition may be presented by one or more of the following persons, for instance (a) *a candidate in an election* (b) *besides the two categories slated in 144(1)*, 145 continues, and allows further categories of those who may question the election, and, states in 145(1)(d) when there is a question, that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election. The intention of the people who drafted the statute must be that the people who lodged complaint against an election must have a grouse and where do they ventilate the grouse. In the case of section 144(1) the grouse is self evident, they are

given a right to ventilate it in 145. This apply in 145 for candidate who participated in the election or the party. This is self evident, no explanation is required for him to question the election and so present a petition. However, in 145(1)(d), the person who applies to question the election but did not in fact have votes cast for him at the election is allowed by the statute to sanction the election at the tribunal if he can show (1) that he was validly nominated by his party; (2) that he was unlawfully excluded.

If section 145(1)(a) - (c), do not exist, the power to question the election through a petition to the tribunal is barren, to use the phrase of my learned brother, Justice Olagunju, JCA, in *Okonkwo's case (supra)* NWLR (Pt. 854) 222. if it does not contain the substance of the occasion when the power may be exercised. It seems to me and I so hold that the provisions of section 144(1) Electoral Act 2006 which gives power to certain categories of people to question an election before the election tribunal, enlarged the categories of eligible complainants in section 145(1)(d) of the same Electoral Act subject to satisfaction of conditions stated therein. It was for that reason that I reasoned in the decision of *Adebusuyi v. Hon. Babatunde Odnvove & Ors.* (2004) 1 NWLR (Pt. 854) 406 who had support of his party. In that case, the altitude of the party they know who their candidate, who they cleared and validly nominated, is. The matter in issue then was whether (he substitution of one for the other whose name the party subscribed first before close of names as presented by the then existing electoral body. In my view, it is not possible for the right to sue. where it is not self evident to sue to exist without the occasion when the right may be exercised. Consequently, not only has section 144(1) of the Electoral Act. 2006 widened the categories of those who may sue. it also provides in the law, the occasion when a person who did not have votes cast for him in the election may approach the Tribunal to question the election. This is the actual scenario after the election has taken place. Ours is a Constitution which allows a complainant opportunity to vent his grouse in a court of law, on the principle that wherever there is a wrong alleged, there must be occasioned an avenue for redress. The respondent has demonstrated his point of view by staling the case of a candidate; (*that word is perhaps misleading, the word 'statute' used in 145(1)(d) of the Act: the word a petitioner or its (candidate of the party surety).*) The example given of a

person who was validly nominated, and died before the tribunal sits I wonder at the ineptitude of reasoning which produced such an example. There will be no petitioner at the tribunal if the person who could have complained has died, (he example is totally inappropriate.

From the foregoing. I have no hesitation in holding that the leaned Tribunal was in error to have struck out the name of the 2nd petitioner (Prince Abubakar Audu). From the proceedings in the Tribunal, and I allow the cross appeal. In consequence. I order that a fresh election which should include the 2nd petitioner therein as a candidate be held in Kogi State within 90 days of this judgment. SANUSI, J.C.A.: This is an appeal against the decision of Kogi State Governorship and Legislative Houses Election Tribunal (hereinafter referred to as "The Tribunal") delivered on 10th October, 2007.

On the 14th day of April, 2007 which was a Saturday, the Independent National Electoral Commission (INEC, for short) which is the 1st respondent in the first appeal and 1st appellant in the second appeal and 1st respondent in the cross appeal. INEC, which is constitutionally authorized to organize, undertake and supervise all elections into elective offices in Nigeria, conducted elections in all the thirty six States of the Nigerian Federation including the federal Capital Territory, Abuja. In preparation for the conduct of the election into gubernatorial seats in all the States, various political parties fielded their candidates to contest the governorship election and concluded all necessary arrangements for the contest. Kogi State of Nigeria was not an exception.

The All Nigeria Peoples' Party (ANPP) which happened to be one of the registered political parties which is the 1st respondent in the two sets of appeals and 1st cross-appellant in the cross-appeal fielded Prince Abubakar Audu (the 2nd respondent in the appeals and 1st cross-appellant in the cross-appeal) as its candidate for the gubernatorial election held on 14th day of April, 2007. On the eve of the said election ie 13th April, 2007, the Resident Electoral Commission for Kogi State issued a circular letter informing all electoral/ officers in Kogi State that Prince Abubakar Audu should not participate at the said election and also ordered that the symbol of ANPP and Audu s name and picture and also the name of the party on the ballot papers should be deleted boldly with indelible marker before the ballot papers were distributed to the polling stations within the State which said instruction was carried out. The election was conducted and 1st appellants, the 24th respondent was declared winner by INEC. Both the ANPP and its candidate Prince Abubakar Audu, became disenchanted with the action of INEC and its officers and filed their joint petition at the Tribunal alleging, in a nutshell, that they were unlawfully excluded from participating in the said election and thereupon sought the under mentioned reliefs:-

- (i) That the election held on 14th April, 2007 into the office of Governor of Kogi State and the return of the appellant/ 24th respondent, Idris Ibrahim as the winner by the 1st and 2nd respondents in the said gubernatorial election be declared void and same a nullity by virtue of the provisions of Electoral Act, 2006 and the Constitution of the Federal Republic of Nigeria.
- (ii) An order for fresh election to be conducted by the 1st to 23rd respondents for the Governorship seat of Kogi State forthwith, having the 2nd petitioner as candidate for the said election having been sponsored and nominated by the 1st petitioner and screened and cleared by the 1st and 2nd respondents.

After a protracted trial/proceedings, the Tribunal on October 10", 2007 delivered its decision. Some of the power points or highlights of the Tribunal's judgment are stated hereunder:

- (a) That it was only a political party that fielded a candidate who was excluded that is competent to present a petition to the exclusion of the candidate himself.
- (b) That since Abubakar Audu did not take part at the election, he has no *locus standi* to bring the petition hence, it struck out his name.
- (c) That ANPP the 1st petitioner had *locus standi* to bring a petition by virtue of the provisions of section 145(1)(d) of the Electoral Act, 2006.
- (d) That by the provision of paragraphs 2(1)-(4) of the I⁵' Schedule to the Electoral Act, 2006, the Tribunal has discretion to order security deposit subject to the said paragraph 2.
- (e) That having paid the sum of N 10.320 in respect of the petition, the petitioners have complied with the provisions of paragraph 2 of the 1st Schedule to the Electoral Act, 2006.

- (f) That even if there was non-payment, short or inadequate payment of filing fees such merely amounts to mere irregularity and would not render the petition incompetent.
- (g) That where only the petitioners' counsel address for service mentioned in (he petition, it was enough and had met (he intendment of paragraph 4(4) of 1st Schedule to the Electoral Act, 2006.
- (h) That even if there was non-compliance with regard to the petitioners address on the petition, such will only amount to mere irregularity which is saved by paragraph 49(1) of the First Schedule to the Electoral Act, 2006.

- (i) That since the petitioner had *locus standi* to file the petition and had also paid the requisite filing fees fixed by the Electoral Act, the Tribunal had jurisdiction to hear and determine the petition.
- (j) That the preliminary objection by the respondents now appellants, lacked merit and was dismissed accordingly.
- (k) That there was a directive issued by the 2nd to 24th respondents to their agents in various polling units in Kogi State to delete the name of the 2nd petitioner and his parties logo and name from the ballot papers.
- (m) That the 2nd respondent, INEC lacked any legal power to disqualify the 2nd petitioner on the eve or day of the election and such action amounted to denial of petitioner's right to fair hearing, especially in view of an existing and valid injunction handed down by the High Court of Kogi State in *suit No. KG/VG/18/M.2007* restraining the 2nd respondent from doing so as per exhibit A7.

(n) That it was wrong for the 2nd respondent to disqualify the 1st petitioner's candidate without giving it opportunity to present another candidate, in keeping with the provisions of section 39 of Electoral Act, 2006. (n) That the 2nd petitioner was validly nominated by party and his exclusion was also unlawful, null and void especially in view of the decision of the Supreme Court in *Action Congress & Anor v. INEC*.

It is instructive to note that these focal points and others that featured in the judgment of the Tribunal, were made grounds of the appeals and the cross-appeal and were naturally raised by the parties counsel as issues or parts of issues for determination in the two appeals and cross-appeal, as will be seen later. Starting with the 1st appellant herein, he filed twenty-two grounds of appeal in his notice of appeal and out of them, he formulated seven issues for determination which are reproduced hereunder:

1. Whether the trial Tribunal was not in error in dismissing the preliminary objection of the appellante and the 2nd to 24th respondents therein after having struck out the name of the 2nd petitioner. Prince Abubakar Audu.

2. Whether the trial tribunal was not in error in the way and manner it resolved the issues of non-payment or non-proper payment of filing fees and security for costs and the failure, to furnish the petitioners' address in the petition having regard to the applicable provisions of the Electoral Act.
3. Whether having regard to the provisions of section 145 of the Electoral Act. the trial tribunal was not wrong by holding that the 1st respondent who did not participate in the election had requisite locus standi to present the petition and whether having rightly struck out the name of 2nd petitioner the trial Tribunal was not in error in delving into the issues of his alleged disqualification and alleged wrongful exclusion and pronouncing on same as unlawfully, null and void.
4. Whether the trial tribunal was right in law in utilizing the further witness statement on oath, of the 2nd petitioner together with the annexures thereto, while failing to utilize at all, the testimonies and exhibits tendered by the appellants and the 2nd to 24th respondents herein.
5. Whether the trial tribunal was not in error in holding that the appellants and their respondents before her can raise the issue of non-qualification of the 2nd petitioner as a defence notwithstanding the case put forward by the petitioners before the trial Tribunal.
6. Whether the trial tribunal was not in error in the view it took on the doctrine of *stair decisis* by extending the benefit of the decision in the case of *Action Congress & Anor v. INEC* to the petitioners while annulling the Court of Appeal decision in the case of *INEC v. A.C. & Anor.* delivered on 13th April. 2007.
7. Whether the trial tribunal was not in error in entering judgment for the petitioners when it (*sic*) did not prove its entitlement to the reliefs granted to it.

The 2nd set of appellants filed eight grounds of appeal from which they also distilled seven issues for determination. it appears to me that the issues they formulated have been aptly encapsulated in or subsumed by the 1st set of appellants' issues. I therefore do not deem it necessary to set them out.

Responding, to the two sets of appellant's briefs of arguments 1st respondent filed his brief of argument on 1/11/07 dated 17/10th and therein he formulated seven issues in response to the 1st appellant appeal and five issues for determination in reaction to the 2nd se appellants. The 1st respondent issues in response to the 1st appeal in my view covers the entire issues raised in the two sets of appeal and by the respondents. For case of determination, it will suffice only the 1st respondents issues are reproduced since they are encompassing and when duly considered will cover all the issues raised too. They are:

- (a) Whether the dismissal of the preliminary objection striking out the name of the 2nd petitioner, Print Abubakar Audu occasions any miscarriage of justice having regards to the circumstances of the case.
- (b) Whether the petition of the 1st respondent competent having regards to the provisions of Election Act, 2006 relating to payment of filing fees, security for costs and address for service/occupier.
- (c) Whether 1st respondent has locus standi to present I petition having regards to the combined provisions, sections 144(1) and 145(1)(d) of the Electoral Act, 2006 and the Federal High Court Rules, 2000 applicable.
- (d) Whether the learned Tribunal was right in relying on further deposition/evidence of 2nd petitioner together with the annexures having regards to the provisions of the Electoral Act, 2006 and the Federal High Court Rules, 2000 applicable.
- (e) Whether the learned Tribunal was right in holding that the appellant cannot raise the issue of qualification of the 2nd petitioner before the Tribunal.
- (f) Whether the learned tribunal was right in the application of the doctrine of *stare decisis vis-a-vis* the Supreme Court case of SC/69/2007 - AC v. INEC. Whether the tribunal was right in holding that the petitioner has proved the petition to be entitled to the reliefs sought.

I observed earlier that the ANPP and 2nd respondent/petitioner filed a cross-appeal. The sole issue formulated in the cross-appellants brief queries whether the learned tribunal was right in holding that the 2nd petitioner lacks *locus standi* in presenting the petition having regard to the combined provisions of sections 144(1) and 145(I)(d) the Electoral Act, 2006. Naturally, I will have to first of all deal the two sets of appeal before treating the cross-appeal. , It would seem to me that the issues formulated by the 1st spondent are less verbose and have covered all the corresponding matters of issues raised on the 1st set of appellants' brief. They have also captured all the points/issues raised by the 1st appellant as [produced above. That being so, I choose to be guided by the 1st respondent's issues for determination. I will also consider them in order first, before dealing with the cross-appeal.

Issue No. 1:

Here the two sets of appellants query why the Tribunal after striking out the name of the 2nd petitioner, Prince Abubakar Audu or want of *locus standi* and the Peoples Democratic Party, the 25th respondent for not being a necessary party in its judgment, should, which proceed to consider and make pronouncement affecting the position in the petition.

On this issue, the learned senior counsel for the 1st appellant while making submissions on this issue referred to the Tribunal's statement holding on page 1095 (vol. 3 of its record of proceeding) where in it said while dealing with the preliminary objection.

"And having held that the petitioners possess *locus standi* to file his petition (*sic*) and have also paid (he requisite filing fees prescribed by the Electoral Act 2006. we are of the opinion that the Tribunal possesses the necessary jurisdiction to hear and determine the petition. We hereby *overrule the preliminary objection and it is accordingly dismissed for lack of merit.* " The learned counsel for the 1st appellant went further to submit with reference to the above finding of the Tribunal, that having upheld the objection in part by striking out the name of the second petitioner and that of the Peoples Democratic Party (PDP)the 25th respondent, it would appear rather strange for the Tribunal to turn round and say it did, that the said objection was over ruled and dismissed the objection in its entirety for want of merit.

Relying on the decision of *Akinbohola v. Plisson Fisko (Nig.) Ltd.* (1991) 1 NWLR (Pt.167) 270 particularly the dictum of Nnaemeka-Agu at page 288. He urged this court to hold that the dismissal of the preliminary objection in the circumstance amounted to giving an order to the 1st respondent which it did not deserve, especially in view of the distraction in the finding by the Tribunal.

On the other hand, the learned senior counsel to the respondent likened the apparent confusion on the part of the Tribunal to mere slip on the part of the Tribunal when it stated that the preliminary objection was dismissed instead of it to say that the preliminary objection *was dismissed in part*. He further argued the even if it was a slip, from the gamut of the ruling, it cannot be slip that miscarriage of justice was occasioned on the 1st appellant as he even failed to show that. He urged us to discountenance the submission of the 1st appellant's counsel since it has been held if this court and the apex court in plethora of decided authorities it is not every slip or misdirection in a judgment that will cause the overturning of the decision of a trial court. It must always be shown that such slip or misdirection occasioned miscarriage of justice. He referred to the decision of the Supreme Court in the case of *Gbaje Gbaje* (1996) 6 NWLR (Pt.455) 417 at 428.

A careful and dispassionate perusal of the judgment of the Tribunal on the preliminary objection clearly shows that the conclusion in the findings of the Tribunal in its findings as reproduced above would leave one in no doubt that there was either a mix up [slip or] misdirection. This is more so in view of the fact that the Tribunal's remarks (*supra*) dismissing the entire objection after indeed it had struck out the name of 2nd petitioner. So it is inconceivable for the Tribunal to dismiss the objection in its entirety after it upheld part of it earlier. That is how the confusion arose.

At any rate, I am inclined to agree with the submission of the 1st respondent's counsel that it was either a slip or a misdirection. It is settled law, that it is not every slip or misdirection or mistake on the part of a court of law/tribunal that will warrant the overturning of an appeal unless it is shown that the misdirection/slip in the trial court's judgment had occasioned a miscarriage of justice? In *Gbaje Gbaje* (*supra*) the Supreme Court held on page 428 as follows: "It is not every slip committed by a judge in his judgment that will result in an appeal being allowed. The mistake committed by a Judge, to be fatal, must have occasioned miscarriage of justice."

See also *Nduluel v. Ibezim* (2002) 12 NWLR (Pt. 780) 139 at 169, On this premise, I hold that the 1st appellant failed to show and prove that the slip or misdirection on the part of the Tribunal on its finding on the preliminary objection had occasioned any miscarriage of justice to him when the Tribunal failed to state that the objection succeeded in part but instead dismissed it in its entirety. I hereby, therefore resolve this issue against the two sets of appellants.

