

Senator Ayogu Eze v. Hon. Ifeanyi Lawrence Ugwuanyi and Ors: An Answer to *Locus Standi* and Jurisdiction in Nigerian Jurisprudence

Godwin Emeka Ngwu¹

¹ Lecturer and Head of Department of Private Law, Enugu State University of Science and Technology, Enugu

Correspondence: Godwin Emeka Ngwu, Lecturer and Head of Department of Private Law, Enugu State University of Science and Technology, Enugu.

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Abstract

Equally settled is the fact that as at the moment, the only window opened for the courts to entertain action on and/or concerning nomination of candidates for any election by political parties is as provided under section 87(8) or (9) or (10) of the Electoral, Act 2010, (as amended)... “As a result of the above provision conferring (sic) this court has held, in very many cases, that only an aspirant in the primary election conducted by the political party can question the result or nomination or declaration of any person by the party as the winner of the primary election. Consequently, the sponsored candidate of the political party concerned in the election in issue. It follows, therefore, that no other person or member of the political party concerned, has the locus to challenge or question the nomination of any candidate by a political party for any election.” Even at the risk of repetition, the appellant was not a candidate in the governorship primary election that was held in Enugu State in 2015, as such he lacked the locus to challenge the declaration of the 4th respondent as the winner of the said primary. However, section 87(9) of the Electoral Act, 2010 (as amended) gives the courts very limited jurisdiction to ensure that in the selection or nomination process, political parties do not act arbitrarily but within the confines of their constitution and Electoral Guidelines, and in accordance with the provisions of the Electoral Act. The appellant failed to bring himself within the purview of section 87 (9) of the Electoral Act He was not an aspirant in the primary election from which the 4th respondent emerged. He therefore lacked the locus standi to institute the action. There is no reason to interfere with the sound reasoning of the court. Jurisdiction is the bedrock of every litigation be it civil or criminal, however, in this case, the court is heavily clothed with jurisdiction to entertain a matter bordering on political parties primary elections by virtue of section 87(8) or (9) or (10) of the Electoral Act 2010, as amended..., *Locus-Standi* is an indisputable principle of law that can be raised at any stage of judicial proceedings, *locus-Standi* determines whether a party to a litigation is armed with power or legal capacity to institute an action before the courts of law, however Senator Ayogu Eze who is the plaintiff/ respondent lacked the right of action, on his failure to participate in primary elections organized by the national committee headed by king Asara; has forfeited or negated his legal capacity to institute action in the court of first instance.

1. Introduction

Ayogu Eze, a Senator, who emerged the governorship candidate of the PDP at a parallel primary on the same day, had instituted a suit challenging Mr. Ugwuanyi's election for the same position at a different primary held in another location. He prayed the court to restrain the PDP from submitting the name of any other candidate other than him to the Independent National Electoral Commission as the party's governorship candidate.

He joined the National Chairman of the PDP, Adamu Mu'azu, and the INEC as defendants.

The National Working Committee of the respondent appointed a panel under the leadership of His Royal Highness King Asara A. Asara to conduct the primary election of 8th December, 2014. The appellant refused to

participate in the primary election conducted by H.R.H Asara A Asara, on the ground that the list submitted for the primary election which was in possession of King Asara A Asara deviated from his own. It was his claim that a parallel primary election in which the list of delegates sanctioned by the Federal High Court was used in conducting the election, had elected him as the Governorship candidate of the 1st respondent. The appellant did not give particulars of the body that appointed the panel that conducted the primary in which he was elected the gubernatorial candidate of the 1st respondent.

