

IN THE EDO STATE LOCAL GOVERNMENT ELECTION
PETITIONS TRIBUNAL
HOLDEN AT BENIN CITY

ON WEDNESDAY THE 27TH DAY OF JUNE, 2018

BEFORE THEIR LORDSHIP, HON. PRESIDENT AND WORSHIPS

<u>HON. JUSTICE U. I. ERAMEH</u>	-	<u>CHAIRMAN</u>
<u>HON. JUSTICE P. A. AKHIHIRO</u>	-	<u>MEMBER I</u>
<u>D. O. ELOGIE ESQ</u>	-	<u>MEMBER II</u>
<u>E. I, BAZUAYE (MRS)</u>	-	<u>MEMBER III</u>
<u>J. OGBEIDE ESQ</u>	-	<u>MEMBER IV</u>

PETITION NO. ELGEP/01/2018

BETWEEN:

ROBINSON ARUOMA BROWN í í í í PETITIONER

AND

1. ALL PROGRESSIVE CONGRESS (APC)	}	RESPONDENTS
2. BARR. ANSELM OJEZUA (CHAIRMAN, APC, EDO STATE CHAPTER)		
3. OMOROGBE OSARO		
4. EDO STATE INDEPENDENT ELECTORAL COMMISSION		
5. ORHIONMWON LOCAL GOVERNMENT COUNCIL		

JUDGMENT

DELIVERED BY HON. JUSTICE U. I. ERAMEH

CHAIRMAN

This Election Petition dated 28th March, 2018 and filed 29th March, 2018 was presented by the Petitioner ó Robinson Aruoma Brown challenging the return as elected Councillor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State, the 1st and 3rd Respondents namely All Progressives Congress (APC) and

Omorogbe Osaro by the 4th Respondent being the Edo State Independent Electoral Commission (EDSIEC).

The Petitioner claims the following reliefs:

1. A DECLARATION that the Petitioner is the duly nominated candidate of the 1st Respondent as the Councillorship Candidate for Ugu Ward 9, Orhionmwon Local Government Council, Edo State in the Local Government Elections held on March 3, 2018, by virtue of Article 20 (11) (A) of the All Progressives Congress Constitution (October 2014 as amended) and Section 23 of the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (Re ó enactment) Law, 2012 and the Constitution of the Federal Republic of Nigeria 1999 (as amended).
2. A DECLARATION that it is wrongful, unlawful, illegal and unconstitutional and a breach of Article 20 (11) (A) of the All Progressives Congress Constitution (October 2014 as amended) and Section 15 of the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (Re ó enactment) Law and the Constitution of the Federal Republic of Nigeria Constitution, 1999 (as amended) for the 1st and 2nd Respondent to purport to submit/present the name of the 3rd Respondent to the 4th Defendant as the 1st Respondent Candidate representing Ugu Ward 9, Orhionmwon Local Government Council, Edo State in the Local Government Elections held on March, 3, 2018.
3. AN ORDER of this Honourable Tribunal that the Petitioner is the duly elected and returned Candidate of the 1st Respondent as the Councillor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State in the Local Government Elections held in March 3, 2018, by virtue of Article 20 (11) (A) of the All Progressives Congress Constitution (October 2014

as amended) and Section 23 of the Edo State Local Government Electoral law and the Edo State Independent Electoral Commission Establishment (Re ó enactment) Law, 2012 and the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

4. AN ORDER of this Honourable Tribunal directing the 4th Respondent to immediately withdraw/cancel the certificate of return issued to the 3rd Respondent and immediately issue a certificate of return to the Petitioner as the duly elected and returned candidate of the 1st Respondent as the Councillor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State in the Local Government Elections held in March 3, 2018, by virtue of Article 20(11) (A) of the All Progressives Congress Constitution (October 2014 as amended) and Section 23 the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (Re ó enactment) Law, 2012 and the Constitution of the Federal Republic of Nigeria 1999 (as amended).
5. AN ORDER of this Honourable Tribunal compelling/directing the 3rd Respondent to immediately vacate the office of the Councilor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State and the Chairman and the Leader of the 5th Respondent should forthwith swear in the Petitioner as the duly elected Councilor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State in the Local Government Election held in March 3, 2018.
6. AN ORDER of this Honourable Tribunal that all the Salaries, emoluments, allowances and all other monies payable to the Councilor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State, which have been received by the 3rd Respondent, be forthwith refunded by the 3rd Respondent to the 5th Respondent and that the same amount of money be paid by the 5th Respondent to the Petitioner as the duly elected

Councillor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State in the Local Government Election held in March 3, 2018.

7. AN ORDER of this Honourable Tribunal perpetually restraining the 3rd Respondent by himself, privies, attorneys or otherwise, from parading himself as the elected Councillor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State in the Local Government Election held in March 3, 2018.
8. AN ORDER of perpetual injunction restraining the 5th Respondent, its privies, agents and representatives from recognizing, accepting and endorsing the 3rd Defendant as the Councillor for Ugu Ward 9, Orhionmwon Local Government Council, Edo State.
9. All other consequential orders that the Tribunal may deem fit to make.ö

The 1st, 2nd, 3rd and 5th Respondents in opposition on 25th April, 2018 filed a Notice of preliminary objection and a Reply.

The 4th Respondent by order of court made on 10th May, 2018 entered appearance and filed no reply.

The Petitioner in reply on 8th May, 2018 filed a preliminary objection to the competence of the entire processes filed by the 1st, 2nd, 3rd and 5th Respondents, Response to the preliminary objection raised by the 1st, 2nd, 3rd and 5th Respondents and a Reply to the Reply of the 1st, 2nd, 3rd and 5th Respondents.

The 1st, 2nd, 3rd and 5th Respondents subsequently filed a Motion on Notice on 9th May, 2018 praying inter-alia for the following.

ö An order striking out this Petition NO. ELGEP/01/2018 between ROBINSON ARUOMA BROWN and All Progressives CONGRESS & 4 ORS dated the 29th day of March 2018í ö

The Tribunal directed that all preliminary objections raised shall be considered at Judgment stage.

Hearing in this Election Petition commenced on the 10th May, 2018.

The Petitioner in proof of the petition testified and called 3 witnesses and tendered various Exhibits.

The 1st, 2nd, 3rd and 5th Respondents in their defence, the 3rd Respondent testified. They called 3 witnesses and tendered various Exhibits.

At the end of hearing, by order of the Tribunal, written addresses were duly filed and exchanged.

On 13th June, 2018, counsel to the Petitioner and counsel to the 1st, 2nd, 3rd and 5th Respondents adopted their various written addresses. Counsel to the 4th Respondent submitted that as the petition borders on party primaries, that the 4th Respondent cannot decide for the party who should be their candidate for the election, he urged the tribunal to use its wisdom to decide the petition one way or the other.

It is pertinent at this stage to note and identify that in the processes filed and/or in the body of the Record book during substantive trial these are the outstanding objections.

- (1) Objection to oral application for extension of time to file Reply on points of law out of time.
- (2) Objection to oral application to amend the Petitioner's final written address filed on 7th June, 2018.
- (3) Whether the joint written address of the 1st, 2nd, 3rd and 5th Respondents filed out of time ordered by this Honourable Court is not liable to be discountenanced and struck out for incompetence.
- (4) Whether the 4th Respondent's Appearance in this case is valid and whether the 4th Respondent who never filed any pleading in this case is not deemed to have admitted the entirety of the Petitioner's claim and all evidence elicited during the cross examination by the 4th Respondent liable to be discountenance.
- (5) Whether the 1st, 2nd, 3rd and 5th Respondents have validly entered Appearance in this case and if not, whether their processes and

participation in the entire case ought not to be discountenanced and struck out.

- (6) Motion on Notice filed on 9th May, 2018 for an order striking out the petition No. ELGEP/01/2018 between Robinson Aruoma Brown and All Progressive Congress and 4 Ors dated the 29th day of March, 2018 and filed on the same date.

All the above objections, howsoever formulated will now be resolved and disposed off by this Tribunal.