2nd Issue:

In this issue, the two sets of appellants raised the issues of (i) non-payment or inadequate payment of filing fees (ii) non-payment or insufficient deposit of security for costs and non-inclusion of petitioners' address and name of occupier in the petition. I will comment on all of them at the same time. The grouse of the two sets of appellants is that only N10,320 was paid by the petitioner and that such was an under payment by virtue of the provisions of paragraph 2(1) to (4) and paragraph 45 of schedule one to the Electoral Act, 2006.

The appellants' counsel questioned or challenged the Tribunal's decision that the appropriate filing fees had been paid and that even if it was not paid the default was mere irregularity which could not vitiate the petition. The learned counsel opined that the Tribunal was also wrong in its stance that security for costs deposited was appropriate, and that even if it was not so, that would not render the petition incompetent. The learned counsel relied on the provision of paragraphs 2(1)-(4) and 45 of the first schedule to the Electoral Act, 2006. To expatiate on this point, it was submitted that fourteen different candidates were joined in the petition as parties who contested the election on the platform of various political parties namely the 24th, 26th, 28th, 30th, 32nd, 34th, 36th, 38th, 40th, 44th, 48th and 58th as respondents to the petition. According to the learned appellant's counsel, by the provisions of paragraph 3(4) of the same schedule, it was mandatory for the petitioner to pay fees for service on each of the respondents joined.

On security for costs, it was argued on behalf of the appellants that security on all costs which may be payable by him to a witness sum awarded on his behalf or the respondent was N5,000 adding that a sum of N5,000 is the minimum security for costs on each of the respondent or any amount ordered by the Tribunal should mandatorily be deposited. Reliance was placed on the provisions of paragraph 2(1)(2) and (4) and paragraphs 36 and 45 of the first schedule to the Electoral Act, 2006 and the case of *Remi v. Sunday* (1999) 8 NWLR (Pt.613) 92 at 103; *O.Obia v. Anah* (1999) 5 NWLR (Pt.601) 1; *Olaniyonu v. Prof. Ava & 2 Ors.* vol. 3 NEPLR 108 at 115; *Onuorah v. Okeke* (2005) 10 NWLR (Pt.932) 40 at 68; *OBiekwe v. Obi* (2005) 10 NWLR (Pt.932) 60 at 74; and *Agbeotu v. Brisibe*

(2005) 10 NWLR (Pt.932) 1. This court was then urged by the appellants to declare the petition incompetent for non-compliance with the above mentioned provisions of the Electoral Act, 2006 in the light of the decided authorities cited.

On the non-conclusion of petitioners address and name of occupiers on the petition, the learned counsel submitted that it was non-compliance with paragraph 4(4) of the First Schedule to the Electoral Act, 2006 which said non-compliance was fatal and would render the petition incompetent. Even simply on that. Reliance was also put on the case of *Abiodun v. A.-G., of the Federation* (2007) 15 NWLR (Pt. 1057) 359 at 396 and a host of decided authorities. Responding to the above submissions of appellants counsel on this issue, the learned counsel for the 1st and 2nd respondents argued that the provisions of paragraph 45 of the Schedule to the Electoral Act 2006 must be read along with section 144 of the Electoral Act, 2006. He cited and relied on a number of decided authorities among which are the cases of *Buhari v. Yusuf* (2003) 14 NWLR (Pt.841) 446 and *Onuorah v. Okeke* (2005) 10 NWLR (Pt.932) 40 at 74.

Now let me reproduce the two relevant provisions below for purposes of clarity and ease of reference.

Section 144(1) of the Electoral Act, 2006 which is in *part material* with section 133(1) of the Electoral Act, 2002 which read thus:-

"144(1) An election petition may be presented by one or more of the following persons:-

- (a) A candidate in an election
 - (b) A political party which participated in the election."
- (2) The person whose election is complained of in this Act referred to as respondent but if the petitioner complains of conduct of an electoral officer a presiding officer, a returning officer or any other person who took part in the conduct of an election such officer or person shall for the purpose of this Act be deemed to be respondent and shall be joined in the election petition in his or her official status as a necessary party PROVIDED that where such officer or person is shown to have acted as an agent of the commission, his non-joinder as aforesaid will not on its own operate to void the petition if the commission is made party."

Paragraph 45 of 1st Schedule to the Electoral Act, 2006 provides as follows:

"Two or more candidates may be made respondents to the same petition and as the case may be for the sake of convenience heard at same time but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the respondents."

In the case of *Buhari v. Yusuf* (*supra*) the Supreme Court had cause to interpret the provisions of section 133(2) of Electoral Act, 2002 which is in *pari materia* with section 144(2) Electoral Act, 2006 and paragraph 45 of 1st schedule to the Electoral Act with regard to section 144(2) where Katsina-Alu. JSC had this to say.

"I think the law is settled. It is cardinal rule of interpretation of a statutory provision that it must be given its clear and ordinary meaning. Subsection 2 of section 1-33 of the Electoral Act, which I have reproduced above provides for persons who may be respondents in an election petition. *The first set of respondents is the person whose election is complained of.* The second set is made up of an electoral officer, a presiding officer, a returning officer, whose conduct of the election is complained of. These are collectively referred to as 'statutory respondents'. When subsection 2 speaks of the person whose election is complained of, it clearly did not contemplate making any person a respondent except a person petitioned against, that is, the person declared the winner of the election. I think it is quite elementary really. I can not envisage a situation under which a person who lost an election will present a petition against another loser."

When constructing the provisions of paragraph 45 of the 1st Schedule to Electoral Act, 2002, which has the same wordings with the corresponding paragraph in the Electoral Act of 2006, the learned jurist stated as follows:

"This provision envisaged that where two or more candidates are made respondents to the same petition, the petition shall be deemed to be a separate

petition against each of the respondents. As I have already stated, is only an *election or return of a candidate* can be questioned by an election petition in which the person 'elected or returned' is found as a party - see section 131(1) of the Act. See also section 133(2). It can therefore be seen clearly that the operation of paragraph 45 of the First Schedule to the Act must be in regard to each of the respondents elected or returned in the election on question. *As I have already pointed out & Act does not envisage a situation in which a petition presented against the loser of the election...* (emphasis)

Thus, a community reading of the two provisions and the interpretation of same by the apex court leaves no one in doubt the insistence of the learned appellants' counsel that the respondents ought to have paid filing fees and deposited security on each of the 14 respondents as cited is of no moment. The said respondents' candidates who lost at the said election and have therefore fallen under the second category of candidates who lost at the election and were not returned. They were simply candidates who participated in the election but failed or were not returned winners or parties whose election was complained of. I am also of the firm view that paragraph 45 of the 1st Schedule to the Act did not concern the 1st respondent's petition since its petition is merely against the appellant respondent in the petition who was declared elected or returned and certainly not against the fourteen (14) respondents as being suggested by appellants' counsel, the various parties' candidates and loser of the disputed election. I am therefore convinced that the Tribunal was correct in its finding with regard to the payment of filing fee and security deposit.

On the last leg of appellants' complaint on non-compliance with the petitioners' address and name of occupier, that aspect is in my view taken care of by paragraph 4(4) of 1st schedule to the Electoral Act, 2006 wherein it states that:

"At the foot of the election petition there shall also stand an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier."

To my mind, the above provision simply has directory and NO mandatory effect. Where there is non-compliance with it, such would only amount to an irregularity especially if one reads it together with its sub-paragraph 5 which gives latitude or discretion to the Tribunal to give contrary order even in a situation where the petitioner fails to provide the address for service. In any case, a cursory look at page 10 of the record of proceedings of the Tribunal contains the petitioners' address for service immediately after the signature column and the name of their counsel and signatures were also indicated. The complaint of the appellants' counsel in this regard is baseless and a mere resort to technicalities which our courts now strongly abhor and endeavor to avoid. The Tribunal is therefore right in holding that such complaint is of no moment. This issue is also resolved in favour of the 1st and 2nd respondents.

Issue No. 3:

On this issue the appellant is challenging the tribunal's decision that the 1st respondent had *locus standi* to present the election petition which they made a ground in these appeals. The learned appellants' counsel also in this same issue questioned the validity of the Tribunal's resolve in delving into the merit of the petition and ultimately finding in favour of the 2nd respondent. Prince Abubakar Audu after it had earlier struck out his name for want of *locus standi*. In a nutshell, the pith of the submission of the appellants' counsel is that the tribunal would have applied the parameter it used in disqualifying the 2nd respondent for want of *locus standi*, and apply it to the position of the 1st respondent and if it did so it would arrive at the same conclusion it reached in the case of the 2nd respondent that it did not also participate or contest the Governorship election held on 14th April, 2007. It is also part of the appellants' counsel submission on the second issue that the Electoral Act, 2006 did not vest *locus standi* on the 1st respondent who like the 2nd respondent, did not take part in the election held on 14/4/2007. It had been argued further, that if the tribunal had closely studied or considered section 144(1)(b) together with section 145 both of the Electoral Act, 2006, it would have arrived inevitably to the conclusion that both the 1st and 2nd respondents lacked *locus standi*. He insisted that the requirement of *locus standi* is only found in section 144 while section 145(1)(d) of the same Act merely deals with grounds upon which petition could be presented and NOT persons who are competent to present a petition.

Conversely, the learned counsel for the 1st respondent naturally holds a contrary view with that of the appellants' counsel. To him, "locus standi" issue is governed by both, the provisions of section 144(1)(b) and 145 of the Electoral Act, 2006, adding that the latter provisions allow a political party which took part at an election on the ground that a candidate it validly nominated and fielded was unlawfully excluded from participating in the election. He cited and relied on the decisions of (his court in the case of *Adebusitvi v.*

Odneyoye (2004) 1 NWLR (Pt. 854) 406 at 426 - 428 and P.P.A. & Anorv. Dr. Bukola Saraki & Ors. , now reported in (2007) 17 NWLR (Pt. 1064) 453.

At this juncture. I deem it apposite to reproduce (he two provisions of the Electoral Act, 2006 cited and relied upon by the two learned counsel even at the risk of being repetitive. Section 144(1) of (he Electoral Act, 2006 reads as follows;-

"An election petition may be presented by one or more of the following persons:-

- (a) a candidate in an election;
- (b) a political party which participated' in the election.

And section 145(1) of the Electoral Act. 2006 provides thus:

"An election petition may be questioned on any of the following grounds:

- (a) ...
- (b) ...
- (c) ...
- (d) That the petitioner or its candidate was *validly nominated but was unlawfully excluded from the election.* (emphasis supplied)

First of all, from (he wordings of section 144(1)(a) of the Act, a candidate in an election has *locus standi* to present petition, while section I44(1)(b) provides that a political party that participate in an election also has the *locus standi* to present petition in an election. I am not unaware that the side notes lo section 144 reads "persons entitled to present election petition" while the side notes on section 145 of the Act reads "grounds of petition".

It is pertinent to state here that in order to determine whether a party has *locus standi* in a suit is determined by the totality of the averments in the pleadings or petition, in case of election petition. The important issue is to ascertain whether or not the has sufficient interest and how such interest has arisen. Where it is shown that the plaintiff/petitioner has interests which have been or are in danger of being violated, invaded or adversely affected by the act of the defendant or responded in election petition, the complaint of such a plaintiff would be deemed to have shown sufficient interest to give him *locus standi* to litigate over (he subject-matter in issue. See *Owodunni v. Registered Trustees, C.C.C.* (2000) 10 NWLR (Pt.675) 3)5 at 354/355; *Yusufu :Government Edo Stale* (2001) 13 NWLR (Pt. 731) 517 at 533. In the instant case, it has been shown in the petition that the 1st petitioner/respondent and his party had sufficient interest which had been trampled on by the 2nd set of appellant INEC *ride its* action of unlawfully excluding him from the contact of the election while he. Was validly nominated by His party to so contest. It cannot therefore be said that he has no *locus standi*.

Now. let us consider the instant scenario. The 1st respondent, ANPP is a registered political party. Having been duly registered by (he appellant in (he second appeal i.e. INEC. it was automatically authorized to contest an election. This can only be done by it after it conducts the preliminary exercise. Thai is to say. it screens the candidates who wish to conies that election. After the screening of all its candidates, it may then conduct primary election to decide which of its candidates it would field lo contest and send its nomination to INEC.

That is what is better known as *nomination*. Remember that by the provisions of section 85 of the Electoral Act. 2006. JNEC had to he informed or invited to witness the party congresses or conventions or the primary election where the parties decide to conduct same. Note also that once a party sends or nominates the name of its candidate lo it, INEC, cannot later withdraw it and substitute it with another UNLESS and UNTIL it presents or adduces verifiable reasons for the withdrawal or substitution of its candidate and it must be done within the period specified by the Act. See section 34 of the Act and the case of *Ugwu & Anor. v. Ararwne & Anor.* (2007) 6 SC (Pt. I) 88; (2007) 12 NWLR (Pt. 1048) 367. I went lo (his length to justify that since a political party has *locus stand!* to present a candidate of its choice to contest election on its platform, it goes without saying, (hat it can present petition on the ground of violation of (he provisions of section 145(1)(d) of the Act, The decision of the tribunal on this point is therefore unassailable and I accordingly endorse same. Coming to the other leg of this issue relating to the 2nd respondent whose name was struck out by the tribunal for want of *locus standi*, it is the view of the appellant's counsel that the tribunal.

Was wrong to have delved in the issue of his disqualification and wrongful or unlawful exclusion. He also argued that having struck out 2nd respondent's name, the tribunal then lacked the jurisdiction to deal with the matter and make pronouncement on a person who which is not a party to the petition. What baffles me here is can a political party which is qualified to bring a petition under section 144(1)(b) of the Act and which has *locus standi* to do so and had based its petition on violation of section 145(1)(d) of the Act be barred from presenting a petition such as an allegation under section 145(1)(d) of the Act⁹ And if it does so, can the tribunal not deal with its case based on (he evidence it presents on/the issue of violation of section 145(1)(d) of the Act simply because it involved its candidate (the 2nd respondent) who was rightly or wrongly adjudged to lack *locus standi*? We should bear in mind that the action was targeted at or grounded on wrongful action of the INEC which had wrongfully or unlawfully excluded a candidate it validly nominated.

Who else will adjudicate on the case besides the Tribunal. Could it be proper then to decline to make pronouncements on its (ANPP) case. It is instructive to note that, the 1st respondent (ANPP) had part taken or participated in the election. I am therefore inclined to accept the submission of the learned counsel of the 1st respondent to the effect that the Tribunal was on the right track in its approach with regard to this issue. It should even be noted that there is nowhere¹ in the Tribunals' record where it made specific reference to 2nd respondent/petitioner as it bore in its mind, that it had earlier struck his name out (rightly or wrongly). It needs to also be noted also that even if the tribunal had made pronouncements concerning on or in favour of the 2nd respondent whose name it had earlier struck out, it is inevitable for it to avoid doing so. This is because in the factual situation, the tribunal was dealing with the case of 1st petitioner/respondent which was closely tied to that of the 2nd petitioner/respondent and also the petition was based on or ensuring in favour of the latter.

With regard to the other part of this issue, the appellants counsel queried or attacked the approach of the Tribunal adopted appropriating the decision of the Supreme Court in *Action Congress & Anor. v. INEC* (then unreported) No. SC/169/07 delivered on 6/4/2007; (2007) 12 NWLR (Pt.1 048) 222 in favour of the 2nd petitioner He seems to be agitating that the Tribunal should be guided by the decision of this court in *INEC r. AC & Anor* which was then right and valid decision until the decision of the Supreme Court (*supra*) which upturned this court's decision on appeal. His other reason for his suggested approach was that the 2nd petitioner was never a party in the case. But this latter submission appeals me to be rather ridiculous. One may ask, why did he liken the Tribunal to follow this court's decision instead of that overriding it banded out by the Supreme Court? Was the petitioner ever a party to the decision of this court? Is it a question of appropriating and reprobating? The pith of the matter is that as at 16/4/2007 this court's decision in *INEC v. AC & Anor* (2007) 6 NWLR (Pt. 1029) 142 was no longer a valid and applicable law. The new law in the issues is that contained in the Supreme Court's case of *AC & Anor v. INEC* (2007) 12 NWLR (Pt. 1048) 222. All courts in the land are bound to follow and be guided by it whatever reservations one has on it. That is the wisdom or corollary in the doctrine of *stare decisis* which is an age long principle of law which must be respected and guarded religiously and jealously. The Tribunal can therefore not be right if it discards or refuses to be guided by the Supreme Court's decision which is the valid and subsisting law right from when it delivered its judgment in October, 2007 and NOT this court's decision. For the avoidance of doubt this court decided that INEC had power to disqualify a candidate from contesting election, while the apex court now said that INEC had no such power. Since the ground of the petition talks about *unlawful exclusion* the Tribunal had to be guided by it and it rightly held so. This is because as at that time, the decision of this court had become archaic and was no longer a subsisting law. The result of all that I have said *supra* is that the third issue had to be also decided against the appellants and I accordingly do same.