2. Facts of the Case

The 1st respondent, a political party that sponsored the 4th respondent at the Governorship Election which took place in 2015 throughout Enugu State, had on 1st November 2014 conducted ward congresses in all the wards of that state in which three delegates were elected from each ward. The delegates so elected were saddled with the responsibility of voting in the primary election fixed for 8th December, 2014 in order to elect the 1st respondent's candidate for the Governorship Election in Enugu State. When an issue arose as to the 1st respondent's commitment¹ to utilizing the list of the delegates proceeded to the Federal High Court and initiated a case. In his judgment, Ademola, J. sanctioned and or recognized the list submitted by the plaintiffs as the authentic delegates to the primary election. The appellant claimed that he was also elected as the candidate of the 4th respondent at the primary conducted with the list of delegates sanctioned by the Federal High Court. The National Working Committee of PDP, however, appointed a panel under the leadership of Asara A. Asara that conducted Governorship Primaries of PDP pursuant to which the 4th respondent (Hon. Ifeanyi Ugwuanyi) emerged as the Governorship candidate of PDP for Enugu State. Irked by that development, the appellant approached the Federal High Court by originating summons against the respondents and sought the determination of several questions; and claimed several declaratory and injunctive reliefs against the respondents. The thrust of the appellant's reliefs was that he been declared the duly elected candidate on the platforms of the PDP as Governorship candidate for Enugu State at the general election of 2015. Upon service of the originating summons and supporting affidavit, the respondents filed notices of preliminary objections as well as their counter-affidavits in opposition to the originating summons. The trial court heard arguments in respect of the preliminary objections and the substantive suit together. In its judgment on 2nd March, 2016, the trial court overruled the preliminary objections, jurisdiction and dismissed the appellant's suit. Dissatisfied, the appellant appealed to the Court of Appeal. The 1st, 2nd and 4th respondents were also dissatisfied with the judgment of the trial court, and also appealed. The Court of Appeal in its judgment on 15th February, 2017 affirmed the trial court's finding and dismissed the appellant's appeal. It however allowed the respondents' appeal and struck out the appellant's action for lack of necessary *locus standi*.

Aggrieved, the appellant appealed to the Supreme Court. At the Supreme Court, the appeal turned on whether the appellant had *locus standi* to initiate or institute the action.

Held (Unanimously dismissing the appeal): The foregoing decision and numerous others still bind not only the lower court but this court as well. Arising from this reality, the overwhelming issue in the appeal is accordingly resolved against the appellant and his unmeritorious appeal is dismissed. The lower court's unassailable judgment is hereby affirmed.

3. The Principle of Jurisdiction in Law

On fundamental issue in law is that of jurisdiction of court. The issue of jurisdiction is very fundamental and radical. It is the foundation, the bedrock, so to say, of litigation. Where it is lacking, there is a want of competence on the part of the court to try the matter. Thus, proceedings of the court embarked upon without the necessary jurisdiction, being a nullity *ab initio*, will be set aside on appeal notwithstanding how well conducted.

Characteristics of jurisdiction.

- (1) Jurisdiction is the life wire of every case.
- (2) It can be raised at any stage of the proceeding.
- (3) It can be raised without the leave of the court.
- (4) Jurisdiction cannot be waived.

A court is competent to adjudicate in a cause or matter in the following circumstances:

- (a) When it is properly constituted as regards numbers and qualifications 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 comes before the court initiated by due process of law and upon the fulfillment of any condition

¹ Barr. Orji Chinenye Godwin and Ors v. People Democratic Party and Ors. Suit No. FHC/ABJ/CS/816/2014.

precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity, no matter how well conducted; the defect is extrinsic to the adjudication, see *Madukolu v. Nkemdilim*¹.

On Jurisdiction of court to look into complaints arising from conduct of political party's primary election. Ordinarily, matters relating to the selection and nomination of candidates for an election are within the sole preserve of the political party and the courts do not have jurisdiction to look into any complaint arising therefrom. However, the Electoral Act, 2010 (as amended)² gives the courts very limited jurisdiction to ensure that in the selection or nomination process, political parties do not act arbitrarily, but within the confines of their Constitution and Electoral Guidelines, and in accordance with the provisions of the Electoral Act. Section 87 (9) of the Act³ provides a window for an aspirant who complains that any of the provisions of the Electoral Act or his party's guidelines have not been complied with in the selection or nomination of the party's candidate for the election, to ventilate his grievance before the Federal High Court, a State High Court or the High Court of the Federal Capital Territory. Not only must his complaint relate to noncompliance with the Act or his party's Guidelines, he must also bring himself within the purview of the subsection by showing that he was an aspirant in the election complained of, see *Onuoha v. Okafor*⁴.