Learned counsel to the 1st, 2nd, 3rd and 5th Respondents on 13th day of June, 2018 on the day fixed for adoption of written addresses urged court to orally extend time for them to file their Reply on points of law as counsel to the 1st, 2nd, 3rd and 5th Respondents filed the Reply on points of law out of time. He stated that they were preparing their address in ELGEP/02/2018 which was to be filed on Sunday along side with the Reply so as to meet with time. That for ease of job, the two documents were on the same page. He said on Sunday when he went to print the documents in a business centre, his computer got corrupted. He had to do the job again. He could only do it the next day and filed. He urged the court not to visit the sin of counsel on the litigant.

Learned counsel to the Petitioner objecting to the oral application stated that no reason has been proffered to the court that will inspire the court to exercise its discretion in favour of the 1st, 2nd, 3rd and 5th Respondents.

He submitted that the application has not been made properly. That they worked within the time line, that there is no reason that Respondentsø could not do the same. That if the court was to consider the reasons given, it did not extend time to the 2nd day.

We have carefully considered the oral application. Section 127 (1) and (4) of the Edo State Local Government Electoral Law and the Edo State Independent Electoral

Commission Establishment (Re ó enactment) Law, 2012 hereinafter referred to as the Edo State Electoral Law 2012 provides thus:

õSection 127(1) The Tribunal shall have power, subject to the provisions of Sections 79, 82 and 95 of this law to extend the time appointed by the law or the rules of court mentioned in Section 131 of this law or fixed by any other extending time, for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require.

(4) an application for extension of time shall be made by motion after notice to the other party but the Tribunal may, for good cause shown by affidavit or otherwise, dispense with such Notice.ö

The 1st, 2nd, 3rd and 5th Respondentsø counsel, apart from the oral application for extension of time also stated on the 1st page of the Reply Address on point of law thus:

õ We acknowledge that this Reply address is coming out of time by a day and we therefore respectfully seek your Lordships indulgence to enlarge time till today to accommodate the address in the interest of wholesome justice,ö

In our view, considering the reasons given by the 1st, 2nd, 3rd and 5th Respondentsø counsel for the delay in filing their Reply address on points of law timeously, this is a proper situation this tribunal should exercise its discretion and grant the oral application for extension of time in the interest of justice and especially as the Petitioner has not shown that he was prejudiced in any way.

Accordingly, the oral application for extension of time is hereby granted, time within which the 1st, 2nd, 3rd and 5th Respondents may file their Reply Address on points of law is hereby extended and it is further ordered that the 1st, 2nd, 3rd and 5th Respondentsø Reply Address on points of law already filed on the 12th of June, 2018 is hereby deemed as properly filed and served, the appropriate filing fees having been paid.

Learned counsel to the Petitioner also orally applied to amend the final written address of the Petitioner as follows:

Page 15 paragraph 1.14 line 2 to read "Exhibit F9"

Page 17 paragraph 5.8 lines 3 and 4 to read "Exhibit D", "Exhibit F2", "Exhibit E" and "Article 20 (1a)" respectively.

Page 30 paragraph 5.61 line 5 should read "RW3", line 6 should read "RW1".

Learned counsel to the 1st, 2nd, 3rd and 5th Respondents raised objection to the oral amendment, he submitted that the final written address of the Petitioner by reason of the amendment sought is a draft. That the address is an incomplete document and that the Petitioner is not allowed to prepare his address before this court. That the amendment sought is not a typographical error but was deliberate.

We have carefully considered the oral application for amendment.

Section 98(1) of the Edo State Electoral Law, 2012 provides thus:

- “(1) In relation to an election petition, the provisions of the relevant provisions of the civil procedure Rules relating to amendment of pleadings shall apply as if for the words “any proceedings” in those provisions there were substituted the words “the Petition or the reply in any”

The relevant Civil Procedure Rules in this regard is the High Court of Edo State (Civil Procedure) Rules, 2012 and Order 24 Rules (1), (2) and (8) thereof provides thus:

01. A party may amend his originating process and pleadings at anytime before the settlement of issue and not more than twice during the trial but before the close of the case, provided the court may grant more than two amendments in exceptional circumstances.
2. Application to amend may be made to a judge, such application shall be supported by an exhibit of the proposed amendment and may be allowed upon such terms as to cost or otherwise as may be just.

8. Subject to the provisions of Rule 1 of this Order, a Judge may at anytime and on such terms as to costs or otherwise as may be just amend any defect or error in any proceedings.ö

We have carefully considered the oral application for amendment and it is our considered view that same should be granted in the interest of justice and especially as the 1st, 2nd, 3rd and 5th Respondents have not shown to the Tribunal how they will be prejudiced or overreached by the amendment sought.

Accordingly, the oral amendment sought above is hereby granted as prayed.

Learned counsel to the Petitioner submitted that this Tribunal on 30th May, 2018 ordered that the Respondents are given 5 days from 25th May, 2018 to file and serve their final written addresses.

He argued that the 1st, 2nd, 3rd and 5th Respondentsøtime within which to file Final Written Address expired on the 3rd June, 2018.

He submitted that the said Joint Final written address of the 1st, 2nd, 3rd and 5th Respondents is incompetent and liable to be struck out.

Replying, learned counsel to the 1st, 2nd, 3rd and 5th Respondents in the Reply on points of law submitted that the Tribunal on 30th May, 2018 gave the parties 5 days to file their written addresses starting from the next day which was the 31st May, 2018. That the final written address was filed on the 4th June, 2018 and served within the time stipulated by the Tribunal. He urged the court to discountenance the submission of learned counsel to the Petitioner.

On the 30th May, 2018, this Tribunal ordered as follows:

- ö By consent of all counsel and order of court, written addresses shall be filed. The Respondents are hereby given 5 days from today to file their final written addresses and serve the Petitionerø counsel. Upon receipt, the Petitionerø counsel is thereafter given 5 days to file his final written address and serve the Respondents counsel. Upon receipt, the Respondents counsel are thereby given 3 days to file reply on points of law as the need arises. Case adjourned to 13th June, 2018 for adoption of written addresses.ö

Thus by the express order of this Tribunal the time within which the 1st, 2nd, 3rd and 5th Respondents were to file their final written address lapsed on the 3rd of June, 2018 and the final written address was filed on the 4th June, 2018.

On a careful perusal of the Edo State Electoral Law, 2012, there is no specific provision in respect of the days limited for filing of final written addresses.

Section 134 (1) of the Edo State Electoral Law, 2012 provides thus:

- õ(1) Subject to the express provisions of this law, the practice and procedure of the Tribunal in relation to an election petition shall be assimilated as nearly as may be to the practice and procedure of the High Court in the exercise of its civil jurisdiction, and the Civil Procedure Rules shall apply with such modifications as may be necessary to render them conveniently applicable, as if the Petitioner and the respondent were respectively the plaintiff and the defendant in a civil action.õ

Flowing from above, where the Edo State Electoral Law, 2012 is silent, resort shall be had to High Court of Edo State Civil Procedure Rules.

Order 29 rules 13, 14 and 15 of the High Court Edo State (Civil Procedure) Rules, 2012 provides for filing of Final written addresses and it states thus:

õ Order 29.

13. when the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 21 days file his own written address.
14. where the other party calls evidence, he shall within 21 days after the close of evidence file a written address.
15. upon being served with the other party's written address, the party beginning shall within 21 days file his own written address.õ

Thus, by the express provision of Order 29 rule 14, the 1st, 2nd, 3rd and 5th Respondents were originally entitled to 21 days to file their final written address but the days were abridged by this Tribunal to 5 days because of constraint of time and sui generis nature of Election Petition. Can this Tribunal because the 1st, 2nd, 3rd and 5th Respondents filed their final written on 4th June, 2018, one day after the abridged days given, refuse to look at the final written address and discountenance same when it was filed within the period allowed them by the Rules of court? CERTAINLY NOT! For courts are moving away from the twilight era of technicalities to the enlightening dawn of doing substantial justice.

We accordingly hold that the 1st, 2nd, 3rd and 5th Respondents having filed their Final written address within the time stipulated by the High Court of Edo State (Civil Procedure) Rules, 2012 same cannot be discountenanced and struck out for incompetence.