Issue No. 4:

Here, the appellant's counsel urged this court to determine whether the Tribunal' was correct 'in 'utilizing the further witness statement on oath made by the 2nd petitioners/respondent along with the Annexure thereto while it failed totally to utilize testimonies and exhibits tendered by them and the 24th respondent. The learned counsel for the appellants opined that the action of the Tribunal in that regard runs riot and violent to the provisions of paragraph 16(1)(a) and (b) of first schedule to the Electoral Act. It was further argued that the Practice Direction, 2007 (as amended) did not also make any provision for filing of further witness statement not to talk of introducing fresh document while filing petitioner's reply. It was also suggested on behalf of the appellants, that the Tribunal by

There will be no order for costs.

Prominence to technicality at the expense of justice. Courts have now moved from undue reliance on technicality to doing substantial justice. In *Nwobodo v. Onoh* (1984) 1 SCNLR 1 Uwais, JSC, (as he then was) at page 195 said:

"Election petitions are by their nature peculiar from other proceedings and are very important from the point of view of public policy. It is the duty of courts therefore to hear them without allowing technicalities to unduly fetter their jurisdiction..."

Also in *Prince Nwole v. Chief Iwiutgwu & Ors.* 1 EPR 682 at 698; (2004) 15 NWLR (Pt. 895) 61, it was held that:

"To prevent the exercise of full hearing by relying on technical issues is not the ideal way of handling such a sensitive situation. Reliance on technicalities in determining sensitive matter has always be frowned upon by the courts. It only helps to prevent the other side from being heard. In a situation where very grave allegations are made by the other party, to shut him up does much harm to the cause of justice."

See also *Owuru v. INEC & Ors.* (*Supra*).

I now come to issue No. 3, which is distilled from grounds 2.4, 5, 1, 11, 14, 15, 16 and 17 of the grounds of appeal. Issue No. 3 is targeted at the correctness or otherwise of the trial Tribunal's decision that the 1st respondent, ANPP, who did not take part in the election, had *locus standi* to present the election petition.

It also challenges the decision of the Tribunal to consider the merit of the petition and to make pronouncement *in favour of and to the benefit of* the 2nd petitioner, Prince Abubakar Audu, after his name had been struck out from the petition because he had no *locus standi*. On the first leg of issue No. 3, the appellants contended that since the Tribunal ruled that the 2nd petitioner did not contest the election, then the 1st respondent, ANPP, did not participate in the election therefore, it too had no *locus standi* to present the election. They relied on the provision of sections 144(1) and 145(1) of the Electoral Act, 2006, and drew a distinction between the two sections, mainly that while section 144(1) deals with the "persons entitled to present election petitions", section 145(1) deals with 'grounds of petition'. Relying on *Dabubu v. Kolo* (1993) 9 NWLR (Pt. 3 17) 254 at 273; *Ibrahim v. J.S.C.* (1998) 14 NWLR (Pt. 584) 1; *U.B.N. v. Nwaokolo* (1995) 6 NWLR (Pt. 400) 127 at 1 34; *Obasanjo v. Buhari* (2003) 17 NWLR (Pt. 850) 510 at 577 and *Okonkwo v. IN EC* (2004) 1 NWLR (Pt. 854) 242, the appellants submitted that the provisions of section 145(1) of the Electoral Act, 2006 has nothing to do with the issue of *locus standi*, therefore the Tribunal was wrong to premise the *locus standi* of the 1st respondent on it.

On the 2nd leg of issue No. 3, the appellants contended that the Tribunal having held that the 2nd petitioner had no *locus standi* to maintain the petition and struck out his name, he ceased to be a party in the case. Therefore the Tribunal has no *vires* or jurisdiction to decide a matter in favour or against a non party in the proceeding.

The 1st respondent's reply is that it has the *locus standi* to file the petition by virtue of the provisions of sections 144(1) (a) & (b) and 145(1) (d) which should be read together.

I am in agreement with the 1st respondent that the provisions of section 144(1) (a) & (b) must be construed together with section 145(1) (d). At this juncture, it becomes necessary to examine the provisions. Section 144(1) (a) & (b) of the Electoral Act provides:

"An election petition may be presented by one or more of the following persons:

- (a) a candidate at an election.
- (b) a political party which participated at the election."

From the above clear provisions, a candidate at an election can present an election petition. Similarly, a political party which participated at the election can present an election petition and both can do so together or separately, one acting independently of the other.

Also section 145(1)(d) provides:

"An election may be questioned on any of the following grounds, that is to say.

- (a)
- (b)
- (c)
- (d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."

The expression "petitioner or its candidate" surely and certainly indicate that both the political party and its candidate have *locus standi*. The petitioner as used in the section 145(1) (d) can only mean a political party because the political party is not a candidate at an election and it cannot be nominated. Political party can nominate a candidate but a candidate cannot nominate a political party. It is significant that the political party participation in an election is by nominating and sponsoring its candidate. See sections 32(1), (2), (3), 33, 34(1), 36(1), (2) and 38 of the Electoral Act. Nomination is an act of suggesting or proposing a person by name to an elective office. In the instant case on appeal, the 1st respondent, ANPP, nominated Prince Audu Abubakar as its gubernatorial candidate for Kogi State at the 14/4/07 elections; therefore, it participated in the election. Surely this gives the 1st respondent the *locus standi* to present the election petition. The submission. That, because the 2nd petitioner did not actually contest the election. Their 1st respondent cannot be said to have contested the election is preposterous. It is a submission which does violence to the provisions of section 144(1)(a) & (b) and section 145(1)(d) of the Electoral Act.

Similarly, the submission of the appellants, that section 144 (1) (a) & (b) and section 145(1) (d) be considered separately is not in consonance with the canon of interpretation. In the interpretation of statute regard must be given to the entire enactment in order to understand its purport and meaning. See *Oyeniran v. Egbetola* (1997) 5 NWLR (Pt. 504) 122. From the provisions of sections 144(1) (a), (b) and 145(1) (d) of the Electoral Act, it is very clear that the law gives the political party and the candidate independent recognition.

So a petition can be filed by the Candidate or by the political party which participated at the election or by the two of them jointly. By the provisions of section 144(1) (a) & (b)'a political party can present a petition alone or jointly with its candidate at the election. In *linluri & Ors. v. Obasanjo Ors.* 1 EPR 112 at 130; (2005) 2 NWLR (Pt. 910) 241, it was held thus:

"Here for a political party to qualify as a petitioner, it only needs to participate at the election and no more, and participation simply means "taking part" not in any specified way. This may include participation by the political party itself or through its authorized agent." Also in *Obasanjo v. Bnhan* (2003) 17 NWLR (Pt. 850) 510, the Supreme Court held that sponsorship of a candidate in an election is enough to qualify a political party as having participated in an election. This court has also held that under section 134 (1) (d) of the Electoral Act, 2002, which is *pari materia* with section 145(1) (d) Electoral Act, 2006, a political party can present an election petition complaining of valid nomination but unlawful exclusion.

See *Okonkwo v. INEC* (2004) 1 NWLR (Pt. 854) 242; *Okon v. Bob* (2004) 1 NWLR (Pt. 854) 378; *Asinye v. INEC (supra)*. See also *IP.P.A. v. Saraki & Ors.* (2007) 17 NWLR (Pt. 1064) 453.

There is therefore no merit in this leg of issue No. 3 and 1 resolve: it against the appellants.

On the second leg of issue No. 3, that is to say whether the trial Tribunal was right after striking out 2nd petitioner from the proceeding to determine the issue of unlawful exclusion or disqualification of Prince Abubakar Audu.

It will be recalled that the petition before the Tribunal was filed jointly by the political party, ANPP, and Prince Abubakar Audu, as 1st and 2nd petitioners. Therefore, the striking out of the 2nd Petitioner for want of *locus standi* will not defeat the petition because of the 1st petitioner who is before the Tribunal can prosecute the petition independently. Furthermore, the Tribunal in its judgment filed not referred to the 2nd petitioner or the name of Prince Abubakar Audu. Referred to the 2nd petitioner as the 1st respondent's nominated candidate. See pages 1113 - 1115, vol. 3, of the record. On the issue of *Action Congress & Anor. v. INEC*, my brief ["answer to that is that following the well established principle of *stare decisis* and judicial precedent, the Supreme Court having set aside the decision of the Court of Appeal and affirmed the decision of the Federal High Court, which declared that INEC lacks the power to disqualify candidate at election, the Tribunal was bound by it and so are we. The feeble attempt to persuade the court that the case of *INEC & Ors. v. A.C (supra)* was decided by this court on 3/4/07 before the election were held on 14/4/07 whereas the decision of the Supreme Court was given after the election is a distinction made in futility because it has no meaningful impact on the case of the appellants. The issue in both cases revolves around the interpretation of section 182 of the 1999 Constitution. It is not a case of accrued fights under an existing law. Section 182 has always been there.

The central issue here is that the Supreme Court has decided in *Action Congress & Ors. v. INEC (supra)* that an indictment is no more than an accusation until pronounced upon by the court. Therefore, INEC has no right to disqualify a candidate. In my considered view, that decision sufficiently settle the issue of qualification or disqualification raised by the appellants in this appeal. The Tribunal was right to hold that the disqualification and exclusion of the 2nd petitioner was unlawful, null and void. I find no merit in this issue. See *Clement v. Iwnanyanwii* (1989) 3 NWLR (Pt. 107)3 at.54 and *Dalhatu v. Turaki* (2003)15 NWLR (Pt.843)310 at 336 On the issue of whether the tribunal was right in relying on the injunction granted by the Kogi State High Court in suit No. KM/E 18M/2007, my answer is that the ruling and the order made by this court remains valid and in force until set aside. In *UTB v. Koleos* (2006) 18 NWLR (Pt. 1010) 1 at 14, it was said that:

"That order of court must be obeyed until it discharged. It is immaterial that the person affected b the order believes it to be irregular or even void." The Tribunal was right to rely on the order of injunction granted in the said suit. There is no merit in issue No. 3 and I resolve against the appellants.

On issue No. 4, the appellants question whether the Tribunal was right in relying on further deposition, of evidence on both of tl 2nd petitioner together with the annexure having regard to the provisions of the Electoral Act, 2006, and the Federal High Court Rules, 2000 applicable. This issue is predicated on grounds 6, and 19.

A perusal of the petitioners' petition before the Tribunal reveal that it was a case of valid nomination but unlawful exclusion und section 145(1)(d) of the Electoral Act, 2006. No issue of qualification was raised therein. Rather, it was the appellants who raised the issues of the indictment of the 2nd petitioner, Prince Abubakar Audu by panel of inquiry set up by the Kogi State Government. This is clear shown in paragraphs 4, 5 and 6 of the joint reply at page 120, vol. of the record. The 1st respondent in response filed a reply to the new issue raised and a witness deposition in support. See pages 175 - 176 the issue under consideration is quite simple It is the rule of pleadings that a petitioner is enjoined to tile a reply to the respondent's defence or reply where such raises a new fact or issues not raised in the petition. See *Kemkia v. Maigemn* (2003) 6 NWD (Pt. 817) 496 at 520 where this court held:

"Filing of reply to a statement of defence may necessary if it is intended to plead relevant additional facts which render untenable a particular defence raised in the statement of defence or to negate the applicability of such defence. Moreover, where because of the nature of the defence proffered, the plaintiff intends to lead evidence in rebuttal or to raise a matter of fact not arising from both the statements of claim and defence, a reply may be, in such circumstance, filed as the plaintiff may not be permitted to lead evidence on any material fact he had defaulted to plead to in his statement of claim. [*Bakare v. Ibrahim* (1973) 6 SC 205; *Akredolu v. Akinremi*(No.3)(1989)3NWLR(Pt. 108) 164 referred to]."

This is also very clear from the provision of paragraph 16(1) of the First Schedule to the Electoral Act, 2006, which provides thus:

"If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the registry within five days from the receipt of the respondent's reply, petitioner's reply in answer to the new issue of fact, so however that:

(a) the petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him, and

(b) the petitioner's reply does not run counter to the provisions of subparagraph (1) of paragraph 14 of this schedule,

(2) The time limited by subparagraph (1) of this paragraph shall not be extended."

From the above, it is crystal clear that the 1st respondent had the duty to specifically plead facts in rebuttal of the new issues raised by the appellants relating to the 2nd petitioner's indictment by the Prof. Ayua's Administrative Panel of Inquiry set up by the Federal Government and the indictment by the Kogi State

Government. Having filed a reply, it becomes necessary for the 1st respondent to lead further evidence in support of his reply. This was why the 1st respondent filed additional witness statement on oath. See *Iwuoha v. NIPOST Ltd.* (2003) 8 NWLR (Pt.822) 308 at 340-341.

The tribunal cannot be held to be guilty of denial of fair hearing in this matter because the appellants were allowed to tender and adopt their witness statements on oath together with exhibits and they addressed the Tribunal. They were given equal opportunity to prove their defence just as the 1st respondent was given fair hearing in essence means giving equal opportunity to the parties to be hearing in litigation before the court. Where parties are given opportunity to be heard they cannot complain of breach of the fair hearing principles. See *IN EC v. Musa* (2003) 3 NWLR (Pt.806) 72 at 195-196

I see no substance in issue No. 4 and I resolve it against the appellants.

I now come to issue No,5 which is married to ground 20. On issue 5, it is the-appellants' contention that the Tribunal was in error in holding that the appellants and other responder before her cannot raise the issue of non-qualification of the petitioner as a defence notwithstanding the case put forward by the petitioners before the trial tribunal. From the record, it appears that upon being served with the 1st respondent's petition, the 1st - 25 respondents, now appellants, filed their replies wherein they raise the issue of non-qualification of the 2nd petitioner. The 1st -25th respondent contention is that the appellants could have availed themselves in the provision of section 34(2) of the Electoral Act, 2006 and more importantly that the issue has not arisen at all as the 2nd petitions was not even allowed to contest. If he had contested and won, the .any other candidate can bring a petition challenging his qualification: " In my considered view, its glaring clear that the issue of qualification is one of the grounds for questioning an election of a candidate in an election petition. Section 145(1)(a) of the Electoral Act, 2006 provides that:

"An election may be questioned on any of the following grounds:

(a) That a person whose election is questioned was at the time of the election not qualified to contest the election."

In this appeal, we are dealing with a situation where the 2nd petitioner was not even allowed to contest the election. I, therefore agree with the 1st respondent that the defence of indictment is no available to the appellants; in the circumstances. See *Ango v. Achida* (1999) 3 NWER

For the avoidance of doubt, the case of the 1st respondent and the 2nd petitioner is stated in paragraph 2, page 6 of vol. 1 of the record as follows:

"Ground relied upon for the petition

That the 1st petitioner who has 2nd petitioner as candidate was validly nominated but was unlawfully excluded from the election of 14th April, 2007 for the in gubernatorial election for Kogi. State.

The above was the only issue before the Tribunal in the election filed by the 1st respondent and, 2nd petitioner and the Tribunal was in law bound to limit itself to that issue only. I agree with the Tribunal that the defence is not available to the appellants. The defence of disqualification in the hand of a respondent can only avail him to challenge the election of a candidate who won the election.

I see no merit in issue No. 5 and I resolve it against the appellants.

On issue No. 6, the appellants contended that the Tribunal was wrong in the application of the doctrine of *stare decisis* to the case before it in relation to the Supreme Court's decision in the case of *A. C. & Ors. v. INEC (supra)*.

Let me say straight away that the trial tribunal had no option than to follow, apply and enforce the decision of the Supreme Court in *A. C. & Ors. v. INEC (supra)*. It would have been judicial suicide for the Tribunal to prefer a decision of the Court of Appeal which has been set aside by the Supreme Court. So the question of the Tribunal overruling the decision of this court, as submitted, by the appellants did not arise at all and it is not an issue at all. Following the doctrine of *stare decisis*, the Tribunal was bound to follow the decision of the Supreme Court and not that of this court in the circumstances. The Supreme Court having nullified the decision of this court is affirming the decision of the Federal High Court, Abuja, which declared that INEC lacks the power to disqualify candidates. Moreover, the Supreme Court having nullified the judgment of this Court means that the decision never was. In *Saleh v. Monguno* (2003) 1 NWLR (Pt. 801) 221. it was held thus:

"A nullity is in law a void act which has no legal consequence. A proceeding which has been declared a nullity is void and without any legal effect or consequence whatsoever. Just as it does not confer any title whatsoever, it does not also inure obligation or liability on any one or

make any party liable to suffer any penalty or disadvantage."