4. Meaning and Nature of Locus-Standi

Locus standi is the legal right or power or capacity or standing of a party to institute an action in a court of law. The *locus standi* of a plaintiff or a petitioner is a crucial matter touching on the competence and the jurisdiction of the court to adjudicate on the suit, or petition, or application before it. It is a fundamental jurisdictional question that can be raised at any time during the trial as a preliminary issue or even raised for the first time on appeal. Thus, in this case the *locus standi* of the appellant to institute the action was crucial in determining whether the trial court was clothed with the necessary jurisdiction to entertain the suit see *Egolum v. Obasanjo*⁵.

Who is an aspirant? An aspirant is a person who contested in the primary election of his party. He must be someone who actually participated in the primary election he is challenging. See: *P.D.P v. Sylva* (2012)⁶ 13 NWLR (Pt. 1316) 85 @ 126 A-E; *Lado v. C.P.C*⁷(2011) 18 NWLR (Pt. 1279) 689; *Shinkafi v. Yari*⁸ (2016) 7 NWLR (Pt. 1511) 340. What is more, the primary election he is complaining about must have been conducted by the National Execution Committee or National Working Committee of the party. The appellant did not participate in the primary election conducted by the King Asara A. Asara Election Committee set up by the 1st respondent. He was adamant that the election conducted using ad-hoc list of delegates sanctioned by the Federal High Court in suit No.FHC/ABJ/C5/8I6/2014⁹ was the authentic election.

The resolution of this matter is quite straightforward. Having not participated in the primary election conducted by HRH King Asara A. Asara Electoral Panel, mandated by the 1st and 2nd respondents to conduct the primary election, the appellant failed to bring himself within the purview of section 87 (9) of the Electoral Act He was not an aspirant in the primary election from which the 4th respondent emerged. He therefore lacked the *locus standi* to institute the action. There is no reason to interfere with the sound reasoning of the court.

5. Conclusion

Equally settled is the fact that as at the moment, the only window opened for the courts to entertain action on and/or concerning nomination of candidates for any election by political parties is as provided under section 87(8) or (9) or (10) of the Electoral Act 2010, as amended...

As a result of the above provision conferring (sic) this court has held, in very many cases, that only an aspirant in the primary election conducted by the political party can question the result or nomination or declaration of any person by the party as the winner of the primary election.

Consequently, the sponsored candidate of the political party concerned in the election in issue. It follows, therefore, that no other person or member of the political party concerned, has the locus to challenge or question

¹ (1962) 2 SCNLR 341

² Section 87 (9)

³ Electoral Act 2010 (as amended) supra mentioned.

⁴ (1983) SCNLR 244

⁵ (1999) 7 NWLR (Pt.611) 355 referred to.] (P.23, paras. F-G)

⁶ (2012) 13 NWLR Cpt. 13 16) 85 at 126 A – E.

⁷ (2011) 18 NWLR (Pt. 1279) 689

⁸ (2016) 7 NWLR (Pt 1511) 340.

⁹ Barr. Orji Chinyere Godwin and 2 Ors. v. P.D.P & 4 Ors certified before.

the nomination of any candidate by a political party for any election. Even at the risk of repetition, the appellant was not a candidate in the governorship primary election that was held in Enugu State in 2015, as such he lacked the locus to challenge the declaration of the 4th respondent as the winner of the said primary.

However, section 87(9) of the Electoral Act, 2010 (as amended) gives the courts very limited jurisdiction to ensure that in the selection or nomination process, political parties do not act arbitrarily but within the confines of their constitution and Electoral Guidelines, and in accordance with the provisions of the Electoral Act.

The appellant failed to bring himself within the purview of section 87 (9) of the Electoral Act. He was not an aspirant in the primary election from which the 4th respondent emerged. He therefore lacked the locus standi to institute the action. There is no reason to interfere with the sound reasoning of the court.

6. Recommendations

Jurisdiction is the bedrock of every litigation be it civil or criminal, however in this case the court is heavily clothed with jurisdiction to entertain a matter bordering on political parties primary elections by virtue of section 87(8) or (9) or (10) of the Electoral Act 2010, as amended..., *Locus-Standi* is an indisputable principle of law that can be raised at any stage of judicial proceedings, *locus-Standi* determines whether a party to a litigation is armed with power or legal capacity to institute an action before the courts of law, however Senator Ayogu Eze who is the plaintiff/ respondent lacked the right of action, on his failure to participate in primary elections organized by the national committee headed by king Asara; has forfeited or negated his legal capacity to institute action in the court of first instance.

References

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