Learned counsel to the Petitioner argued whether the 4th Respondent's Appearance in this case is valid and whether the 4th Respondent who never filed any pleading in this case is deemed to have admitted the entirety of the Petitioner's claim and all evidence elicited during the cross examination by the 4th Respondent liable to be discountenanced.

He referred to Section 93(3) of the Edo State Electoral Law (2012) and submitted that same is clear and unambiguous, that it must be given its natural and literal meaning.

He argued that the Memorandum of Appearance must be signed by the Respondent itself and no other person. He placed reliance on the cases of **FRN v Osahon** (2006) LPELR 63174 (SC) and **Buhari v Yusuf** (2003) 14 NWLR (PT. 841) 446.

He urged the court to strike out the Memorandum of Appearance. He argued further that the 4th Respondent filed no pleadings, that the 4th Respondent is deemed to have admitted the claims of the Petitioner in its entirety.

What calls for determination in this preliminary issue is the application of Sections 93 (3), 94 and 133(1) of the Edo State Electoral Law, 2012 which provides thus:

93(3) The memorandum of appearance shall be signed by the respondent but may be filed by his solicitor, if any.

94. If the Respondent does not enter an appearance afore said, any document intended for the Respondent may be posted upon the tribunal notice board and such posting shall be sufficient notice thereof.

133(1) Non-compliance with any of the provisions of this part of the law or with any rule of practice for the time being in force, shall not render any proceedings void unless the Tribunal shall so direct but such proceedings may be set aside either wholly or in part as irregular or amended or otherwise dealt with in such manner and upon such terms as the Tribunal shall deem fit to ensure substantial justice.

The main quarrel of the Petitioner's counsel in this preliminary issue is that the Memorandum of Appearance filed by the 4th Respondent was signed by its counsel and not the 4th Respondent herself, and as such, same should be struck out.

By order of court made on 10th May, 2018, the Memorandum of Appearance of the 4th Respondent was deemed properly filed and served.

We have taken a close look at the Memorandum of Appearance dated 9th May, 2018. The court process was signed by M. O. Airende Esq., counsel to the 4th Respondent.

It is settled law that where the words of a statute are plain, clear and unambiguous, effect should be given to them in their ordinary and natural meaning except where to do so will result in absurdity. See **Nnonye v Anyichie** (2005) vol. 124 LRCN 357 at pp 374 and 377.

It has also been held that the object of interpreting any statute or instrument is to ascertain the intention of the legislature that had made it or that of the parties that had

drawn it. This is done by reading the words used in the particular Section of the statute or the document. Where the meaning is not clear by so doing, the other Sections of the statute or the document, or the whole of it, shall be read together to ascertain the meaning. See the cases of:

- (1) **Agbareh v Mimra (2008) 2 NWLR (PT1071) at pp. 387 to 388.**
- (2) **Martin Schroeder & Co v Major & Co (Nig) Ltd (1989) 2NWLR (PT101) 1.**

Also, in the case of **Independent Television/Radio v Edo State Board of Internal Revenue (2015) 12 NWLR (PT 1474) 442** Ogunwumiju JCA stated that when interpreting a statute, the provisions are to be taken as a whole and the review of any Section therein cannot be severed from other sections.

On a community reading of Sections 93(3), 94 and 133(1) of the Edo State Electoral Law, 2012, the mere fact that the Memorandum of Appearance was signed by the counsel and not the 4th Respondent herself will not vitiate the process. For it has been held that the purpose of filing Memorandum of Appearance is to let the other side know that the writ of summons had been received that the action may be defended and the address for service of other documents be known to the other side or the address of the solicitor who is appearing for the defendant. See **Dike v UBN (1987) 4 NWLR (PT 67) 958** at p. 963

The 4th Respondent filed a Memorandum of Appearance but filed no Reply to the petition. During the hearing of the Petition, learned counsel to the 4th Respondent cross-examined some of the witnesses called by the Petitioner, 1st, 2nd, 3rd and 5th Respondents. The question that therefore arises is whether by the 4th Respondent's failure to file a Reply to the petition, the 4th Respondent is deemed to have admitted the entirety of the Petitioner's claim and the evidence elicited during cross-examination by the 4th Respondent should be discountenanced.

Section 215 (1) and (2) of the Evidence Act, 2011 provides thus:

- õ215 (1) Witnesses shall be first examined-in-chief, then if any other party so desires, cross-examined, then if the party calling him so desires, re-examined.
- (2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.ö

Section 189 (1) and (2) of the Evidence Act, 1990 which is in pari-materia with Section 215 (1) and (2) of the Evidence Act, 2011 was subject of interpretation in the case of **Okoromaka v Odiri** (1995) 7 NWLR (PT 408) 411 at pp 438 to 439 where the court of Appeal held thus:-

- õ It is for this reason that Sec 189 Evidence Act 1990 provides as follows:
- 189(1) Witnesses shall be first examined-in chief, then if any other party so desires cross-examined, then if the party calling him so desires re-examined.
- (2) The examination and cross examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination in chief.ö

Section 189(2) (Supra) has been judicially interpreted that cross-examination is not at large but limited in Civil cases especially to relevant facts which are pleaded facts, giving rise that cross examination is limited to pleaded facts and not at large.ö

To our mind, the evidence elicited by the 4th Respondent during cross-examination of the Petitionerø and 1st, 2nd, 3rd and 5th Respondentsø witnesses if same relate to facts pleaded in the Petition, Reply to Petition filed by the 1st, 2nd, 3rd and 5th Respondents and Petitionerø Reply to Reply filed by 1st, 2nd, 3rd and 5th Respondents, same is relevant and shall not be discountenanced. But where the evidence do not relate to pleaded facts before this Tribunal, it comes to no issue and shall be discountenanced.

In the case of **Obanla v Okewunmi** (2017) LPELR-42386 (CA), the court of Appeal held thus:-

ö Unlike in criminal case, a civil case is fought or contended with the option of the defendant. He may elect to defend or even throw in the towel by yielding to judgment or do nothing whatsoever. That is a characteristics of Civil Suits. In this appeal, the appellants as defendant had the opportunity to file statement of defence but chose not to but instead challenged the respondent on his own case by Cross-examination. This was their election and is permissible but they must also prepare to bear the consequence if unpleasant.ö

Order 29 rule 13 of the High Court of Edo State (Civil Procedure) Rules, 2012 provides thus:-

ö Order 29

13. Where the party beginning has concluded his evidence, the judge shall ask the other party if he intends to call evidence í .ö

On the 30th May, 2018 when the 1st, 2nd, 3rd, and 5th Respondents closed their defence. The records of this Tribunal is as follows:

ö Court: Ayo Esq., do you intend to call evidence?

Ayo Esq.: We do not intend to call witnesses in this petition. We are relying on the evidence led by the 1st, 2nd, 3rd and 5th Respondents.ö

In this instant case, the 4th Respondent chose not to file a Reply to the petition, but chose to cross-examine the witnesses called by the Petitioner and 1st, 2nd, 3rd and 5th Respondents and relied on the evidence led by the 1st, 2nd, 3rd and 5th Respondents. The above election by the 4th Respondent is permissible and she sinks or swims with the 1st, 2nd, 3rd and 5th Respondents.

Learned counsel to the Petitioner also argued whether all the 1st, 2nd, 3rd and 5th Respondents have validly entered Appearance in this case and if not, whether their processes and participation in the entire case ought to be discountenanced with and struck out. He submitted that entering appearance is a condition precedent to the participation of the Respondents in this case. He stated that the 1st, 2nd, 3rd and 5th

Respondents till date have not filed any Memorandum of Appearance. He referred and relied on Section 93 (1) of the Edo State Electoral Law, 2012.

He argued that any other procedure adopted by the Respondents and any other processes filed by the Respondents contrary to Section 93 (1) of the Edo State Electoral Law, 2012 amounts to a nullity.

He placed reliance on the case of **MPPC v INEC** (2015) LPELR ó 25706 (SC). He urged the court to give Section 93 (1) its natural and literal interpretation as the provision is simple and unambiguous. He placed reliance on the case of **Agip (Nig) Ltd. V Agip Petroli International** (2010) vol. 181 LRCN 119 at p. 131.