See also *Okafor v. A-G., Anambra State* (1991) 6 NWLR (Pt. 200) 659, where the court held that:

A nullity is in law a Act which has no legal consequences....."

It follows from the above that the appellants have not seen the futility of hanging tenaciously to the judgment of this court in *INEC v. A C & Ors. (supra)*.

It is ridiculous to argue, as the appellants did, that the decision of the Supreme Court should be disregarded on the ground that position of the law at the time of the election was the decision of the Court of Appeal and that the decision of the Supreme Court came later and too late. They argued further that INEC had no option than to obey the decision of the Court of Appeal in disqualifying the 2 petitioner. That submission is a mere straw in the wind that must go with the wind. I am not persuaded by it I have instead, chosen be guided by the age long rule of judicial hierarchy, and accord respect to the pronouncement of the Supreme Court in the matter. They Supreme Court of Nigeria is the highest and final Court of Appeal) in Nigeria and its decisions bind every court, authority or person nil Nigeria. See *Dalliatu v. Turaki* (2003) 15 NWLR (Pt. 843) 310 336.

It is immaterial that the judgment of the Supreme Court came shortly after the election. The judgment in *INEC v. A.C. & Ors.* was a judgment in *rem* dealing with the power and limitation of INEC. The central or main issue in the above mentioned case was whether INEC had the power either under the 1999 Constitution and or under the Electoral Act, 2006, to disqualify any candidate sponsored by a political party from contesting election. in the 2007 general election.

The appellants also submitted that judgment in *A. C & Ors.v INLC (supra)* is a judgment *in personam*, sOthe appellants and 1st respondent are not affected.

Firstly, the judgment of the Supreme Court is a judgment *rem*. INEC is the statutory body established to conduct election ml Nigeria and that involves every registered political party and all| their candidates. Bearing that in mind, the submission of t appellants is bereft of any substance or merit.

A judicial decision *in rem* is one which determines the status a person or thing that is the jural relation of a person or thing to the world generally and is conclusive for or against, everybody unlike decisions *in personam* which determines *the jural relation* of personas to one another. Furthermore, the appellants cannot be heard to contend that the judgment of the Supreme Court is a judgment *in personam* and therefore it does not ensure in favour of the 1st respondent and the 2nd petitioner. If that is the case, what about the judgment of this court in *INEC v. A. C. & Ors. (supra)* relied upon by the appellants, is it also a judgment *in personam* Was the 1st appellant a party to the suit, No. He claimed benefit from that case because it was a judgment *in rem*. .. It is ridiculous to argue that the case of *INEC v. A.C. & Ors. (supra)* was a judgment *in rein* but the appeal to the Supreme Court in the same case is a judgment *in personam* and therefore cannot ensure in favour to the 1st respondent and the 2nd petitioner. Nothing can be more misleading. I say without any fear of contradiction that the case of *A.C. & Ors. v. INEC (supra)* is a judgment *in rem*.

The appellants alluded to the fact that the trial Tribunal took a swipe at the Court of Appeal by declaring null and void the decision in *INEC v. A.C. & Ors. (supra)*. The Tribunal has no jurisdiction to declare the judgment of the Court of Appeal null and void and it never did, rather it was the Supreme Court of Nigeria that set aside the judgment. All that the Tribunal did was to obey and say the obvious. It should be noted that the Tribunal was still hearing this matter when the Supreme Court set aside the judgment of this court m *INEC v. A.C. & Ors. (Supra)*. The only valid judgment in existence at the time of the hearing and the delivery of the judgment of the Tribunal was the judgment of the Supreme Court. It would have been a case of impertinence, insubordination and disrespect for the Tribunal to ignore the decision of the Supreme Court. Lastly, INEC was well aware of the appeal to the Supreme Court because it was a party. It was therefore aware of the pending matter yet it went ahead to disqualify the 1st respondent and the 2nd petitioner on the 13th of April, 2007, just one day to the elections conducted on 14th of April, 2007. In *Obi v. INEC (unreported)* SC.123/2007 delivered on 13/07/2007; now reported in (2007) 11 NWLR (Pt. 1046) 560, Aderemi, JSC, had this to say:

"...That election was a wasteful and unnecessary exercise. The 1st respondent was aware at that lime and the appellant was in court pursuing his legal rights. A body that has respect for rule of law, which INEC ought to be, would have waited for the outcome of the court proceedings; particularly when it was aware of it."

The fact that the judgment of the Supreme Court was delivered after the election is immaterial, See *Amaechi v. INEC (unreported)* SC.262/2007 delivered on the 25/10/2007.

Moreover, there was a pending order of injunction by Kogi State High Court in suit No. KG/UG/18NI/200J, which suit is still pending. Though it was contended by the-appellants that the order is spent

and that it was made without jurisdiction In my view, Tribunal properly dealt with this issue when it held that as long that order is not vacated nor set aside on appeal, it remains valid at subsisting for all intents and purposes. Furthermore, in *Komolafe Omole*(1993) 1 NWLR (Pt. 268) 213 at 227, Oguntade, J.C.A.,(as he then was) said:

"I agree that a party to a dispute cannot refuse to obey: court order on the ground that the order is wrong made without jurisdiction. To allow a party to a dispute to do so may lead to a state of chaos and anarchy, A court order remain until it is set aside by the court Which made the order or a superior court."

Having regard to the foregoing, it appears that the problem n this matter was perpetrated by INEC. If it had simply obeyed order of injunction made by the Kogi State High Court restraining from disqualifying the 1st respondent and 2nd petitioner from contesting the election conducted on 14/4/2007, there would have been no problem now. INEC is not above the law. In fact, it disobedience and arrogance is now the misfortune of the 1: appellant, Ibrahim Idris, who in the present circumstance is a victim. There is no substance in issue No. 6 and I resolve it against appellants.

I now come to issue No. 7, which arose from grounds 21 and 22nd grounds of appeal filed by the appellants. The contention of the appellant here is whether the trial Tribunal was not in error in entering judgment for the petitioner when it did not prove its entitlement to the relief granted to it. The appellants made various attacks on the averments sell out in the petition, particularly paragraphs 11, 13, 14, at page 5, lines! 8.9 of the record. In respect of paragraph 11 of the petition, the appellants' case is that the certified true copy of the original ballot papers pleaded was never tendered at the trial.

Appellants submitted that exhibit A10 is an unsigned letter dated 13/4/07 purportedly issued by INEC to all Electoral Officers in Kogi State and exhibit 11 is and uncertified document they are therefore intrinsically worthless. It was also submitted that the petition is only supported by the witness statement of the 2nd petitioner adopted by his counsel at the bar and that in any event serious matters alleged in an election petition cannot be proved by affidavit but by oral evidence of witnesses who will be subjected to the crucible of cross-examination and thorough observation of the Tribunal.

It is important to advert our mind to the fact that the central issue before the Tribunal was one of valid nomination and unlawful exclusion of the 2nd petitioner from the election held on 14/4/07.

On the state of the pleadings (the petition) and following the case of *Effiong v. Ikperne* (1999) 6 NWLR (Pt; 606) 260 at 274, all that \$ the 1st respondent and the 2nd petitioner were required to prove are:

1. That the 2nd petitioner was validly nominated by the 1st respondent.
2. That the election was conducted and concluded,
3. That a winner was declared.
4. That the name of the 2nd petitioner was not included in the list of the contestants."

Firstly, the 1st respondent proved that the 2nd petitioner was duly nominated and sponsored by the 1st respondent as shown in exhibits A2, A3 and A5 which are the certified true copies of the 2nd petitioner's nomination Forms 001 and 002. The 1st appellant in paragraph 2 of their joint brief admitted paragraph 1 of the petition of the 1st respondent and 2nd petitioner, to the extent that the 1st 'petitioner nominated the 2nd petitioner to contest the gubernatorial election held on 14/4/07 in Kogi State. Therefore, it is not in dispute that the 2nd petitioner was validly nominated.

It is not also in dispute that the election was conducted and concluded on 14/4/07. See paragraph 10 of the petition which was admitted by the 2nd appellant, INEC, in their joint reply in paragraph 16. See pages 349 - 350, vol. 1, of the record.

Still under the same paragraph 16, INEC admitted that the 1st appellant, Alh. Ibrahim Idris was elected and declared the winner of the election. See also exhibit 'A4', the certified true copy of the 2nd appellant's (INEC) form EC 8E, which is for the declaration of result, tendered by the 1st respondent.

The 1st respondent tendered exhibits A10 - All, the letter written by the 2nd appellant directing its official to delete the name of the 2nd respondent from the ballot paper. The said letter was dated on 13/4/07, just a day before the election of 14/4/07. See paragraphs 10 and 11 of the petition.

Further, notice to produce was given by the 1st respondent to the 2nd appellant (INEC) and its

official to produce the letter but they did not. The appellants in paragraph 14 of their reply stated that they are not in a position to admit or deny the said paragraphs 10 and 11 of the petition. In law, such averment is deemed to be an admission. See *Atolagbe v. Shorun* (1985) 1 NWLR (Pt. 2) 360 at 366 - 369 and *Lewis & Peat (N.R.I.) Ltd. v. Akhmien* (1976) All NLR (Pt. 1) 460, where the Supreme Court held that:

"A traverse must be made either by denial or non-admission either expressly or by necessary implication so that if a defendant refuses to admit a particular allegation in the statement of claim, he must state so specifically; and if he does not do this satisfactorily by pleading thus:

"Defendant is not in a position to admit or deny (the particular allegation in the statement of claim) and will at the trial put the plaintiff to proof.' A general denial ought not to be adopted in respect of material and essential allegations of fact. Essential allegations should be specifically traversed." See also *Owosho v Dada* (1984) NSCC568 at 569 - 77.

From the foregoing, it could be seen clearly that the elements of the 1st respondent's petition before the Tribunal have been proved having regard to the exhibits tendered and the admission of the appellants. By the provisions of section 75 of the Evidence Act admitted facts need no further proof. See *Ajomale v. Yadaut (No. 2)* (1991) 5 NWLR (Pt. 191) 266 and *Okobor v. Police Council* (2003) 12 NWLR (Pt. 834) 444 at 471.

On the question of the witness statement on oath, I find the submissions of the appellants untenable and unimpressive. From pages 1030 to 1031 and 1081 of vol. 3 of the record, it is crystal clear that the adoption of the witness statements on oath without hearing the witnesses' *viva voce* was by the mutual consent of the parties. Learned counsel for the appellants adopted the same procedure so what is the appellants complaining about.

Alter all; what is good for the goose is good for the gander. I find no merit in issue No. 7 and I resolve it against the appellants.

The 2nd appellant raised the issue, whether the learned tribunal was right in holding that at best the 2nd appellant should have deferred the election on the defect of candidacy.

In order to put the matters in the correct perspective and for better appreciation it is necessary to refer to the remark made by the Tribunal at page 1105 of the record:

"And even if but not conceded, the exclusion was in order was the time appropriate? Just a day to the election even if the 2nd petitioner was guilty of all the indictments what about the 1st petitioner. Was it given an opportunity of presenting another candidate bearing in mind the provision of section 39 of the Electoral Act, 2006. The section provides:

'Where at the close of nomination there is no candidate validly nominated, the Commission shall extend the time for the nomination and fix a new date for the election."

Let me say straight away the above remarks do not in any way form the *ratio decidendi* of the tribunal. There cannot be any appeal against a mere remark. The remarks of the Tribunal did not arise out of any issue canvassed before it nor were arguments advanced on it. It is therefore not a decision that could be appealed against. See *N.D.I.C. v. Akahall & Sons Co. Ltd.* (2004) 6 NWLR (Pt.869) 245; *SBM Serv. (Nig.) Ltd. v. Okon* (2004) 9 NWLR (Pt.879) 529. I therefore resolve this issue against the 2nd appellant. Having resolved all the issues against the appellants, their appeals lack merit and I dismisses them.

Cross Appeal:

There is a cross-appeal filed by the Cross-appellants namely: All Nigeria People's Party, ANPP and Prince Abubakar Audu, who were the petitioners before the Tribunal, against the judgment delivered on 10/10/07 wherein the Tribunal upon the objection of the 1st to 25th respondents struck out the 2nd cross-appellant as lacking the requisite *locus standi* to institute the petition.

Dissatisfied with that part of the judgment, the cross-appellants appealed to this court on one ground. In their brief dated 15/11/07 and filed on 16/11/07, the cross-appellants distilled one issue for determination as follows:

"Whether the learned tribunal was right in holding that the 2nd petitioner lacks *locus standi* in presenting the petition having; regard to the combined provisions of sections 144(1) and 145(1) (d) of the Electoral Act, 2006."

Upon been served with the cross-appellants' brief the 1st - 23rd respondents filed a joint brief dated and filed on the 22/11/07 in which they formulated one issue as follows:

"Whether the 2nd cross-appellant was a "candidate" in the April 14th, 2007 gubernatorial election in Kogi State, with *locus standi* to question that election."

The 24th respondent, Alh. Ibrahim Idris filed a brief dated 22/ 11/07 and filed the same day wherein, he distilled a lone issue for determination as follows:

"Whether upon a dispassionate consideration of the provisions of sections 144 (1) and 145(1), of the Electoral Act, 2006, the trial Tribunal was not right in its decision that the 2nd cross-appellant lacked *locus standi* to maintain the petition and in striking out his name from Same."

It is observed that the lone issue formulated respectively by the parties is similar. In the circumstance I have chosen to rely on the issue formulated by the cross-appellants.

In sum, the submission of the cross-appellants is that from a community reading of sections 144(1) and 145(1) (d) of the Electoral Act, 2006 both cross-appellants have the *locus standi* to present petitions before the Tribunal. Therefore, the Tribunal erred when it held that the 2nd cross-appellant lacks the *locus standi* to present petitions. They relied on *P.P.A .v, Saraki & Ors. (2007) 17 NWLR (Pt.1064) 453* from which they made copious reference and "quotations in their brief. They urged the court to set aside that part of the judgment of the Tribunal. The respondents unanimously submitted that the 2nd cross-appellant not having contested the election had no *locus standi* to present an election petition. They relied on many cases, notably *Egoluin v. Obasanjo (1999) 7 NWLR (Pt. 611) 355 at 410*, *Obasanjo v. Bithari (2003) 17 NWLR (Pt. 850) 510*; *Okonkwo v. INEC (2004) 1 NWLR (Pt. 854) 242 at 294*; *Okon v. Bob (2004) 1 NWLR (Pt. 854) 378 at 400 - 401* and *Adebusim v. Oduyoye (2004) 1 NWLR (Pt. 854) 406 at 427 - 428*.

In view of the decision of this court in *Adebusuyi v. Odiivove ajper Oimage, JCA and P.P. A. Saraki (supra) per gunwurruju, JCA*, there is no need to dissipate energy on these issues.

There is no doubt that the 2nd cross-appellant has *locus standi* to present an election petition under section 144(1)(a) and section 145(1) (d) of the Electoral Act, 2006. Section 144(1) (a) of the Act provides:

"An election petition may be presented by one or more of the following persons;

(a) a candidate at an election,"

It should be noted that "election" is a process of choosing by popular votes a candidate for a political office in a democratic system of government. The word "election" is not restricted to what happened on the day of the polls. See *Ojtkwit v. Obasanjo (2004) 12 NWLR (Pt. 886) 169*. See also *P.P.A. v. Saraki (supra) at page 497* where per Ogunwumiju, JCA, said:

"This process by the constitutional definition in my view starts from the voting by party members to choose candidates to represent the party at ward level and the primaries up to the polling day when these party candidates are presented by the party to the electorate. This position is also in my view supported by the Electoral Act, Part IV of the Act stipulates 'Procedure at elections'. It contains sections 26 to 77.1 will give a few. Examples. It provides -for-notice of election - section 31, appointment of officers for the conduct of registration of voters and elections -section 30, submission of list of candidates and their affidavits by political parties - section 32, nomination of candidates-section 33, a poll is taken when more than one candidate stand validly nominated when poll is required-section 41, notice of poll - section 47, conduct of poll

Section 53, collation of election results - section 66 etc. Clearly under Part IV of the Electoral Act, it is not the polling day alone that constitutes an election. All the steps to be taken by candidate and/or their political parties and the duties of INEC under part IV of the Act all amount to what constitutes the process called an election. I make bold to say that the casting of votes by the electorate on the clay of the polls is just part of the electoral process. The Electoral Act uses the word election quite liberally and I daresay, it is a generic word which encapsulates everything that takes place under part IV of the Act."