He argued that any process filed without compliance with Section 93 (1) of Edo State Electoral Law is incompetent and liable to be struck out. He relied on **Abia State Transport Corporation v Quorun Consortium Ltd.** (2009) vol. 172 LRCN 134 at p. 137.

That the 1st, 2nd, 3rd and 5th Respondents having failed to file their Memorandum of Appearance are not competently before this Tribunal and ought not to be further heard in this case. He relied on **Inakoju v Adeleke** (2007) LPELR 1510.

He urged the court to strike out all the processes filed on behalf of the 1st, 2nd, 3rd and 5th Respondents as being incompetent as the condition precedent to the filing of same were not met. He further urged the court to refuse to hear 1st, 2nd, 3rd and 5th Respondents as they are not properly before the court and enter judgment in favour of the Petitioner, as his claims and averments are deemed unchallenged and uncontroverted.

Replying, Learned counsel to the 1st, 2nd, 3rd and 5th Respondents submitted that the facts and circumstances of the case of **Inakoju V Adeleke** (Supra) are not applicable to this case. He argued that Section 93 is permissive and it cannot act to deprive a Respondent who filed a Reply from being heard. That the fact of filing a reply is the best evidence of an intention to contest the petition. He placed reliance on the case of **Nwobodo v M. O. Nyiam & Associates** (2014) LPELR ó 22668.

He referred to Section 94 of the Edo State Electoral Law, 2012 and contended that the penalty for not entering appearance is that service will be done by posting on the Tribunal's notice board. He argued that once the law provides for the punishment of an act, no other punishment will be invoked but that for its breach.

He urged the court to discountenance the objection as there is no better appearance than the Reply filed by the 1st, 2nd, 3rd and 5th Respondents and the appearance of counsel at all court dates in arguing the petition. He placed reliance on the case of **Akeredolu v Omiyale** (2013) LPELR 6 22800 CA

The crux or fulcum of this preliminary objection is that the 1st, 2nd, 3rd and 5th Respondents failed to file a Memorandum of Appearance and as such they should not be further heard in this case and all processes filed on their behalf are incompetent.

Again, what calls for consideration in this objection is the application of Sections 93(1), 94 and 133 (1) of the Edo State Electoral Law, 2012.

Sections 94 and 133 (1) had earlier been reproduced in this judgment. Section 93(1) provides thus:

- 93(1) Where the respondent intends to oppose the petitions he shall, within such time after being served or deemed to be served with the petition, or, where an order has been made under sub-section (2) of Section 91 of this law within such other time (if any) as may be stated in that order, enter an appearance by filing in the Registry a memorandum of appearance stating that he intends to oppose the petition and giving the name and address of his solicitor, if any, or stating that he acts for himself as the case may be, and in either case giving an address for service within five kilometers of a Post Office in the Judicial Division and the name of its occupier, at which documents intended for the respondent may be left.

This Tribunal has inherent powers to look at documents in its case file to arrive at a just decision in the case. See the cases of:

- (1) **PDP v Ezeonwuka (2018) 3 NWLR (PT 1606) 187 at p. 250.**
- (2) **Uzodinma v Izunaso (N0.2) (2011) 17 NWLR (PT 1275) 30 at p. 75.**

From the case file records of the Tribunal, the 1st, 2nd, 3rd and 5th Respondents upon being served with the Petition in this Suit, filed a Notice of Preliminary Objection and Reply without prejudice to their Preliminary Objection on 25th April, 2018.

In the case of **British American Insurance Company Ltd. V Edema Sillo** (1993) 3 NWLR (PT. 227) 567 at p. 516 the Court of Appeal had this to say on non entering appearance:

õ I should also comment on the views of the learned trial judge that until a defendant has entered appearance in a suit, he has not subjected himself to the jurisdiction of the court and so should not be granted any indulgence. It is my view with due respect to the learned trial judge, that the present legal position appear to be that once a defendant has taken any step in the proceedings, such as asking for extension of time within which to file any paper or do this or that, he is deemed to have submitted himself to the jurisdiction of the court.ö

Also in the case of **Guinness (Nig) PLC v Ufot** (2008) 2 NWLR (PT 1070) 51 at p. 81 the Court of Appeal held as follows:

õ It was wrong for the learned Trial judge to shut out the Defendant/Applicant and deny it of participation in the proceeding to set aside the judgment in default on account of the fact that it has not filed a memorandum of appearance, more especially as the defendant/appellant has filed a statement of defence albeit irregularly before the same court perhaps one should add that the existence of the statement of defence of the defendant/appellant would have been at least a factor to be taken into consideration in denying the plaintiff/Respondent the motion for default judgment in the first instance with the option to adjourn the matter for an opportunity to the defendant/appellant to present its defence.ö

Applying these clear principles to this instant case, the 1st, 2nd, 3rd and 5th Respondents filed a Preliminary Objection and Reply to the Petition upon being served with the Petition. Having fully participated in the proceedings, can this Tribunal rightly declare that all court processes filed on their behalf are incompetent and they should not be further heard because they failed to file a Memorandum of Appearance? WE CERTAINLY THINK NOT.

The purpose of filing the Memorandum of Appearance is to inform the Petitioner that the Petition will be contested and to give addresses where court processes will be served.

By Section 94 of the Edo State Electoral Law, 2012, if the Respondent does not enter an appearance, any document intended for the Respondent may be posted upon the tribunal notice board and such posting shall be sufficient notice thereof.

It has been held and it is also settled principle of our jurisprudence that where a statute prescribes the consequence of non-compliance and there is no doubt from the language used in the statute, that should be the consequence, the court will not allow any departure from the provisions of the statute. See the following cases:

- (1) **Cunsin (Nig) Ltd. v I. G. P (2008) 8 NWLR (PT 1081) 546 at p. 556,**
- (2) **Abia State University v Anyaibe (1996) 3 NWLR (PT 439) 646.**

Learned counsel to the Petitioner placed reliance on the case of **Inakoju v Adeleke** (Supra) to the effect that the 1st, 2nd, 3rd and 5th Respondent should not be further heard by the Tribunal as they failed to enter appearance and we should enter judgment in favour of the Petitioner.

It is pertinent to observe that the facts and circumstances in **Inakoju v Adeleke's** case differs from that in this case.

In **Inakoju's** case, the Appellants upon being served with the originating summons only filed a preliminary objection, they failed to file a Memorandum of Appearance and counter-affidavit in opposition to the summons.

In this instant case, the 1st, 2nd, 3rd and 5th Respondents upon being served with the Petition, though they failed to file a Memorandum of Appearance, they filed a preliminary objection, Reply to the Petition and fully participated in the proceedings of this Suit up to this stage.

Thus, the case of **Inakoju v Adeleke** is not applicable, it is distinguishable and in apposite to the case at hand. Accordingly, this preliminary issue of non filing of the memorandum of appearance lacks merit and it is hereby overruled.

Finally, the 1st, 2nd, 3rd and 5th Respondents filed a Motion on Notice dated 7th May, 2018 and filed 9th May, 2018 praying for the following:

õ(A) An order striking out this petition NO. ELGEP/01/2018 between ROBINSON ARUOMA BROWN and ALL PROGRESSIVES & 4 ORS dated the 29th day of March 2018 and filed on the same date based on the complained grounds hereunder.

AND/OR

(B) An order striking out paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34 and 35 of the petition.

(C) And for such other or orders as the Honourable Tribunal may deem fit to make in the circumstances.

TAKE FURTHER NOTICE that the grounds of this application are as follows:

- a. The petition is based on matters bordering on pre-election disputes
- b. The matters so raised in the petition do not qualify as grounds in the Edo State Local Government Electoral Law, 2012 for questioning the validity of an election.
- c. The petitioner lacks the requisite locus standi to present this petition
- d. This Honourable Tribunal lacks the jurisdiction to adjudicate over the matters on which the petition is predicated to wit: who was the candidate of APC in the March, 3rd election in the Ugu Ward 9 constituency election to the Orhionmwon Local Government Council.ö

The motion is supported by a 5 paragraph affidavit and a written address.

Learned counsel to the 1st, 2nd, 3rd and 5th Respondents adopted the written address on 13th June, 2018.

In his address, learned counsel referred to the facts of the petition, grounds of the petition and the reliefs being sought in the petition.

He submitted that where a court lacks jurisdiction, the issue of jurisdiction must first be determined. He placed reliance on the cases of **Muhanmadiya Metal**

Construction & Co Ltd v Umra Co. Nig Ltd (2005) All FWLR (PT 252) 273 at p. 278 and **All States Trust Bank V King Davidson Enterprises Nig. Ltd** (2000) FWLR (PT 232) 2361. He stated that the competence and jurisdiction of the Tribunal is governed by Section 78 (1) of the Edo State Local Government Law, 2012 and urged the Tribunal to first determine the issue of jurisdiction raised to save time and expenses of litigation. He placed reliance on the case of **Drexel Energy v TIB** (2008) 36 NSCQR 1219 at p. 1264.

He raised the following issues for determination.

- (a) Whether the petition is incompetent bordering on pre-election matter thereby going outside the sphere of jurisdiction of the court.
- (b) Whether the petitioner has the locus standi to question the return of the 3rd Respondent as the winner of the Councillorship Election into the Ugu Ward 9 constituency, himself not being a candidate in the said election.
- (c) Whether the reliefs sought by the petitioner fall within the jurisdiction of the Tribunal.

He submitted that the petition is incompetent as it raises pre-election matters as it purports to present the Petitioner as the candidate of the 1st Respondent. That the Petitioner request the tribunal to determine the candidate of the 1st Respondent between the Petitioner and the 3rd Respondent.

He referred to Section 78 (1) of the Edo State Electoral Law, 2012 and submitted that the Election Tribunal has original jurisdiction to hear and determine petition as to whether

- (a) Any person has been validly elected as a member of the local Government Council.

He also referred to Section 80(1) of the Electoral Law, 2012 that stipulates who may present an election petition. He argued that from the above provisions, Election Tribunals are only concerned with Post-Election disputes and have no business with the internal wrangling of political parties at pre-election levels. That pre-election

disputes are the exclusive preserve of the Federal and State High Courts. He placed reliance on the cases of **Zaranda v Tilde** (2008) 10 NWLR (PT 1094) 184 and **Adeogun v Fashogbon** (2008) 17 NWLR (PT 1115) 149.

He argued that the Petitioner's petition is purely a pre-election case as the dispute as presented to the tribunal is that he was the candidate whose name was not forwarded to the 4th Respondent. That the question borders on who won the nomination and therefore became the rightful candidate. That the reliefs sought in the petition inter alia include the declaration that the Petitioner is the rightful candidate whose name was not forwarded to EDSIEC but the 3rd Respondent's name was announced and published as the candidate who won the primary election as well as the election.

He contended that this Election Tribunal is a special court set up to hear complaints arising from election and post-election matters. That the Tribunal cannot hear disputes arising from the procedure for nominating a candidate by political party. That regular courts have powers to hear such matters. He placed reliance on the case of **Obi v INEC** (2003) 11 NWLR (PT 1046) p. 565.

He argued that the question of nomination, sponsorship and candidature are pre-election matters which are only cognizable in the regular courts. He placed reliance on the case of **Kolawole v Folusho** (2009) 9 NWLR (PT 1143) 338 at p. 361.

He contended that what has to be determined by the Tribunal is whether the Petitioner ought to pursue his claim at the ordinary court as he was not a candidate as stipulated in Edo State Electoral Law, the Electoral Act and the APC Constitution.

He placed reliance on the cases of **Ozigbo v PDP** (2010) NWLR (PT 2010) 607 and **ANPP v Argungu** (2009) 17 NWLR (PT 1171) 445 at p. 464.

He argued that the Petitioner cannot in this Tribunal challenge nomination that was concluded on the 31st day of January, 2018 by the issuance of form B which by the provisions of Section 24(4) of the Edo State Electoral Law, 2012 is the final decision as far a nomination is concerned.

He argued that a pre-election matter does not metamorphose to post-election matter. He referred to paragraphs 32 and 33 of the petition where the Petitioner avered that having not been nominated, he caused his lawyer to write a letter to the 1st Respondent instead of filing a pre-election Suit on the disputed nomination either at the regular State High Court or at the Federal High Court.

He contended that by Section 87(9) of the Electoral Act, the Petitioner is afforded opportunity of applying to the High Court of a State or Federal High Court to seek redress for pre-election matters.

He contended that the cause of action arose before the Election day. That a cause of action accrues the moment there is a wrong. That in the instant case the wrong was the refusal to issue the Petitioner with the nomination form and the publication of the name of the 3rd Respondent by the 4th Respondent as the 1st Respondent's candidate. That the above incidents happened 31 days before the election.

He argued that the complaints did not arise at, on or after the day of Election held on 3rd March, 2018 but before the Election at the point when the name of the 3rd Respondent was forwarded to the 4th Respondent who published same and issued nomination form to him.

He contended that the allegation that it was the Petitioner who was the candidate of the 1st Respondent is not supported by the Edo State Electoral Law, 2012. That as the petition borders on pre-Election matter, it is liable to be struck out.

Learned counsel to the 1st, 2nd, 3rd and 5th Respondents on issue B, submitted that as the Petitioner was not a candidate in the election as provided by Section 80(1) (a) and (b) of the Edo State Electoral Law, 2012, he lacked the locus standi to bring the petition and as such, the Tribunal also has no jurisdiction, for all condition precedent for adjudication must be complete. He relied on the cases of **Green v Green** (1987) 3 NWLR (pt. 61) 480 AT P. 500 AND **Alpha v Zakari** (2010) 6 EPR 773 at p. 807.

He argued that by the express provisions of Section 80(1) (a) and (b) of the Edo State Electoral Law, 2012, the Petitioner does not fall within the category of persons or authorities that can challenge an election in this Tribunal.

He referred to Section 22 of the Local Government Electoral Law, that political parties are obliged to submit to EDSIEC their candidates for a political election but in this instant case, the name of the 3rd Respondent was submitted and accepted, screened and cleared by EDSIEC to contest in the said election by publishing his name in Form M2. He stated that the Petitioner's name was never published as the candidate of the 1st Respondent and as such he lacks the necessary locus standi to present this petition. He submitted that to determine jurisdiction, the court should look at the statement of claim and not the Defence put forward. He referred to paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34 and 35 of the petition. He contended that the pleaded facts do not relate to post-election facts but pre-election matters and that the petitioner did not establish that his name was published as the candidate of the 1st Respondent to entitle him to come to the Tribunal in violation of Section 80(1) (a) & (b) of the Edo State Electoral Law, 2012. He placed reliance on the cases of **Olufo v Ifodo** (2010) 44 NSCQR 558 at pp 588 -589 and **Egbuonu v BRTC** (1997) 12 NWLR (PT 531) 29 at p. 43.

He argued further that no member of a political party is entitled to be nominated or sponsored as of right. That the nomination and sponsorship of candidates is a domestic affair of the party, who sets parameters not subject to review by the court. He relied on the case of *P.D.P. v Sylvia* (Supra) 85 at p. 143.

He submitted that however, by Section 87(9) of the Electoral Act, 2011, the High court or Federal High courts can assume jurisdiction in nomination matters.

He contended that as the Petitioner did not participate in the primaries organized by the 1st Respondent on 24th January, 2018 for failure to win his unit during the gubernatorial election of 2016, he cannot contest the conduct of the primaries vide Section 87(9) of the Electoral Act, 2011 as he lacks the locus Standi to ignite the

court's jurisdiction. He relied on the case of **Wushishi v Imam** (2017) 18 NWLR (PT 1597) 175 at pp 198, 211 and 213.