From the foregoing, the conclusion I reach is that the 2nd cross-appellant was a candidate at the election.

Now, if the 2nd cross-appellant was a candidate at the election then obviously he has a

right to present a petition under section 145(1) (d) of the Electoral Act, 2006 having been validly nominated but unlawfully excluded from the election. See *Adebisuyi v. Oduyoye (supra)* and *P.P.A. v. Saraki (supra)*.

I only wish to add that if the Electoral Act gives a right against unlawful exclusion from election under section 145(1)(d) then there must be a remedy for the breach of that right. "*Ubi jus ibi remedium*" where there is a wrong there is a remedy. The above *maxim* makes it imperative that the rights which ensure to a person are protected. The protection of the rights of a person must include an avenue to remedy the wrong done to him to prevent him from losing his rights. See *P.D.P. v. INEC* (1999) 7 SCNJ 297; (1999) 11 NWLR (Pt. 626) 200. It is also very important that a person be given unhindered access to court and it is unjust to drive a person from the judgment seat and deny him access to court and it is justice to drive a person be given unhindered access to court and it is unjust to drive a person from the judgments seat and deny him access to justice on the ground that he has no locus standi.

Locus standi is a legal right and not a favour to be given to litigants at the whims and caprices of the Tribunal. See *P.P.A v. Saraki & Ors (supra)* per Commassie, J.C.A.

It is for these reasons and the fuller reasons contained in the judgment of my learned brother, Omage, J.C.A., that I also dismiss the appeals of the appellants. I allow the cross-appeal of the cross-appellants. I abide with the consequential orders made in the lead judgment.

PETER-ODILI, J.C.A.: I agree with the judgment of my learned brother, Omage, J C A. It was argued for the appellant that the respondents 1st, 24th ought to take refuge in the Supreme Court judgment of *Action Congress & Anor v INEC* (2007) 12 NWLR (Pt. 1048) 222 which in the main is to the effect that the Independent National Electoral Commission lacks the authority to disallow or exclude any candidate from contesting an election. In that respect, the candidate was Alhaji Atiku Abubakar. The argument of the appellant is that the judgment *Action Congress. INEC (supra)* was *impersonam* and not in *rein* and so not available to the respondent, Prince Abubakar Audu and the All Nigeria Peoples Party the party, under which he was to contest as candidate.

That position of the appellant the respondents contest on the basis that it was a judgment in *rein* and available to all persons now and at all times.

Again for the appellant it was contended that at the time the election was conducted on 14th April 2007 the valid law is as interpreted by the Court of Appeal in the same *Action Congress v. INEC* before it was successfully appealed against was that INEC had the power to disallow a candidate from vying for election. That was the decision of the Court of Appeal set aside on April 16th, (2007 by the Supreme Court.

Of interest is that in between these two judgments the respondents had obtained on 16th February, 2007 injunction at the Kogi state High Court stopping the INEC from disallowing Abubakar Audu from contesting. That injunction was ignored by the INEC in completing the act of stopping the All Nigeria Peoples Party candidate from contesting the reason was that the judgment of the Court of Appeal was subsisting and upon which they could carry out the act and that the interim injunction of the Kogi State High Court had expired by effluxion of time since the substantive application was not filed within 14 days.

Having briefly stated the background, I do not have any difficulty in saying that the appellants cannot circumvent the law. The injunction order remained valid and subsisting until set aside and the INEC made no effort in having that order set aside and that establishment or body proceeding in spite of that court order of the Kogi State High Court infringed the rule

of law and in fact created the impression that the INEC could within the confines of their office obey or disobey what court order at will or in keeping with whatever interpretation they unilaterally choose. It brings to mind the opinion of Achike JSC in *Okafor v. Attorney General Anambra State* (1999) 7 SCNJ 192 at 211; reported as *Ndigwe v. Nwude* (1999) 11 NWLR (Pt. 626)314 when he said:

"For avoidance of doubt, it may be stated that it is a matter of choice to proceed to set aside a judgment that amounts to a nullity either by a simple application to the court that made it to appeal against it The reason for the application to set aside the order or judgment tainted with voidness is that until set aside the order or judgment subsists and remains effectual and binding."

The same view was expressed in *Re: Diamond Bank Ltd.* (2002) 17 NWLR (Pt. 795) 120 at 134; *Ijebu Ode Local Government v. Adedeji Balogun & Co. Ltd.* (1991) 1 SCNJ 1 at 13; (1991) 1 NWLR (Pt. 166) 136; *U.B.A. v. Onagoruwa* (1996) 3 NWLR (Pt. 439) at 709.

The INEC lacked the authority to decide that the High Court of Kogi State either lacked jurisdiction to give the order or to interpret to all and sundry that the order had self destroyed by effluxion of time. Such a brazen attitude if allowed or encouraged would lead to a chaotic and an anarchy infested society. Fortunately, our judicial system has no patience or indulgence for such. I rely on *Komolafe v. Omole* (1993) 1 NWLR (Pt. 268) 2L3 at 227.

Having the foundation of the history of this matter it becomes all the more compelling that the failure of the INEC to await the Supreme Court decision on the appeal from this court on *Action Congress v. INEC* (*supra*) was imperative and what Aderemi, JSC said in *Peter Obi v. INEC* (Unreported) S.C. 123/2007 delivered on 13/7/07; now reported in (2007) 11 NWLR (Pt. 1046) 560 has settled the matter and that is:

"I only need to add that as at 14th April, 2007 when the 1st respondent (INEC) was conducting gubernatorial election in Anambra State, the seat of the Governor of that State was not vacant. That election was a wasteful and unnecessary exercise. The 1st respondent was aware at that time that the appellant was in court pursuing his legal rights. A body that has respect for rule of law, which INEC ought to be, would have waited for the outcome of the court proceedings; particularly when it was aware of it."

By the same token as the dicta above stated in the instant case, the INEC ought to have contested the injunction of the Kogi State High Court of February 2007 and had it set aside before embarking on the election of 14th April 2007. Again, the Supreme Court judgment in *Action Congress v. INEC* being pending, INEC ought to have awaited the outcome before hurriedly embarking on the electoral contest in Kogi State these bottlenecks in place INEC as incapacitated to carry out election. It was wrong of INEC to do so and cannot justify its action based on the Court of Appeal decision of *Action Congress v. INEC* (*supra*). Therefore INEC having acted when it did in excluding the respondent when it did not have the necessary authority to do so, the act cannot be sustained and the valid situation had to be that as declared on 16th April, 2007 by the Supreme Court that INEC did not have the right or power to exclude any candidate from election, whether Atiku Abubakar or anyone else which includes the respondent.

Having stated the above I see no basis for allowing the appeal which I dismiss. I abide by the consequential orders of my brother. In respect to the cross-appeal which is whether the tribunal was right in holding that the 2nd petitioner lacked the *locus standi* in presenting the petition having regard to the combined provisions of sections 144(1) and 145(1)(d) of the

Electoral Act, 2006. For ease of reference I will recast sections 144(1) and 145(1) of the Electoral Act, 2006: Section 144(1):

"An election petition may be presented by one or more of the following persons:

- (a) A candidate in an election;
- (b) A political party which participated in the election.

Section 145(1):-

"An election may be questioned on any of the following grounds.

- (a) that a person whose election is questioned was at the time of the election, not qualified to contest the election,
- (b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;
- (c) that the respondent was not duly elected by majority of lawful votes cast at the election;
- (d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."

While the 24th cross-respondent, that is the appellant in the main appeal contends that section 144 should be read without recourse to section 145 as they deal with different subject matters and situations, learned counsel for the cross-appellant/respondent in the main appeal disagrees contending that section 144(1) and 145(1)(d) especially must be read together otherwise an absurd interpretation would occur.

It is necessary to go into some decided authorities on how the interpretation of either section 144 or 145 should be embarked upon. Anyone called upon to interpret any kind of statute should not for any reason attach to its provisions, a meaning which the words of the statute cannot reasonably bear. Also, in the interpretation of statute regard must be given to the entire enactment in order to understand its purport and meaning. See *Oyeniran v. Egbetola* (1997) 5 SCNJ 94; (1997) 5 NWLR (Pt. 504) 122.

It seems to me in the light of the prevailing circumstances that section 144 (1) of the Electoral Act 2006 cannot be read in isolation of section 145(1)(d) in order to get at the true meaning of the statute and the intendment of the law maker in enacting it. See *Ugwuv. Aranune* (2007) 12 NWLR (Pt. 1048) 367 at 519; *Adah v. NYSC* (2001) 1 NWLR (Pt. 693) 65 at 78 - 80; *Mersey Docks Harbour, Board v. Coggins & Griffith (Liverpool)* (1947) AC 1; *Tukur Government of Gongoki State (No.2)* (1989) 4 NWLR (Pt. 117) 517; *Attorney General Bendel State vs Attorney General Federation* (1982) 3 NCLR I; *Aftorney Government Lagos State v. Attorney General Federation* (2004) 18 NWLR (Pt. 904) 1.

It is difficult to agree with the decision of the lower Tribunal that the cross-appellant lacked the *locus standi* to sue for which he had to be struck out of the suit. The absurdity that ensued thereafter was that the Tribunal could not get to the meat of the matter nor make a final decision without the interest of the cross-appellant being factored and protected. Therefore, he had sufficient interest and was a necessary party and ought not to have had his name struck out of the petition. Put differently the suit or matter could not have been effectually and finally determined without him and so he was a necessary party. That is to underscore the fact that section 144 cannot be taken in the peculiar circumstances without being linked with section 145(1)(d) of the Electoral Act, 2006. See *Chinweze v. Masi* (1989) 1 NWLR (Pt. 97) 254; *Okafor v. Nnaife* (1973) 3 SC 85.

From the foregoing I am satisfied that this cross-appeal succeeds and the decision of the court below in striking out the name of the cross-appellant Abubakar Audu from the Electoral Tribunal suit set aside. The cross-appeal is allowed. I abide by the orders of my learned brother. **Omage, J.C.A.**

OWOADE, J.C.A.: This appeal arose from the decision of the Kogi State Governorship and Legislative Houses Election Tribunal holden at Lokoja delivered on 10th day of October, 2007.

The appeal consists of two main appeals and a cross-appeal "by 1st respondent. The first appeal filed by the chambers of Yusuf Ali., Esq., SAN is for the incumbent Governor of Kogi State, Alhaji Ibrahim Idris who was the 24th respondent before the Tribunal. The second appeal filed by the Chambers of Kami Agabi SAN is for the Independent National Electoral Commission (INEC) and its officials as against the ANPP, Alhaji Ibrahim Idris and others.

The 1st respondent to the two sets of the appeals through Dr, Alex; Iziyon SAN responded separately to each of the appeals and in addition brought a cross-appeal on behalf of the 1st respondent that is the All Nigerian Peoples Party (ANPP).

The two sets of appeal separately complained about the Judgment of the trial Tribunal which nullified the Governorship election of Kogi State conducted on the 14th April, 2007 and which produced the 1st appellant as the elected Governor of the State pursuant to the provisions of section 147(1) of the electoral Act and which in consequence made an order directing the conduct of a fresh governorship election for Kogi State with the duly sponsored/nominated candidate of the petitioner as a candidate, in accordance with the provision of paragraph 27(2) of the first schedule to the Electoral Act, 2006.

The highlights of the judgment of the Tribunal from pages 1085 - 1115 of the printed record as summarized at pages 10 - 13 of the 1st appellant's brief of argument are as follows;

1. That it was a political party that sponsored the candidate who was excluded that can file an election petition to the exclusion of the candidate himself (page 1085).
2. That the 2nd petitioner, Prince Abubakar Audu, Having taken no part in the election in view of his exclusion has no *locus standi* to bring the petition. His name was accordingly struck out. (Page 1085).
3. That the 1st petitioner (1st respondent therein) which had sponsored the 2nd petitioner has *locus standi to bring the petition in view of the provisions of section" 145(1)(d) of the Electoral Act (Page 1084).*
4. That the provisions of paragraph 2(1) - (4) of the Fourth Schedule to the Electoral Act, 2006 give the Tribunal a lot of discretion on the ordering of security subject to the said paragraph 2 (Page 1086).
5. That with the payment of the sum of N10,320.00 in respect of the petition, the petitioners have satisfied the provisions of paragraph 2 of the Fourth Schedule to the Electoral Act, 2006 (Page 1086).
6. That even if the allegation of non payment of correct filing fees was correct, the non payment or insufficient and or inadequate payment made would amount to mere irregularity and would not have fatal consequences on the petition'(Page; 1087)
7. That the indication of the petitioner's counsel for service on the petition was sufficient for the purpose and intendment of paragraph 4(4) of the First Schedule to the Electoral Act.
8. That even if there is non-compliance with regards to the petitioner's address on the petition, it would amount to irregularity, the breach of which is saved by paragraph 49(1) of the First Schedule to the Electoral Act (Page 1089).
9. That the further evidence on oath of the 2nd petitioned together with the annexure thereto were properly filed (Page 1093).
10. That the 26th respondent before the trial Tribunal Peoples Democratic Party, was not a necessary party to the petition and was accordingly struck out (Page 1094).
11. That since the petitioner possesses *locus standi* to file the petition and also paid the requisite filing fees prescribed by the Electoral Act, the Tribunal possessed the necessary jurisdiction to hear and determine it. (Pa 1095).
12. The preliminary objection (of the respondents now appellants) was said to lack merit and according dismissed (Page 1095).
13. That the 2nd petitioner (Prince Abubakar Audu) was validly nominated by the 1st petitioner (INEC) to contest the election (page 1098).
14. That the 2nd - 24th respondents had issued a directive to their agents at various polling units in Kogi State that the names of the 2nd petitioner should be deleted from the ballot papers (Page 1103).
15. That it was ultra vires the 2nd respondent herein to 2nd petitioner on the day or eve of the election.
16. That the 2nd - 25th respondents therein bleached the petitioner's right to fair hearing in then decision to disqualify 2nd petitioner (Page 1104)
17. That the illegality and invalidity of the disqualification of 2nd petitioner is reinforced by the pending injunction of the High Court of Kogi State in suit No. KG/VG/ 18M/2007 restraining the 2nd respondent therein from doing what it did as can be seen from exhibit A7 (Page 1105).

18. That apart from the wrongfulness of the disqualification, failure to give the 1st petitioner an opportunity of presenting another candidate in line with the provisions of section 39 of Electoral Act, 2006 is wrongful. (Page 1105).
19. That the disqualification of the 2nd petitioner and his exclusion is unlawful, null and void. (Page 1106).
20. That the fact of existence of the Court of Appeal's decision as at the time of election would not change the provisions of the 1999 Constitution. (Page 1109).
21. That in view of the Supreme Court's decision in the case of *Action Congress & Anor. v. INEC & Ors.* (2007) 12 NWLR (Pt. 1048) 222 the exclusion of the 2nd petitioner was unlawful, null and void. (Page 1110).
22. That the respondents before the trial Tribunal cannot raise the issue of non-qualification of the 2nd petitioner to contest the elect on as a defence having not filed a cross petition (Page 1111).
23. That the 26th and 27th respondents before the trial Tribunal who have not cross petitioned cannot be heard lending support to the petitioner and their joint reply together with the annexure were accordingly struck out (Page 1112).
24. That the unilateral act of the 2nd - 24th respondent therein to exclude the petitioner/1st respondent candidate from contesting the 14th April, 2001 Governorship election in Kogi State was unlawful, *ultra vires*, null and void and cannot stand (Pages 1114-1115). Dissatisfied with this decision the 1st appellant filed 22 ground notice of appeal from which he distilled seven (7) issues for determination. The second set of appellants filed only eight(8) grounds of appeal from which their learned counsel also distilled seven (7) issues for determination.

I will be content in this appeal to deal with the issues as I formulated by the 1st appellant as they are not only co-terminus with the issues formulated by the 2nd set of appellants but indeed incorporated and engulfed the issues formulated by the 2nd set of appellants.