Finally on the last issue, he submitted that the reliefs claimed by the Petitioner is alien to the Edo State Electoral Law, 2012. He stated that what is envisaged by the provision on valid nomination and wrongful exclusion is a person who is nominated by his party, his name forwarded to EDSIEC and on the day of election, his name is wrongfully excluded by the Electoral body. He contended that there can be no valid nomination except done by the party. He wondered how the party who clearly stated that his party refused to nominate him, vide paragraphs 21 and 22 of the petition now raise the issue of wrongful exclusion. He referred to Section 81 of the Local Government Electoral Law which states the grounds upon which an aggrieved candidate can question the election. That though the Petitioner stated that the 3rd Respondent was not qualified in line with Section 81 (1) (a) of the Edo State Electoral Law, 2012, no pleading whatsoever was led in that regard. He urged the court to disregard the ground and strike same out. He stated that it is only a Petitioner who was a candidate in the election that can claim to be returned validly having been elected by majority of votes. That the Petitioner in this case did not contest, no vote accrued to him as his name was never published as having been a candidate. That the reliefs sought cannot be granted to him.

What more the Tribunal does not have the jurisdiction to award reliefs relating to internal affairs of a political party before the Election was concluded. He finally urged the court to grant the application.

The Petitioner did not file a counter affidavit to this motion, neither did he file any written address. It is however pertinent to observe that 1st, 2nd, 3rd and 5th Respondents in their Reply, filed on 25th April, 2018, raised the same preliminary objection and the Petitioner on 8th May, 2018 filed a Response to the preliminary objection.

On 13th June, 2018, learned counsel to the Petitioner adopted and relied on their response to the preliminary objection in paragraphs C₁ to C₄.

In the reply, learned counsel to the Petitioner submitted that during the hearing of the Petition, the Petitioner shall contend that he has the requisite locus standi to present this petition and the Tribunal has jurisdiction to hear the petition on the following grounds:-

1. That the Petitioner-Robinson Aruoma Brown was validly nominated by the 1st Respondent but was unlawfully excluded from the Local Government Elections held on the 3rd day of March 2018.
2. The Petitioner is entitled to be declared as the validly elected councilor for Ugu ward 9, Orhionmwon Local Government Council, Edo State in the Local Government Elections held on the 3rd March 2018, by virtue of Article 20(11) (A) of the All Progressives Congress Constitution (October 2014 as amended) and Section 23 of the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (Re-enactment) Law, 2012 and the constitution of the Federal Republic of Nigeria 1999 and all relevant laws.
3. The right of the Petitioner to present this petition as a person entitled to be elected or returned at the election is as provided by Section 79(1) (a) of the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (Re-enactment) Law, 2012.
4. The Grounds of the Petition is not pre-election issue but it is a ground provided and protected by Section 81(1) (d) the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission establishment (Re-enactment) Law, 2012 as the Petitioner was validly nominated but unlawfully excluded from the election.

We have carefully considered the application, the affidavit in support of the application and the submission of learned counsel for both sides. In our view, what calls for determination in this application are:

1. Whether the Petitioner has the locus standi to institute this petition
2. Whether this Tribunal has jurisdiction to entertain this petition.
3. Whether the reliefs sought are justiciable under the Edo State Electoral Law, 2012.

It has been held that Jurisdiction is to a court what a gate or door is to a house. That is why the question of a court's jurisdiction is called a threshold issue. It is at the threshold (that is at the gate) of the temple of justice (the court). To be able to gain access to the temple (that is, the court), a prospective litigant must satisfy the gate keeper that it has a genuine cause to be allowed ingress. Where he fails to convince the gate keeper, he will be denied access to the inns of the temple.

The gate keeper, as vigilant as he is always, will readily intercept and query all persons who intrude into his domain. To be able to ventilate a grievance, a prospective litigant has to ensure that he addresses his complaint to the competent court. That is so for an incompetent court will have no jurisdiction to attend to his entreaty.

See the following cases:

- (1) **University of Ilorin v Oluwadare (2009) All FWLR (PT. 452) 1175.**
- (2) **Ufomba v I.N.E.C. (2017) 13 NWLR (pt 1582) 175 at pp 213 -214.**

A court is said to have jurisdiction to entertain a case when:

- (a) It is properly constituted as regards numbers and qualification of the members of the Bench and no member is disqualified for one reason or another.
- (b) The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the court from exercising its jurisdiction; and

- (c) The case before the court was initiated by due process of Law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

See the following cases:

- (i) **Madukolu v Nkemdilim (1962) 2 SCNLR 341**
(ii) **P.D.P. v Ezeonwuka (Supra) pp. 247 to 248.**

It has been held that courts are set up under the Constitution, Decree, Acts, Law and Edicts. They cloak the court with the powers and jurisdiction of adjudication. If the statutes do not grant jurisdiction to a court or Tribunal, the court and the parties cannot by consent endow it with jurisdiction. The jurisdiction of a court is conferred, limited and circumscribed by the statute creating it.

In considering, this issue of jurisdiction, this Tribunal shall consider the statutory provisions thereto.

In the case of **Ufomba v INEC (2017) 13 NWLR (PT 1582) 175** at pp 209, the apex court held as follows:

- õ It is pertinent to restate at this point that the appellant's reliance on the case of **Lokpobiri v Ogoale** and the other related cases supra, is of no assistance to him.
In the Lokpobiri's case for instance, this court reaffirmed the well known principle that òin civil actions the jurisdiction of a court to hear and determine the plaintiff's action, depends on the claims in the writ of summons and his pleadings.
On the other hand, the jurisdiction of the court to hear and determine an election or election related matter, is statutory.ö

The facts of the case according to the Petitioner as can be gathered from the petition is that the Petitioner is a registered member of the 1st Respondent ó All Progressives Congress, hereinafter referred to as APC. He is from Ugu Ward 9, Orhionmwon Local Government Council, Edo State and a registered voter. On 16th January 2018, APC, Edo State Chapter published its timetables for conduct of the party primaries in furtherance of the Edo State Local Government council elections scheduled for the 3rd of March, 2018. As a councilor Aspirant for Ugu Ward 9, the petitioner expressed his interest to be the Councillorship flag bearer of the APC, on the

payment of the sum of N10,000.00 (Ten thousand Naira) to the 1st Respondent, as fee for Expression of interest, the 1st Respondent duly issued "Expression of interest" form to the Petitioner which the Petitioner filled and submitted to the 1st Respondent. The Petitioner also paid the sum of N50,000.00 (Fifty thousand naira) for the Nomination form of the 1st Respondent with respect to Ugu Ward 9. The Petitioner was duly sponsored by at least 10 registered voters of Ugu Ward 9. In line with Article 20(ii) (a) of the APC Constitution enacted in October, 2014 as amended, the APC party executives and the party leaders in Ugu Ward 9 endorsed the Petitioner as the party's consensus councillorship candidate for Ugu Ward 9. The letter of endorsement was sent to Orhionmwon Local Government Council Secretariat of APC, Edo State by the ward executives of Ugu ward 9, the Petitioner was also given a copy. The Petitioner stated that the APC party leaders met with party Executives, party Chairman and Secretary of the APC Orhionmwon Local Government Council. They all gathered and compiled and signed a comprehensive list of the Orhionmwon Local Government Council party's Chairman, Vice Chairman and Councillorship candidates. The Petitioner's name was listed as the nominated candidate for Ugu Ward, 9. The list was signed by the Chairman, Secretary and party leaders.

On 24th January, 2018, the APC party members, Executives of the APC party in Ugu Ward 9, Orhionmwon Local Government Council, Edo State at the Council's Secretariat in Abudu voted "YES" in favour of the Petitioner as the APC consensus councillorship candidate, for Ugu Ward 9, Orhionmwon Local Government Council, hence the comprehensive list of the Orhionmwon Local Government Council APC was forwarded to the 1st Respondent through the office of the 2nd Respondent as the Chairman, Edo State Chapter of the 1st Respondent.

On 30th January, 2018 the Petitioner was notified from the office of the party public relation officer, Edo State Secretariat of the 1st Respondent to come to the State Secretariat for the issuance of FORM A1 (State Independent Electoral Commission form of Nomination of Local Government Council as the councillorship candidate of

the 1st Respondent for Ugu Ward 9). On getting there on the 30th January, 2018, FORM A1 was not issued to the Petitioner, instead the 2nd Respondent issued the said FORM A1 to Omorogbe Osaro, the 3rd Respondent.