The issues formulated by the 1st appellant are as follows:

1. Whether the trial tribunal was not in error in dismissing the preliminary objection of the appellant and the 2nd – 24th respondents therein after having struck out the name of the 2nd petitioner, Prince Abubakar Audu.
2. Whether the trial Tribunal was not in error in the way and manner it resolved the issues of non-payment or improper payment of filing fees and security for costs and the failure to furnish the petitioners address on the petition having regard to the applicable provisions of the Electoral Act.
3. Whether having regard to the provisions of section 145 of the Electoral Act, the trial tribunal was not wrong in holding that the 1st respondent who did not participate in the Election had requisite *locus standi* to present the petition and whether having rightly struck out the name of 2nd petitioner, the trial Tribunal was not in error in delving into the issues of his alleged disqualification and alleged wrongful exclusion and pronouncing on same as unlawful, null and void.
4. Whether the trial Tribunal was right in law in utilizing the further witness statement on oath of the 2nd petitioner together with the annexure thereto while failing to utilize at all the testimonies and exhibits tendered by the appellants and the 2nd – 24th respondents herein.
5. Whether the trial tribunal was not in error in holding that the appellants and other respondents before her cannot raise the issue of non-qualification of the 2nd petitioner as a defence notwithstanding the case put forward by the petitioners' before the trial Tribunal.
6. Whether the trial Tribunal was not in error in the view it took on the doctrine of *stare decisis* by extending the benefit of the decision in the case of *Action Congress & Anor v. INEC* to the petitioners while annulling the Court of Appeal decision in the case *INEC v A.C. Anor.* delivered on 13th April, 2007.
7. Whether the trial Tribunal was not in error in entering petitioner when it did not prove its entitlement to the reliefs granted to it.

In response to the briefs of the two (2) sets of appellants, the 1st respondent filed a brief dated 17/11/2007 on the 19/11/2007 to meet the case of the 1st appellant and filed another on 27/11/2007 to meet the case of the 2nd set of appellants. Learned senior counsel for the 1st respondent Dr. Alex Izinyon, SAN formulated seven (7) issues in reaction to the case of the 1st appellant and five (5) issues in response to the

case of the 2nd set of appellants.

Here again, I will adopt the issues formulated by the 1st respondent in response to the 1st appellant's brief as encompassing the relevant issues for the determination of this appeal. They are:

1. Whether the dismissal of the preliminary objection after striking out the name of the 2nd petitioner Prince Abubakar Audu occasions any miscarriage of justice having regards to the circumstance of the case.
2. Whether the petition of the 1st respondent was competent having regards to the provisions of the Electoral Act, 2006 relating to payment of filing fees, security for cost and address for service/occupier.
3. Whether the 1st respondent has the *locus standi* to present the petition having regards to the combined provisions of sections 144(1)(b) and 145(1)(d) of the Electoral Act, 2006.
4. Whether the learned tribunal was right in relying on further deposition/evidence of 2nd petitioner together with the annexure having regard to the provisions the Electoral Act, 2006 and the Federal High Court Rules, 2006 and the Federal High Court Rules, 2000 applicable.
5. Whether the learned tribunal was right in holding the appellant cannot raise the issue of qualification the 2nd petitioner before the tribunal.
6. Whether the learned tribunal was right in the application of the doctrine of *stare decisis vis-a-vis* the Supreme Court case of SC/69/2007 - AC v. INEC (2007) NWLR(Pt. 1048)222.
7. Whether the tribunal was right in holding that the petitioner has proved the petition to be entitled to the reliefs sought.

It must also be mentioned that in addition to the two sets of 1st respondent's briefs in response to the case of the appellants, the respondent also filed a cross appeal praying this court to determine the sole, issue of whether the learned Tribunal was right that in the holding that the 2nd petitioners lacks locus standi in presenting the petition having regard to the combined provisions of sections 144(1) and 145(1)(d) of the Electoral Act, 2006.

The 1st respondent's cross-appeal and the appellants response thereto would for now be deferred until the determination of the main appeals.

Issue No. 1:

Taking together, the submission of the appellants on issue No, 1 is that having struck out the name of the 2nd petitioner (Prince Abubakar Audu) for lack of *locus standi* and that of the 25 respondent (PDP) for not being a necessary party based on the preliminary objection of the 24th respondent/appellant, the lower Tribunal was error in dismissing the preliminary objection lack of merit.

In developing this argument, the learned counsel for the 1st appellant relied on the decision of the Supreme Court (per Nnaemeka-Agu JSC). In the case of *Akinbobola v. Plisson Fish Nig. Ltd.* (1991) 1 NWLR (Pt. 167) 270 at 288 and submitted the dismissal of the preliminary objection in the circumstances is tantamount to giving to the 1st respondent an order it was not entitled to, apart from its distraction from the findings of the trial Tribunal on the preliminary objection.

The learned counsel for the 1st respondent, on the other hand conceded the error/slip of the lower Tribunal in not stating that preliminary objection succeed in part but submitted that the error/slip has not occasioned any miscarriage of justice. There are two factual situations in this appeal which make one to lean on the side of the 1st respondent's argument that the error or slip of the lower tribunal indeed did not occasion any miscarriage of justice. The first is that unlike the usual attitude of the courts to preliminary objections taken *in limine*, the decision of the lower tribunal on the preliminary objection in the instant case as well as the motions filed was given after the merit case itself has been considered, a situation which put s the lower tribunal, I believe, in some dilemma as to the appropriate orders to be made.

And having taken the merit of the case altogether, it cannot be said in the circumstances that the present appellants occasioned a miscarriage of justice by the order of dismissal of the preliminary objection.

The second reason is that the concluding remarks of the lower tribunal at page 1085 of the record which dismissed the preliminary objection for lack of merit and now the subject of complaint by the appellant became a necessary consequence of the *res*, the *res nova* of the preliminary objection after the name of the 2nd petitioner has been struck.

Either way, the appellants cannot say that the dismissal order occasioned miscarriage of justice in the circumstance of the case.

Obviously, it is not every slip committed by a Judge in his judgment that will result in an appeal being allowed. For it to be fatal; the mistake must have occasioned a miscarriage of justice. *Gbafé v. Gbafé* (1996) 6 NWLR (Pt.455) 417 at 428; *Ndulue v. Ibezim* (2002)12 NWLR (Pt. 780) 139 at 68, *FadlaUah v. Arewa Textiles Ltd.* (1997) 8 NWLR (Pi. 518) 546 at 559.

In *Adewumi v. A.-G., Ekiti State* (2002) 2 NWLR (Pt. 751) 474 the Supreme Court held that:

"It is not every error in law that is committed by a trial or appellate court that justified the reversal of a judgment. An appellant to secure the reversal of the judgment must further establish that the error of law complained of did in fact occasion a miscarriage of justice and substantially affected the result of the decision."

In the instant case, the error of the dismissal order by the Tribunal did not occasion a miscarriage of justice and did not substantially affect the result of the decision. Issue No. 1 is resolved as against the appellant(s).

Issue No. 2:

The two set of appellants have lumped together three (3) items of complaints in issue No. 2. They are:

- (a) Non payment or inadequate payment of filing fees.
- (b) Non payment or inadequate payment of security for costs.
- (c) Non-inclusion of the petitioner's address and name of occupier in the petition.

In relation to (a) and (b) above, the appellants position is that the total fees of N10,320.00 paid by the petitioner was insufficient to satisfy the relevant provisions of paragraph 2(1) - (4) and paragraph 45 of First Schedule to the Electoral Act, 2006.

According to this view, the two petitioners before the trial Tribunal joined fourteen (14) different candidates who also contested the election on the platforms of their respective political parties as the 24th, 26th, 28th, 30th, 32nd, 34th, 36th, 38th, 40th, 42nd, 44th, 46th, 48th and 50th respondents to the petition. And, as paragraph 45 of the First Schedule provides that where two or more candidates are made respondents to the same petition, the election petition shall be deemed to be separate petition against each of the respondents, the petitioners are in law deemed to have filed fourteen (14) petitions. The appellants submitted that this being so, the petitioners were expected in law to have paid at least N3,000.00 being costs of presentation and hearing fees on each of the fourteen (14) petitions, rather than the sum of N10,320.00 paid on the petition. In the same token, said appellants, security for costs ought to be paid also in fourteen places. The appellants submitted further that the word "shall" in paragraph 3(4) of the First Schedule in relation to filing fees is mandatory and that in relation to security for cost, paragraph 2(1)(2) and (4) of the schedule make it mandatory, at the time of presenting the petition, on the petitioner, to give security on all costs which may become payable by him to a witness summoned on his behalf or the respondent at a minimum of N5,000.00 or as ordered by the Tribunal. The net effect of non payment of appropriate filing fees and security for costs from the appellants perspective is that the petition is fatally and irredeemably incompetent and not a matter of mere irregularity as held by the trial tribunal.

In response to the complaints of non-payment of filing fees and security for cost, the 1st respondent referred to a good number of relevant and current authorities on the meaning of who is 'respondent' paragraph 45 of, the 1st schedule and also that paragraph 45 of the 1st schedule to the Electoral Act, 2006 can be read in isolation but must be interpreted in the light of section 144 of the Act itself. The cases which include *Obiekwe v. Chime Ben Obi* (2005) 10 NWLR (Pt. 932) 60 at 14; *Onuorah v. Okeke* (2005) 10NWLR (Pt.932) 40 at 57; *Buhari v. Yusuf* (2003) 14 NWLR (Pt. 841) 446 have made us to understand that the word "respondent" in paragraph 45 of the 1st Schedule refers to a person whose return was questioned or complained of within the provision of section 144 of the Electoral Act, 2006.

In relation to the submissions of the appellants, the question to be decided on issue No. 2 is whether the petitioner presented his petition as against only one(1) respondent or as against fourteen (14) respondents as suggested by the appellants.

The cases which I referred to above support the stance of the trial Tribunal that it is only the 1st appellant whose return of candidature was challenged by the petitioners and therefore the only statutory respondent in paragraph 45 of the 1st Schedule by virtue of the provision of sections 144 of the Electoral Act, 2006. In other words, the word "respondent" in paragraph 45 of the first schedule relates only to the statutory respondent(s) described or mentioned in section 144 of the Act. For ease of reference, section 144 of the Electoral Act 2006 reads thus:

"144(1) An election petition may be presented by one or more of the following persons:

- (a) Candidate in an election
 - (b) a political party which participated in the election.
- (2) The person whose election is complained of is, in this Act referred to as the respondent but if the petitioner complained of the conduct of an electoral officer, a presiding officer, a presiding officer or any other person who look part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a respondent and shall be joined in the elect petition in his or her official status as a necessary PROVIDED that where such officer or person is should to have acted as an agent of the commission, non-joinder as aforesaid will not on its own operate void the petition if the commission is made a party.' It would be seen that section 144(2) provides for two category of respndents. The first which it termed, the "respondent is" person whose elections is complained of. To my mind, this candidate could also be referred to as the statutory respondent or the person, persons who won the election - a term adopted by the trial Tribunal in this case.

The second is "deemed respondent" which covers the joining of the various officers that are involved in the conduct of the election. It seems to me that this category of respondents may also be terns official or nominal respondents.

Now, to the complaints of the appellants on filing fees security costs. In the interpretation of the provisions of the Election Act, 2002, that are in *pan materia* with the present section 144 at paragraph 45 of the 1st Schedule to the Electoral Act, 2006, judicial authorities from the highest court of the land have-held that "respondent" referred to in paragraph 45 of the 1st Schedule is the whose election is complained of in section 144(2) that is the statute respondent and not the deemed or official respondent.

Thus in *Buhari v. Yusuf (supra)* Uwaifo, JSC speaking for the Supreme Court at page 500, referred to the provision of paragraph 45 *vis-a-vis* the provision of sections 131(1) and 133(2) of the Electoral Act, 2002 and held as follows:

"Again, this provision envisages that the inclusion such multiple "respondents" in the same petition shall be deemed to have made the petition a separate petition against each of the respondents. But by section 131(of the Act, it is only an election or return of a candidate that can be questioned by a petition in which the person elected or retuned is joined as a party. See also section 133(2) which talks of the person whose election complained of; it s such a person that is referred to as the respondent.

It is therefore clear that the deemed separate petition arising from the operation of paragraph 45 of the first schedule to the Act must be in regard to tech of the respondents elected or returned in the election in question. Such will normally happen only where multiple candidates within the same electoral area are returned or elected in their respective constituencies, for example.

National Assembly candidates. A petitioner, say a political party which participated in the election may file a single petition against those elected or returned candidates but the election petition 'shall be deemed to be a separate petition against each of the respondents'."

The above explanation of the relationship between paragraph 45 of the Electoral Act, 2002, now section 144 of the Electoral Act, 2006 has shown that whether we talk of filing fees or security for cost, the provision as to respondent being deemed to file separate petitions in paragraph 45 of the First Scheldule does not apply to the situation of the 1st appellant and not fourteen respondents as suggested by counsel to the appellants. Indeed, it would have been a great legislative absurdity if a petitioner had to pay filing fees and security cost in respect of non-statutory or official and norminal respondents. In the circumstance, the trial Tribunal was not wrong to have held that the fees of N10, 320.00 paid by the petitioner (now 1st respondent) was sufficient to sustain the petition.

Still on the issue No. 2, it is now left for me to deal with the correctness or otherwise of the holding the trial tribunal that even if there was non-compliance with the provisions in the Electoral Act relating to non-compliance with the petition, such non-compliance amounts to mere irregularity and are not fatal to the life of the petition.

Here again, it is my considered opinion that the tribunal was right in so holding. The relevant provision for the filing fees is to be found in paragraph 3(4) of the First Schedule to the Act: It reads:

“(4) The petitioner or his solicitor, as the case may, be shall at the time of presenting the election petition, pay the fees for the service and the publication of the petition, and for certifying the copies and, in default of the payment, the election petition shall be deemed not to have been received unless the tribunal or court otherwise orders.

It is obvious from the provision of paragraph 3(4) that the word "shall" be deemed not to have been received in the sub-paragraph is directory and not mandatory as its consequence or the failure of the petitioner to abide with the directives or instructions given by the provision can only lead to the petition not been received by the secretary and has nothing, indeed absolutely nothing to do with the voidability of the petition or the jurisdiction of the trial Tribunal to entertain same.

In relation to security for costs, paragraph 2(1)-(4) of the First Schedule provides as follows:

- 2(1) At the time of presenting an election petition, the petitioner shall give security for all cases which may become payable by him to a witness summoned on his behalf or to a respondent.
- (2) The security shall be of such amount not less than N5,000.00 as the tribunal or court may order and shall be given by depositing the amount with the Tribunal or court.
- (3) Where two or three persons join in an election petition, a deposit as may be ordered under sub-paragraph (2) of this paragraph of this schedule shall be sufficient.
- (4) if no security is given as required by this paragraph, there shall be no further proceeding on the election petition.

The recognition that the consequence of disobedience of a petitioner to the payment of security for costs that "there shall be no further proceeding on the election petition" is a directive to the secretary to the Tribunal which possess no vitiating substance on the petition could be found in the decision of the Court of Appeal in *Bivu v. Ibrahim* (2006) 8 NWLR (Pt. 981) p. 1 at page 50, where the court held that:

"Where non-compliance related only to payment of security for costs considered curable and being a mere irregularity, would not lead to the cancellation of an election petition or otherwise lawful votes."

From the above, the trial Tribunal was not in error to have held that non-compliance with the provision for security for costs if any amounted to mere irregularity.

Finally, on issue No. 2, it is difficult to appreciate the complaint of the appellants on the non-inclusion of the petitioners address and the name of the occupier in the petition. The relevant provision is paragraph 4(4) of the First Schedule to the Electoral Act which says:

"4(4) At the foot of the election petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier."

The provision was again followed by a direction to the Tribunal's Secretary in paragraph 4(5):

"if an address for service is not stated as specified in sub-paragraph (4) of this paragraph, the petition shall be deemed not to have been filed, unless the tribunal or court otherwise orders."

Meanwhile, at page 10 of the printed record, after the signature, the petitioner proceeded as follows:

FOR SERVICE ON:

The Petitioners

C/o Their Solicitors

Alex A Izinyon (SAN) & Co

Plot 1 Kinshsa Street

Zone 6, Wuse,

Abuja

And at page 12 of the printed record endorsed the petition in the following terms.

The names of our solicitors are signed.

Dr. A. Izinyon SAN with Orji

Nwafor - Orizu Haruna Abdullahi.Esq. and S. I. Ameh,
Esq.

All Nigerian Peoples Party signed 1st Petitioner

Prince Abubakar Audu signed 2nd Petitioner

Signed before me

This 9th day of May; 2007

Sgd.

Secretary Election

Petitioners Tribunal

Kogi State

Based on the above, the trial Tribunal held to the dissatisfaction of the appellants that the petitioner(s) had

substantially complied, with the provisions of paragraph 4(4) of the First Schedule to Electoral Act, 2006. For my part, I am in agreement with the holding of the trial Tribunal that the petitioner complied substantially with the provision of paragraph 4(4) of the 1st Schedule. All these, more so, when one is aware of, the saving provision as to non-compliance with rules etc. in paragraph 49(1) of the First Schedule that:

"Non-compliance with any of the provisions of this schedule, or with a rule of practice for the time being operative, except otherwise stated or implied, shall not render any proceeding void, unless the tribunal or court so directs, but the proceeding may be set aside wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Tribunal or court may deem fit and just."