That the 3rd Respondent never participated in the 1st Respondent's councillorship primary election for the nomination in Ugu Ward 9, that the 3rd Respondent was unlawfully imposed by the 2nd Respondent as the councillorship candidate of the 1st Respondent for Ugu Ward 9, Orhionmwon Local Government Council, Edo State.

The facts of the case according to the 1st, 2nd, 3rd and 5th Respondents as can be gathered from the Reply to the Petition is that the 3rd Respondent is the Hon. Councillor representing Ugu ward 9 at Orhionmwon Local Government Council. He is an ardent and financial member of APC. A voter who was duly nominated and sponsored for the position by the 1st Respondent. That the Petitioner was aware of the 1st Respondent's guidelines issued that those who lost their units like the Petitioner in the last gubernatorial elections will not qualify to contest the election. That the 3rd Respondent was the unopposed candidate of the 1st Respondent in Ward 9 of Orhionmwon Local Government Area for the primaries conducted on the 24th January, 2018 and he was presented with a result sheet. That the Petitioner was disqualified at the screening exercise conducted by the 1st Respondent on 23rd January, 2018 for his inability to win his Unit 1 of Ward 9. That the 1st Respondent issued guidelines for the conduct of Local Government Council Election in line with the powers conferred on it by its constitution. Paragraph 5(c) of the said guidelines prescribed winning of a prospective aspirant unit in the 2016 gubernatorial elections as a condition precedent to qualify the person to contest the primary election. That there was no substitution or replacement but a disqualification based on a parameter predetermined by the 1st Respondent vide its guidelines. That nobody notified the Petitioner to come and pick form from the office of the 1st Respondent's public relation office since they were all aware of his disqualification and consequent bar from partaking in the primary election of 24th January, 2018. That the 1st Respondent issued a notice of venue for Local

Government Council primaries across Edo State and the venue for Orhionmwon Local Government Area was APC party Secretariat, Abudu. That officials were appointed to conduct the said primary election in various local government areas. Those posted to Orhionmwon were Hon. Christopher Adesotu as Chairman, other members of the committee were Joseph Imasuen and David Oghile.

That on 24th January, 2018, a voice vote was called since the 3rd Respondent was unopposed in line with Article 20 (ii) (a) of the 1st Respondent's constitution. The 3rd Respondent's candidature was ratified and he was issued with the result sheet. The 3rd Respondent's name was forwarded to the 4th Respondent by the 1st Respondent. That upon verification of the 3rd Respondent's nomination, he was issued Form B in line with Section 24(5) of Edo State Electoral Law. He was also issued with EDSIEC form M. The 3rd Respondent filled the personal particulars of candidate for local Government Election form and submitted same to the 4th Respondent. That the 4th Respondent issued the EDSIEC Form M2 showing the list of candidates finally cleared by EDSIEC for the Local Government Election in Orhionmwon Local Government Council. That the name of the 3rd Respondent is Number 12. That the 3rd Respondent was the consensus candidate of 1st Respondent in ward 9 of Orhionmwon Local Government Area. That there was no imposition as the 3rd Respondent won the primary election.

We shall take a close look at Sections 78, 80 and 81 of the Edo State Electoral Law, 2012 which provides as follows:

Section 78 of the Edo State electoral Law, 2012 provides thus:

§78(1) There shall be established for the state one or more election tribunal to be known as Local Government Election Tribunal which shall to the exclusion of any court or Tribunal have original jurisdiction to hear and determine petitions as to whether:

- (a) Any person has been validly elected to the office of Chairman or Vice Chairman or Councillor.

- (b) The term of office of the Chairman, Vice Chairman and Councillor has ceased;
- (c) The seat of the Chairman, vice - Chairman or councillor is vacant.ö

Section 80

- (1) An election petition may be presented by one or more of the following persons.
 - (a) A person claiming to have had a right to be elected or returned at the election; or
 - (b) A person alleging himself to have been a candidate at the election
 - (c) A Political party which participated in the election.ö

Section 81

- (1) An election may be questioned on the following grounds
 - (a) that the person whose election was questioned as at the time of the election was not qualified or was disqualified from being elected as a member of a council.
 - (b) that the election was voided by corrupt practices or offences against this law;
 - (c) That the Respondent was not elected by a majority of lawful votes at the election.
 - (d) That the Petitioner was validly nominated but was unlawfully excluded from the election.ö

The grounds of this Petition are as follows:

“ GROUNDS OF THE PETITION

1. That the Petitioner ó Robinson Aruoma Brown was validly nominated by the 1st Respondent but was unlawfully excluded from the Local Government Elections held on the 3rd day of March 2018.
2. That the 3rd Respondent ó Omorogbe Osaro as at the time of the Local Government election in March, 2018 was not qualified to be elected as a member of ORHIONMWON LOCAL GOVERNMENT COUNCILö

From our understanding of Section 78(1) (a) of the Edo State Electoral, Law 2012 which provides for the determination of whether any person has been validly elected to the office of Chairman or Vice Chairman or Councilor.

In our view, the sub-paragraph provides for election matters which gives rise to post-election and not pre-election proceedings.

From the facts presented by the Petitioner himself, the cause of action arose on 30th January, 2018 when he went to the APC State Secretariat for issuance of FORM A1 and same was not issued to him but issued to the 3rd Respondent-Omorogbe Osaro by the 2nd Respondent.

Thus, the cause of action arose on 30th January, 2018, over a month before the Elections held on 3rd March, 2018.

The main reliefs claimed by the Petitioner, same are clearly out of the jurisdiction of this Election Petition Tribunal as they are predicated on Pre-Election matters. Section 78(1) (a) of the Edo State Electoral Law, 2012 cannot avail the Petitioner as the Sub-paragraph does not provide for litigation arising from party primaries.

See **Ucha v Onwe** (2011) 4 NWLR (PT 1237) 386.

The provisions of Section 80 of the Edo State Electoral Law, 2012 reproduced above is in respect of person who may present an election petition.

The position of the law is firmly established that where the words of a statute are very clear and unambiguous, courts are duty bound to give their literal, ordinary and usual meaning.

In this instant case, Section 80 of the Edo State Electoral Law, 2012 (Supra) is lucid, clear and unambiguous. Hence, its interpretation need not be a belabouring task. Under the said provision, the categories of persons who can in the main present an Election Petition are, a person claiming to have had a right to be elected or returned at the election, a person alleging himself to have been a candidate at the election and a political party which participated in the election.

From the facts pleaded in the petition, the Petitioner by his own presentation said he was the nominated councillorship candidate of APC for Ugu Ward 9, but he was not given the Form A₁ and was excluded from the Local Government Elections in Edo State which held on 3rd March, 2018.

In the case of **Tsoho v Yahaya** (1994) 4 NWLR (PT.600) 657 at pp 671 ó 672, the Court of Appeal held thus:-

- õ Nomination is an act of suggesting or proposing a person by name to an election body as a candidate for an elective office. This certainly forms part of the preliminary matters before the actual Election is conducted. The person nominated has not yet come to occupy that office. So he is not yet to be cavated and not ripe to be contested. If he jumps the hurdle of nomination, his next herculean task is to possess the mandatory qualifications which will admit him to contest the election. Once he stands for the election, he can now be properly petitioned before the Tribunal or he can himself petition others on any of the grounds upon which petition can be filed to the Tribunal as provided under the Decree.ö

The Petitioner in his reply to the preliminary objection seems to have anchored his right to present this petition as a person entitled to be elected or returned at the election as provided by Section 79 (1) (a) of the Edo State Electoral Law, 2012.

We have taken a close look at the Edo State Electoral Law, 2012.

There is no Section 79(1) (a) in the Electoral Law. We accordingly hold that the Petitioner having not participated or been a candidate in the Local Government Elections in Edo State which held on 3rd March, 2018, he has no locus standi to present this Election Petition.

The 1st ground upon which the petition is predicated is that the Petitioner was validly nominated by the 1st Respondent but unlawfully excluded from the Local Government Elections which held on the 3rd March, 2018.

From the facts in support of the petition, the Petitioner in a nutshell stated that he was duly sponsored by at least ten registered voters in Ugu Ward 9, the APC party executives and party leaders in Ugu Ward 9 endorsed him as the party consensus

councillorship candidate for Ugu Ward 9. The endorsement was sent to APC State Secretariat and Ward Executives of the Ugu Ward.

The APC Leaders, Party Executives, party Chairman and Secretary, all of APC Orhionmwon Local Government Council met and compiled a list of the APC Chairman, deputy chairman and councillorship candidates for Orhionmwon Local Government Council, his name was listed as the duly nominated candidate for Ugu Ward 9. The comprehensive list was duly signed by the chairman, Secretary and Party Leader in Orhionmwon Local Government Council.

On 24th January, 2018, the APC party members and executives in Ugu Ward 9, gathered at the Orhionmwon Local Government Secretariat in Abudu and APC party members and Executives voted "YES" in his favour as the APC consensus councillorship candidate for Ugu Ward 9 for the Local Government Council Elections. The comprehensive list was forwarded to APC through the office of 2nd Respondent as the Chairman of Edo State Chapter of APC.

On 30th January, 2018, the Petitioner was notified from the office of the APC Public Relation Officer, Edo State Secretariat for the issuance of FORM A1 but the form was not given to him but the 2nd Respondent issued same to the 3rd Respondent.

The above facts were controverted by the 1st, 2nd, 3rd and 5th Respondents in their Reply to the petition. They stated that the Petitioner was disqualified at the Screening exercise conducted by the 1st Respondent on 23rd January, 2018 for his inability to win his Unit 1 of the Ward 9. That the party guidelines issued for the conduct of the Local Government Council Elections-paragraph 5 (c) prescribe winning of a prospective aspirant unit in the 2016 gubernatorial election, that the 3rd Respondent was returned unopposed, that there was no substitution or replacement but a disqualification based on APC guidelines.

The APC issued a notice of venue for the Council Elections and it was APC Party Secretariat, Abudu. The Officials who were posted to conduct the Orhionmwon Primary Election was led by Hon. Christopher Adesotu as Chairman, Joseph Imasuen

and Daniel Ighile. On 24th January, 2018, when it was the turn of Ugu Ward 9, to elect their councillorship candidate, a voice vote was called since the 3rd Respondent was unopposed, the 3rd Respondent's candidature was ratified and he was issued a result sheet. Both the Petitioner and 1st, 2nd, 3rd and 5th Respondents placed reliance on Article 20(11) (a) of the APC constitution October, 2014 (as Amended), which provides as follows:

§20(a) All party post prescribed or implied by this Constitution shall be filled by democratically conducted elections at the respective National Convention or Congress subject where possible, to consensus provided that where a candidate has emerged by consensus for an elective position, a vote of 'YES' or 'NO' by ballot or voice shall be called, to ensure that it was not an imposition which could breed discontent and crisis.

Both the Petitioner and 3rd Respondent claimed to have won the primaries of Ugu Ward 9. The Petitioner's name was not forwarded by APC to Edo State Independent Electoral Commission but the 3rd Respondent as a candidate for the Local Government Council Elections that held on 3rd March, 2018.

Flowing from the facts above, it is clear that this Petition has to do with pre-Election matters, who was nominated or sponsored by APC as a candidate for the Ugu Ward 9 Councillorship Election and the right of a political party to nominate or sponsor a candidate for an elective position.

In the case of **Ozigbo v PDP** (2010) 9 NWLR (PT1200) 601 at p. 609 the court held as follows:-

§ The courts do not interfere in affairs of political parties and matters raising political questions as to how a political party should be run or who should be its candidate at an election-is strictly a matter within the exclusive jurisdiction of the political parties which the courts lacks the jurisdiction to interfere with. A political party has the unfettered right to nominate or sponsor a candidate it likes for any election and the court have no jurisdiction to inquire into the issue. It is within the internal affairs of political parties which is exclusive to the parties and not within the competence of the court.

In the case of **Uzodinma v Izunaso** (No 2) Supra p. 60, the apex court held thus:

- õ The nomination of a candidate to contest an election is the sole responsibility of the political party concerned. The court do not have jurisdiction to decide who should be sponsored by any political party as it candidate in an election.ö

Also in **Eyiboh v Abia** (2012) 16 NWLR (PT 1325) at p. 86, the Apex court held thus:-

- õ Nomination of a candidate for an Election is a political matter which falls within the domain of the political party. The court does not make it a practice to interpolate in such an exercise. This is because it is not the function of the court to impose a candidate on any political party.ö

The Apex court further held on page 87 thus:

- õ Nomination or Sponsorship of a candidate for election is a political matter solely within the discretion of a political party.ö

Also, in the case of **PDP v Onwe** (2011) 4 NWLR (PT 1236) 166, the Supreme Court held that Nomination/substitution exercise of a party is clearly an intra party/pre-election issue which has nothing to do with an election and over which an election tribunal has no jurisdiction.ö

In the case of **Ibrahim v Umar** (2012) 7 NWLR (PT1300) 507 at p. 536, the Court of Appeal held thus:-

- õ Any judgment delivered by an Election Tribunal on a pre-election matter is a nullity.ö

Thus, this Tribunal has no jurisdiction to determine this petition being a pre-election matter.

Section 134 (1) (d) of the Electoral Act, 2002 is in pari-materia with Section 81 (d) of the Edo State Electoral Law, 2012.

Section 134 (1) (d) of the Electoral Act, 2002 was construed in the case of **Okonkwo V INEC** (2004) 1 NWLR (PT 854) 242 at p. 294 thus:-

õ The provisions of Section 133 (1) (a) and (b) of the said Electoral Act, 2012 states:

- (a) An election petition may be presented by one or more of the following persons:
- (b) a candidate at an election,
- (c) a political party which participated at the election

Section 134 (1) (d) of the same Act also states:

õ(1) An election may be questioned on any of the following grounds, that is to say:

- (d) That the Petitioner or its candidate, was validly nominated but was unlawfully excluded from the election.

It is apparent that while Section 133 reproduced relates to person entitled to present election petition, Section 134 also reproduced Supra, is in respect of ground for petition. The two are not one and the same but are distinctively expressing two different situations.

Section 134 as correctly positioned can only become relevant after the initiation pursuant to Section 133. In other words, it is the party permitted under Section 133 that can proceed upon Section 134 to put forth the grounds complained of.

The Court of Appeal further held on page 295 thus:

- õ Having regard to the provision of Section 133(1) (d) of the Electoral Act read in conjunction with the authority in the case of **Tsoho v Yahaya** (Supra) the term candidate in my humble opinion and also as rightly submitted by the respondents, can be none other but that which contemplates only a person who contested an election.

This tribunal had earlier held that the Petitioner having not participated or be a candidate in the Local Government Election which held on 3rd March, 2018, has no locus standi to present this petition.

We further hold that the Petitioner not being a candidate in the Local Government Election in Edo State which held on 3rd March, 2018, he has no locus standi to present this petition under the first ground of the petition.

The second ground of the petition is that the 3rd Respondent- Omorogbe Osaro as at the time of the Local Government Election on March 3rd, 2018, was not qualified to be elected as a member of Orhionmwon Local Government Council.

This court having held that it lacks jurisdiction to hear and determine this petition, the 2nd ground of the petition and all other issues raised in this petition have become academic and any attempt to resolve same becomes an exercise in futility.

In sum after due consideration of this preliminary objection by Motion on Notice, this Local Government Election Tribunal lacks jurisdiction to hear and determine this petition NO. ELGEP/01/2018. It is accordingly struck out.

There shall be no order as to cost.

HON. JUSTICE U.I. ERAMEH (MRS.)
CHAIRMAN
27TH JUNE, 2018

HON. JUSTICE P.A. AKHIHIRO
MEMBER I
27TH JUNE, 2018

D. O. ELOGIE ESQ.
MEMBER II
27TH JUNE, 2018

E. I. BAZUAYE (MRS.)
MEMBER III
27TH JUNE, 2018

J. OGBEIDE ESQ.
MEMBER IV
27TH JUNE, 2018