From the foregoing issue No. 2 is resolved against the appellants.

Issue No. 3:

In Issue No. 3, the appellants have asked for the determination of two sets' or items of complaints. The first is the 'correctness' or otherwise of the trial court decision that the 1st respondent had *hem standi* to present the petition culminating in this appeal. The second leg of appellants issue No. 3 is whether the Tribunal was right having struck out the name of the 2nd petitioner to still delve unto the issue of his qualification, disqualification and alleged wrongful exclusion by pronouncing same as unlawful, null and void.

In the main, the appellants argument on the 1st leg of issue No. 3 is that the trial Tribunal would have applied the same yardstick of *locus stanch*, which it applied to strike out the name of the 2nd petitioner also to the 1st respondent who also did not take part in the Governorship Election of 14th April, 2007. According to this view by the appellants, there is nothing in the Electoral Act Which vested *locus standi* in the 1st respondent who like the 2nd petitioner also did not take part in the conduct of the election on 14th April, 2007. The counsel for the appellants submitted that the trial Tribunal could not be right to have come to the conclusion in reading together section 144(1)(b) and 145(1)(d) of the Act that the 1st respondent possesses.

Appellants' counsel invoked the provision of the side notes to section 144 and 145 respectively of the Election Act, 2006, and submitted that the requirement of *locus standi* can be found only in section 144 of the Act as section 145 deals only with grounds of petition and not again with persons entitled to present election petition.

The 1st respondent on the other hand supported the findings of the trial Tribunal and relied on the decision of Omage. J.C.A. in *Idebusuyi v. Oduyoye* (2004) 1 NWLR (Pt. 854) 406 at 422-428 to lay that its *locus standi* stands on a combined reading of the provision of section 144(1)(b) and section 145(1)(d) which allows a political party which participated in the election to question the election on the ground that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election". The 1st respondent furthered its argument drawing support from the recent decision of the Court of Appeal in the case of *PPA & Anor v. Dr. Bukola Saraki & Ors* delivered on 2/11/2007; now reported in (2007) 17 NWLR (Pt. 1064) 453, where the Ilorin division of the Court of Appeal introduced an interpretation of sections 144 and 145 of the Electoral Act which recognizes not only the *locus standi* of the sponsoring Apolitical party but also of the candidate.

I must point out at this juncture that the counsel to the parties in this appeal have assisted the court by providing copious authorities on the interpretation of sections 144 and 145 of the Electoral Act. I think however, that the appropriate answers to the question posed lie in the construction of the sections themselves. For ease of reference, it is important to reproduce sections 144(1) and 145(1)(d) of the Electoral Act, 2006.

"144(1) An election petition may be presented by one or more of the following persons;

- a. a candidate at an election
- b. a political party which participated in the election."

Note that while the whole of section 144 bears the side note "persons entitled to present election petitions" the side note to section 145 says "grounds of petition".

Section 145(1)(d) which is relevant for our purpose provision "145(1) An election petition may be questioned on any of the following grounds:

- (a)
- (b)
- (c)
- (d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."

Before going any further, I must quickly add that I am in agreement with the decision of the trial

Tribunal that the petitioner/respondent in this appeal had the necessary *locus star* to prosecute the petition. I also agree that there is great wisdom following the decision in *Adebusuyi v. Oduyoye (supra)* and those line of cases that found for the *locus slandi* of the political party in combined reading of the provision of section 144(1)(b) and 145(1)' of the Electoral Act, 2006.

Speaking for myself however, I think section 144(1)(a) give the necessary *locus standi* for a candidate in an election". And also that section 144(1)(b) gives *locus standi* for "a political party which favour or against a non-party in participated in the election" this, without recourse whatsoever" the provision of section 145 of the Act.

What is problematic here is the distinction between consequences of the draftsman intention as regards section 144(^ and 144(1)(b).

The political party as the ANPP in this case would be said to have participated in the elections having registered and present candidates for the same, its participation cannot be affected by the fact that it was thereafter excluded from the 2007 Governorship Election in Kogi State the provision relating to *lucos standi* in section 144(1)(b) nevertheless ensures in its favour, indeed without any assistance from section 145 of the Act.

In my view, it is a mere coincidence, which adds nothing to the guaranteed *locus standi* of the political party under section 144(1)(b) that the political party almost invariably seeks a grounds of petition under section 145(1)(d) of the Act. The key word in the appreciation if the provision of section 4"4(1)(b) is the, word "participate". The, *Black Law Dictionary Edition* "defined the word "participate" lomean: "To receive or have a part or share of to partake of experience in common with others to have or enjoy or part a share in common with others. To partake, as to "participate" in a discussion, in a pension or profit sharing plan".

It is clear from the above that the participating political party merely connotes that which has a share in common with others in election or the process of election. It is that participation with or without actually taking part on a particular election day which guaranteed *locus standi* under section 144(1)(b).

For the above reasons, I am unable to agree with the 1st leg of the appellants issue No."3 that trial tribunal was wrong to have held that the 1st respondent *standi* to prosecute the petition. The appellants have also complained that the name of the 2nd petitioner having been struck out, the trial Tribunal was in error to delve into the issue of his qualification and wrongful exclusion [Appellant's counsel made copious references to sundry paragraphs in the judgment of the trial Tribunal where references were made to lie 2nd petitioner and submitted that it is settled law that a court of law or Tribunal has no *vires or* jurisdiction to decide a matter in favour or against a non-party in the proceeding. On this, appellant's counsel relied among others on the cases of *Lebile v. Registered Trustees of Cherubim and Seraphim Church* (2003) 2 NWLR (Pt. 804) 399 at 424-425, *Green v. Green* (1987) 3 NWLR (Pt. 61) 480 at 500, A-G. *Federation* (2003) 6 SCNJ at 50: (2003) 12 NWLR (Pt.833) 1, A.-G, *Federation v. A.N.P.P.* (2003) 18 NWLR |(Pt. 851) 182 at 211. Still on the same issue/learned counsel for the appellant's furthered that a court or Tribunal does not pronounce on academic, hypothetical, mute or moot issues and relied on the cases *Bello v. Fayose & Ors.* (1999) 7 SCNJ 286; (1994) 2 NWLR (Pt. 827)404; *Badejo v. Federal Minister of Education* (1996) 8 NWLR (Pt 464) 15 at 50. *Asafa Foods Factory Ltd. v. Alraine Nig. Ltd.* 1(2002) 12 NWLR (Pt. 781) 353 at 368 and *Ogbonna v. President.* IFRN. (1997) 5 nwlr (Pt. 504) 281.

In response, the 1st respondent submitted that the substance of the claim before the Tribunal was not affected by the striking out of the name of the 2nd petitioner, Prince Abubakar Audu, he himself being a juristic person. Learned counsel for the 1st respond referred to the provisions of Order 12 rule 5(3) of the Federal High Court (Civil Procedure) Rules, 2000 applicable to the tribunal procedures and submitted that it cannot be argued that averment relating to the 2nd, petitioner Prince Abubakar Audu stood strut out in the absence of any prayer to that effect.

It seems to me that this leg of issue No. 3 is not as crucial to appellant's case, as the

appellants would want us to believe, the learned trial tribunal did all through the record, unavoidably was to refer to the 2nd petitioner as the nominated candidate of 1st respondent. I have carefully in this regard peruse the record appeal and could not see any place where the trial Tribunal made any orders, legal orders for the benefit of the 2nd petitioner what agreeably was no longer a party to the case. Indeed, the tribunal commendably careful enough in its consequential orders contained at pages 1115 of the record avoid any mentioning of the name of the 2nd petitioner, not being a party *stricto sensu* to the proceeding before it.

For these reasons, I also find no merit in the 2nd leg of the appellants issue No. 3. A variation of the argument on the 2nd leg issue No. 3 also offered by the appellants is that, in any event at having regard to the decision of the Court of Appeal in the case *INEC v. A.C. & Anor.* delivered on 3rd April, 2007 in Appeal No CA/A/71/2007 which gave the 2nd respondent therein (INEC) power to screen and disqualify candidates put forward by political parties including the 2nd petitioner, the trial Tribunal was wrong have "appropriated the decision of the Supreme Court in *Action Congress & Anor v. INEC*, suit No. SC/69/07 delivered on the 16th of April, 2007 in favour of the 2nd petitioner. The reasons, according to the appellant's are that the 2nd petitioner was not a party in the case. Also, it is the law that judgments of court take effect from day they are delivered and at any event, (he decision of the Supreme Court was a decision in *personam* not in *rein*. Only the parties thereto can claim thereunder not totally strangers like the petitioners, appellants relied on the cases of *Daggash v. Bulama* (2004) NWLR (Ft. 892) 144 at 199 and *Awuse v. Odili* (2005) 16 NWLR (Pt. 952) 416 at 482 and expressed surprise that the trial Tribunal not only inquired into the validity of indictment *vide* official gazettes *vis-a-vis* section 182 of the Constitution and also pronounced issue of breach of fair hearing pursuant to the provisions of section of the Constitution.

In leaning in favour of the 1st respondent and the trial tribunal the point last above mentioned, one must first clear a mix-up as facts contained in the submissions of the appellants. The point, as have indicated earlier on in this judgment is that the trial Tribunal (determining the merit of the 1st petitioner's case was inextricably led down to the factual circumstances surrounding the plight of the 2nd petitioner of the petition was practically to enure in favour of the 2nd petition by the trial Tribunal was inevitable. Second, the application of the doctrine of *stare decisis* by the trial tribunal in the instant case has nothing to do with the distinction between judgments in *personam* and in *rein* as the learned counsel for the appellants would want us to believe.

The truth of the matter is that the decision of the Court of Appeal *I.N.E.C. v. A.C. & Anor* (*supra*) was right in time and space until the decision of the Supreme Court in *Action Congress & Anor v. INEC* (*supra*) came to overturn it and nullified all its effects in substance and in law. Consequently, at the time of reaching its own decision the trial tribunal had no reason whatsoever to be guided by a decision of the Court of Appeal in the face of the decision of the Supreme Court on the same subject matter.

If I am not so clear on this point with the practical illustration if the principle of *stare decisis*, the example of mistake of law would make it clearer. Both the Court of Appeal and perhaps also the 2nd respondent therein (INEC) were mistaken as to the state of the law which supposedly gave INEC the powers to disqualify candidates contesting an election. This mistake had to be corrected and was corrected by the Supreme Court. The trial Tribunal was clearly right when it preferred and applied the decision of the Supreme Court in *Ike v. INEC* (*supra*). In such circumstances, the rights of the parties became affected by two age long and related maxims.

The first, *ignorantia juris quod quisque tenetur scire, neminem excusat* meaning that ignorance of law excuses no man. And indeed furnishes no ground in law or equity.

The second is *ignorantia juris sui non prejudica juri* - meaning that ignorance of one's right does not prejudice the right. For these "reasons issue No. 3 is also resolved as against the appellants.

Issue No. 4:

There are two complaints contained in appellants issue No, The first is the use of further witness statement on oath of the 2 petitioner, together with the annexure thereto having regard to the provisions of paragraph 16(1)(a) and (b) of the First Schedule the Electoral Act, 2006 (as amended). The sub-issue deals with alleged failure and refusal of the trial Tribunal to make use of the written depositions and exhibits tendered by the two sets o appellants.

On the first score, the appellants submitted that the Election Tribunal and Court Practice Direction, 2007 (as amended) made in provision whatsoever for the filing of further witness statement oath as a matter of right as done by the 2nd petitioner, in this case let alone introducing a document afresh through the process of filing of a petitioner's reply. By this, said the appellants, they improve their existing petition and/or filed a fresh petition under the guise of filing a reply. Appellants submitted that the further witness statement on oath aforesaid and the accompanying document thereto area nullity being a gross transgression of the provisions of paragraph 16(1)(a) and (b) of the First Schedule to the Electoral Act.

In answer to the above, the 1st respondent submitted that its petition contained only a case of valid nomination but unlawful exclusion. But that the appellants for the first time raised the issue of indictment of the 2nd petitioner in their reply; Hence, the 1st respondent in 'response filed a reply to this new issue and a witness deposition to it. The 1st respondent relied on a host of decided authorities including the cases of *Kankia v. Maigemu* (2003)6 NWLR (Pt. 817) 496 at 520, *Akeredolu v. Akinremi* (1989) 3 NWLR (Pi. 108) 164 at 172, to demonstrate that the rules of pleadings enjoin the plaintiff/petitioner to file a reply to the defendant/respondent's defence or reply where such raises any new facts or issue not raised in the statement of claim or petition.

The first thing to note in deciding the 1st leg of appellants issue No. 4 is that it is trite law that when a defendant raises a new issue not contained in the plaintiff's claim, the plaintiff (petitioner) would be entitled to a reply on that new issue. This position of the law, contrary to the 'suggestion of the appellants counsel is indeed supported the provision of paragraph 16 of the first schedule to the Electoral Act.

It reads:

“16(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which he petition has not dealt with, the petitioner shall be entitled to file the registry, within five (5) days from the receipt of the respondent’s reply, a petitioner’s reply in answer to the new issues of fact, so however that:

- (a) The petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him, and
- (b) The petitioner reply does not run counter to the provisions of sub-paragraph (1) of paragraph 14 of this schedule....”

In the instant case, the trial Tribunal rightly found in favour of the 1st respondent to this appeal at page 1092 of the record as:

“We accept and uphold the submission that issue of the 2nd petitioner’s indictment by the Professor Ayua’s administrative panel having been raise by the 24th – 25th respondents in their reply to the petition had raised new issue. It behoves on the petitioners to specifically plead facts in rebuttal of those allegations contained in the alleged indictment of the 2nd petitioner's indictment by the Professor Ayua's administrative panel having been raised by the 24th -25th respondents in their reply to the petition had raised new issues. It behoves on the petitioners to specifically plead facts in rebuttal of those allegations contained in the alleged indictment of the 2nd petitioner by the Kogi State Government. And the 2nd petitioner having done that in his reply to the 24th and 25th respondents reply, it again behoves on him to lead further evidence in proof thereof as pleadings without more cannot take the place of evidence...”

The second thing to note here is that the filing of the further fitness statement on oath is in the nature of pleadings, (indeed permissible pleadings) which on *fid* account could be equated with evidence.

It is trite law, as pointed out by the trial Tribunal and now before Us the 1st respondent that pleadings is not evidence *Durasaro v. Ayorinde* (2005) 8 NWLR (Pt. 927) 407 at 425. *Shittu v. Fashawe* (2005) 14 NWLR (Pt. 946) 671, *Iwuoha v. NIPOST Ltd.* (2003) 8 NWLR (Pt. 822) 308 at 340. Thus the appellants counsel, especially the learned counsel for the 1st appellant would not be right to sat that:

"Having regard to the introduction of further witness statement on oath aforesaid, (the petitioners) decide to give themselves a second bite at the cherry. Putting differently, they improved their existing petition and or filed a fresh petition under the guise of a reply ..."

Finally, on this point, it should be noted that the Federal Tribunal found further justification in its view allowing the 2nd petitioner file rebuttal evidence by way of reply. At pages 1092 – 1093, the Tribunal held thus:

"In addition to the above, it is instructive to not the 24th and 25th respondents themselves had called upon the petitioners to furnish them with further particulars of the said judgment of the Federal High Court now annexed to the petitioners reply. The 24th and 25th respondents have

pleaded in their reply toll petition, paragraph 10 at P. 5 as follows:

In answer to paragraph 7, the respondents aver that the purported suit filed by the 1st petitioner at the Federal High Court Abuja, the particulars of which are inexplicably withheld by the petitioners do not enure in their favour. The respondents demand FURTHER AND BETTER PARTICULARS at the said suit particularly as ANNEXURE "AAUG 9 attached to the petition and referred to in paragraph 7 is not by any stretch of imagination the order of the Federal High Court, Abuja in the undisclosed suit."

And concluded:

"Consequently, it is our view that the petitioners not improve their existing petition under the guise of reply as alleged by the 24th and 25th respondents but merely meet the allegations specifically raised by said respondents and the demand for further and better particulars under paragraph 20 of the reply of the 24th and 25th respondents to the petition."

The second aspect of appellants issue No. 4 is the allegation that the trial tribunal was wrong in not treating the cases of the appellants and the 1st respondent evenly, in terms of consideration and reliance on the written depositions together with exhibits tendered by the respective parties. This, according to the appellants led to a truncation of the appellant's right to fair hearing and fair trial.

The summary of the 1st respondent's response to this allegation is that "the learned Tribunal so long as the defence of the appellant anchored on so called indictment has no qualms whatsoever holding that it is of no moment".

I do agree with the learned leading SAN for the 1st appellant in particular that for a better appreciation of this issue, it is crucial to have recourse to the pronouncement of the trial Tribunal, wherein, all the exhibits tendered by the appellant and the testimony of witnesses of the now two sets of appellants were discarded at page 1114 of the record, the trial Tribunal had this to say:

"However, by virtue of exhibit "A9" (the Supreme Court decision in suit No. SC 69/2007). all the exhibits mentioned above tendered by the respondents are of no moment, so also the testimonies of the witnesses of the respondents, RW1 - RW3 which were targeted towards proving the series of indictments hurriedly put together to discredit and therefore disqualify and unlawfully exclude the petitioner's candidate from contesting the election."

It is difficult to understand the appellants complaints by the above quoted statement of the trial Tribunal. "What remains to be said, that was not said either by the trial Tribunal or the learned counsel to the 1st respondent is that a court of law is perfectly entitled to take judicial notice of all laws, in the instant case, the pronouncement of the Supreme Court. (See section 73 and 74 Evidence Act. Cap. 112. LFN. 1990).

The existence of the judgment at the Supreme Court in the case of *INEC v. AC & Anor. (.supra)* became a fact in issue under the provision of section 52 of the Evidence Act. Cap. 112, LFN, 1990 and the trial tribunal took judicial notice of the pronouncements therein to the effect that the 2nd set of appellants have no powers to disqualify any candidates on the basis of an indictment not arising from a court of law.

From that moment on, an irrebuttable presumption of law arose in favour of the 1st respondent which justified the trial Tribunal to discountenance any and all evidence of indictment of the-2nd petitioner, not arising from a court of law. At page 361 of his book "Law and Practice of Evidence in Nigeria". Afe Babalola said of presumptions:

"A presumption of law is merely an invocation of a rule of law compelling a fact-finder to reach a particular conclusion in the absence of evidence to the contrary. It otherwise means a mandatory deduction which law directs to be made, having regard to rules of law and practice laid down for courts use. It is a procedural device, which takes place of evidence in certain cases until the facts in lieu of which the presumption operates are shown. Presumption of law is in fact a preliminary rule of law which may disappear in the face of rebuttal evidence. However, in the absence of evidence to the contrary, the presumption stands."

The learned Author explained further:

"Presumptions of law are in reality, rules of law and a part of the law itself, and a court may draw the inference whenever the requisite facts are developed in the pleadings. They are usually founded upon reasons of public policy, social convenience and safety which are warranted by the legal experience of courts in the administration of justice. While some of these presumptions have been established as conclusive rules of law otherwise called irrebuttable

presumption of law, others are only *prima facie* evidence 'and 'may be rebutted.' For the above reasons, issue No. 4 is also resolved against the appellants.

Issue No. 5:

This issue questions the correctness of the trial tribunal's view and conclusion that the issues of qualification of the 2nd petitioner could not be raised at the trial as a defence having regard to the entire circumstances of the matter and upon non filing of a cross petition.

It would be recalled that the petitioners prayed that the election of the 24th respondent be declared void and a fresh gubernatorial election to be conducted in Kogi State. Meanwhile, the respondents at the trial pleaded in their reply the disqualification of the 2nd petitioner to contest the gubernatorial election in Kogi State having been indicted and hence lack the competence and the capacity to maintain the petition.

The trial tribunal resolved this against the two sets of appellants at page 1111 of the record as follows:

“We accept the submission of the learned senior counsel to the petitioners Dr. Alex A Izinyon that this defence cannot avail the respondents especially the 1st - 23rd and the 24th respondent (*sic*) when they did not cross-petition. The defence would have been open or available to a petitioner where his opponent had been returned was not qualified to contest the election in the first place. However, this is the petition of All Nigerian Peoples Party (1st petitioner and Prince Abubakar Audu 2nd petitioner). If the respondents wanted to bring up the issue of non qualification of the 2nd petitioner they ought to have cross-petitioned that defence is not open to them.

Appellants submitted that they did not have to file a cross petition before raising the issue of qualification and/or non-qualification of the 2nd petitioner as a defence. And that in fact, even if the appellants had not specifically raised the issue of qualification of the 2nd petitioner expressly as a defence, they were still entitled to disprove the averments of the petitioners that the 2nd petitioner was qualified to contest the election. On this, the appellants referred us to the provision of Order 26 rule 17 of the Federal High Court (Civil Procedure) Rules, 2000, paragraph 16(1) of the 1st Schedule to the Electoral Act and also to the cases of *Oyewale v. Oyesoso* (1998) 2 NWLR (Pt. 539) 663 and *Adejogbe v. Ologunja* (2004) 6 NWLR (Pt. 868) 46 at 70.

The 1st respondent on the other hand submitted that the issue has not arisen at all as the 2nd petitioner was not even allowed to Contest, if he had contested and won, then any other candidate can bring a petition challenging his qualification. Relying on the case of *Ango v. Achida* (1999) 3 NWLR (Pt. 594) 246 at 255, the 1st respondent said that the defence is not open to a respondent in an election petition, when he did not cross petition and is only available where the petitioner had won and the respondent is claiming that he was not qualified.

It seems to me that the first justification for the trial Tribunal's view on this score is that the 2nd petitioner in the instant case did not contest not to talk of winning an election.

Relatedly, and perhaps more important, the so called defence of the two sets of appellants' on the non-qualification or disqualification of the 2nd petitioners for reason of indictment is truly in the nature of an attack or a weapon and not a defence.

Put differently, the issue of the disqualification or non-qualification of the 2nd petitioner which the appellants now regarded as a defence is a sword and not a shield. It is indeed a sword as against the winner of an election and could not at the same time be a shield against the case of a person as the 2nd petitioner who neither contested nor won an election.

It is my view therefore that the trial Tribunal was right to have said that the issue of the non-qualification of the 2nd petitioner ought only to have been raised by a cross-petition.

Within the purview of Order 26 rule 17 of the Federal High Court Rules, the so called defence of the two sets of appellants has raised new issues not fairly arising out of the pleadings, as they stand, and as such the petitioner ought not to be then called upon to meet. The petitioners' case was for unlawful exclusion from election, the issue of qualification on the other

hand is a ground on which an election may be questioned under section 145(1)(a) of the Electoral Act, 2006. It follows, that this ground for questioning an election, cannot be utilized under the guise of a defence by the respondent at the trial Tribunal.

Issue No. 5 is resolved against the appellants.

Issue No. 6:

Two related issues in one form the fulcrum of appellant's issue No 6 The first is whether the trial Tribunal was not in error in her view on the doctrine of *stare decisis* by extending the benefit of the decision in the case of AC & A Anor v. INEC(supra) to the petitioners and in annulling the Court of Appeal decision of 3rd April, 2007. Learned counsel for the appellants argue in the main that as the petitioners/respondents were not privies to the Supreme Court

Decision in A.C. & Anor V. INEC (Supra), the trial trial Tribunal was wrong to have extended the benefit of the decision to the 1st respondent. Also, as the Court of Appeal decision in INEC v. A C & Anor. (supra) remained the legal position on the interpretation of section 182 of the 1999 Constitution until 16th April. 2007 two days after the election of 14th April, 2007 when the Supreme Court delivered its own decision the trial tribunal was wrong to have held that the decision of the Court of Appeal was thereby nullified.

The response of the 1st respondent's to this twin issue is that the Supreme Court decision in AC & Anor. v. INEC (supra) was indeed a decision in *rem* and that it is clear that the learned trial Tribunal did not overrule the decision of the Court of Appeal on the subject matter as it cannot do so but merely felt bound by the decision of the Supreme Court on the subject matter as it was obliged to do under the doctrine of *stare decisis*.

On this point the learned trial tribunal held first at pages 94 -95 of the record.

"It has been argued by the respondents since the petitioners were not parties to the case of Action Congress & Anor. v. INEC (supra) they cannot seek to benefit from it. We disagree with this view which is quite inconsistent with the established and well entrenched doctrine of *stare decisis*, natural law and good consciences."

And also at page 1109 that:

What that means is that the decision of the Court of Appeal is, with the greatest respect, null and void. It also means that court's interpretation of section 182(1)(i) of the 1999 Constitution was equally erroneous. INEC therefore cannot expect its action hinged on the erroneous decision to stand. The 1999 Constitution preceded that decision."

I do not think that the learned trial Tribunal was wrong on any of the above grounds. First, the ratio *decidendi* of the judgment of the Supreme Court in the case of Action Congress & Anor v. INEC (supra) on the interpretation of the provision of section 182(1)(i) of the 1999 Constitution creates a right in rein which the trial Tribunal was entitled to apply as they did to the whole world on the basis of the doctrine of *stare decisis*.

Second, the attempt to create any relevance of a time frame between the dates the judgment of the Court of Appeal was delivered and 16th April, 2007 when the Supreme Court was delivered in the Action Congress & Anor v. INEC case (supra) by the learned counsel for the appellants is of no moment. The reason for this as was slightly mentioned by the learned trial Tribunal is that both decisions concern the interpretation of the 1999 Constitution and the 1999 Constitution which was finally interpreted by the Supreme Court preceded both decisions. In any event, the judgment of the trial tribunal was delivered on 10th day of October, 2007 and the tribunal was obliged to follow the position of the law as decided by the Supreme Court on 16th

April, 2007.

For these reasons, issue No. 6 is also resolved against the appellants.

Issue No. 7

This issues questions the rationale for entering judgment for the 1st respondent by the trial Tribunal, when the 1st respondent did not make out a case entitling it and indeed the 2nd petitioner to the reliefs sought. It argues that a dispassionate evaluation of the affidavit evidence proffered in the case will show that the petitioners failed to discharge the requisite burden of proof upon them.

In particular, appellants counsel submitted that there was no legally admissible documentary evidence in support of the petitioners case as averred in paragraphs 11,13 and 14 of the petition and also that exhibits "A 10" and "All" were wrongly admitted and as such liable to be expunged from the record as lacking in evidential value. Also, that the failure of the petitioners to step into the witness box and adopt their witnesses' statement *viva voce* is fatal to the petitioners' case.

The appellant alleged that the exhibits "A10" and "A11" are public document and the only admissible secondary evident of such are certified true copies, the appellants relied on the cases of *Minister of Lands, Western Nigeria v. Dr. Azikiwe* (1969) 1 ALL NLR 49 at 59, and *Araka v. Egbue* (2003) 7 SCNJ 114 at 123; (2003) 17 NWLR(Pt. 848) 1 and submitted that exhibits "A10" and "A11" not being certified true copies of public documents were not admissible in the first place.

On the petitioner's witness statement on oath, the appellants 'relied on the cases of *Angbazo v. Ebive* (1993) 1 NWLR (Pt. 268) 133 at 145, *Basheer v. Same* (1992) 4 NWLR (Pt. 236) 491 at 502, *Ojoh v. Kamalu* (2005) 18 NWLR (Pt. 958) 523 a, 565 amongst others and submitted that pleading is no evidence and therefore does not constitute proof unless the facts are admitted.

The learned counsel for the 1st respondent in meeting the appellants case on issue No. 7 referred us to the case of *Effiong v. Ikpeme* (1999) 6 NWLR (Pt 606) 260 at 274 and demonstrated the rather limited burden of proof on a petitioner who alleged valid nomination but unlawful exclusion as in this case. The elements are:

- (1) That he was validly nominated by the party
- (2) That the election was conducted and concluded.
- (3) That a winner was declared.
- (4) That his name was not included in the list of the contestants.

After demonstrating how these ingredients were proved in particular by exhibits A1, A2, A3, A4 and A5, the 1st respondent Submitted that exhibits 'A10" and 'All' were already admitted by their maker, that is 1st - 23rd respondents before the trial Tribunal.

Also, the 1st respondent said that the petitioner's witness Statement on oath as well as the respondents' witnesses' statement on oath were all tendered by consent of the parties before the trial Tribunal.

The net legal effect of the factual circumstances between the parties in relation to issue No. 7 is that, that which had been admitted needs no further proof. It is trite that formal admissions are made by a party to a civil proceeding so as to relieve the other party of the necessity of proving the matters admitted. Clearly, when both parties have agreed about a particular matter in their pleadings such matter need not be proved and they should accept such as agreed fact as established. Also, formal admissions may take the form of clear If admissions filed or made by a party to a civil proceeding or by his counsel in the course of the trial of a civil

suit. Section 75 of the Evidence Acts puts the matter thus:

"No fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit to the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time, they are deemed to have admitted by their pleadings provided that the court may, in its discretion require the facts admitted to be proved otherwise than by such admissions."

See also. *Edokpolo & Co Ltd. v. Ohenhen* (1994) 7 NWLR (Pt.358) 511; *Friday Kamalu & Ors. v. Uka Umunna & Ors.* (1997)5 NWLR (Pt. 505) 321 SC.

In the instant case, the petitioners witness summons on oath, was admitted by consent of the parties. Also exhibits "A 10" and "A11" were already admitted by the 1st – 23rd respondents before the trial Tribunal. In these circumstances, the 1st respondent was relieved of formal proof of the documents and the content of the statement.

In the circumstances, the 1st respondent has proved her case of valid nomination and unlawful exclusion to be entitled to the relief granted by the Tribunal.

Issue No. 7 is resolved against the appellants.

Having resolved the (7) seven issues in this appeal against the two sets of appellants, I also dismiss the appeal of the two sets of appellants.

The Cross-Appeal:

The sole issue which the 1st respondent has called upon this court to determine is:

Whether the learned tribunal was right in holding that the 2nd petitioner lacks *locus standi* resenting the petition having regard to the combined provisions of sections 144(1) and 145(1)(d) of the Electoral Act, 2006?

The learned counsel for the 1st respondent submitted in the main that a community reading of sections 144(1) and 145(1)(d) of the Electoral Act gives the 2nd petitioner a *locus standi* distinct from that of the 1st respondent also to prosecute the petition.

In coming to this conclusion, the learned counsel to the 1st respondent went down the history lane with the decision of the Court of Appeal per *Omage. J.C.A. in Adebusuyi v. Oduyoye*(supra) and relied particularly on the recent decision of this court per *Ogunwumiju, JCA in P.P.A. v. Dr. Bukola Saraki & Ors.* suit No. CA /A/EPT/GOV./2/2007 (unreported) delivered on 2/11/2007 at the Ilorin division; now reported in (2007) 17 NWLR (Pt. 1064) 453.

The appellants on the other hand relied amongst other cases on the decision in *Tsoho v. Yahaya* (1999) 4 NWLR (Pt. 600) p. 657 and insisted that by the provisions of section 144(1) of the Electoral ,Act, 2006, any person that was not a candidate at the election nor a political party that participated in an election lacks *locus standi* to present an election petition.

Going straight to the point, I think a candidate that was nominated, screen and cleared by the Electoral body (INEC) and was later disqualified is properly "a candidate at the election" under section 144(1)(a) of the Electoral Act.

In other words, the 2nd petitioner in the instant case in my opinion, would be entitled to present his petition distinct and separate from that of his party, the 1st respondent without any community reading of section 144(1)(a) and 145(1)(d). My reasoning is not new. It follows that category of cases that have regarded "election" itself as a process and the fact that the candidate was disqualified after going through all the necessary procedural requirements except the act of being voted for on the polling day; should not affect his capacity to sue.

In other words, the word "election" cannot refer exclusively to the poll. In *Ojukwu v. Obasanjo & Ors* (2004) 12 NWLR (Pt.886) page 169 at 227, *Edozie, JSC* expressed the view

that the word election' in the context in which it is used in section 137(1)(b) of the 1999 Constitution means the process of choosing by popular votes a candidate for a political office in a democratic system of government ... and this process by the constitutional definition in his view starts from the voting by party members to choose candidate to represent the party at ward level and the primaries up to the polling day when these party candidates are presented by the party to the electorate. Also in I.N.E.C. v. Onyimba E. C. Ray & Ors. (2004) 14 NWLR (Pt. 892) page 92 Ogunbiyi. J.C.A. was of the view that the concept of election denotes a process constituting accreditation, voting, collation, recording on all Relevant INEC forms and declaration of results.

It is my considered opinion that the 2nd petitioner in the instant case was a candidate at the election within the meaning of section 144(1)(a) of the Electoral Act, 2006.

It is for these reasons and the fuller reasons contained in the judgment of my learned brother, Oimage, J.C.A. that I also dismiss the appeals of the two sets of appellants and allow the cross-appeal.

I abide with the consequential orders contained in the lead judgment.

Appeal dismissed, cross appeal allowed