

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON THURSDAY, THE 24TH DAY OF SEPTEMBER, 2026
BEFORE THEIR LORDSHIPS

ADAMU JAURO

JUSTICE SUPREME COURT

EMMANUEL AKOMAYE AGIM

JUSTICE SUPREME COURT

HARUNA SIMON TSAMMANI

JUSTICE SUPREME COURT

MOORE ASEIMO ABRAHAM ADUMEIN

JUSTICE SUPREME COURT

STEPHEN JONAH ADAH

JUSTICE SUPREME COURT

ABUBAKAR SADIQ UMAR

JUSTICE, SUPREME COURT

JOSEPH OLUBUNMI KAYODE OYEWOLE

JUSTICE, SUPREME COURT

SC/CV/495/2026

BETWEEN

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) = = = **APPELLANT**

AND

ZENITH LABOUR PARTY = = = **RESPONDENT**

JUDGEMENT

(DELIVERED BY EMMANUEL AKOMAYE AGIM, JSC)

This appeal No. SC/CV/495/2026 is against the judgment of the Court of Appeal delivered on 16-7-2026 allowing in part appeal No. CA/ABJ/CV/750/2026 by setting aside the judgment of the trial court delivered on 5-5-2026 in Suit No.FHC/ABJ/CS/509/2026 in respect of S.77(5) to (7), S. 84(2) of the Electoral Act 2026 and Activity Serial Number Two of the INEC Revised Timetable and Schedule and Schedule of Activities for 2027 General Election, declaring these provisions unconstitutional and void.

Dissatisfied with the judgment of the Court of Appeal, the appellant herein on 28-7-2026 filed a notice of appeal against the said judgment commencing this appeal in this court. The parties herein have filed, exchanged and adopted their respective briefs as follows- appellant's brief, respondent's brief and appellant's reply brief.

The appellant's brief raised the following issues for determination:-

1. **"Whether the learned Justices of the Court of Appeal lack the jurisdiction to entertain and allow Respondent's appeal having regards to the suit as constituted. (Encompassing Grounds 1 and 10 of the Notice of Appeal).**

2. Whether the provisions of Section 77(2)(4)(5)(6) & (7) of the Electoral Act, 2026 and Activity Number 2 of the Appellant's Schedule of Activities for the 2027 General Election are inconsistent with the provisions of Section 65(2)(b), 106(d), 131(c), 142(2), 177(c) and 187(2) and Paragraph 15(a)-(i)) of the Third Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore null and void. (encompassing Grounds 2,3,4,5 and 6 of the Notice of Appeal.)
3. Whether the learned Justices of the Court of Appeal were right in the construction and interpretation of Section 84(2) of the Electoral Act, 2026 and Sections 221, 222© of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). (Encompassing Ground 7).
4. Whether the learned Justices of the Court of Appeal were right in striking down the provisions of Section 77(5)(6) & (7) and Section 84(2) of the Electoral Act, 2026 having regards to the provisions of Section 228(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Respondent's suit as constituted. (Encompassing Grounds 8, 11 and 12 of the Notice of Appeal).

5. Whether the learned Justices of the Court of Appeal were right when they nullified and set aside Activity Serial No. 2 of the Appellant's Revised Time Table and Schedule of activities for the 2027 General Election as being inconsistent with Section 77(4) of the Electoral Act 2026. (Encompassing Ground 9)."

The respondent's brief raised the following issues for determination:-

1. "Whether the non-joinder of the National Assembly as a party in the suit renders the Respondent's suit incompetent and robbed the court the jurisdiction to entertain same. (Grounds 1 and 10 of the Notice of Appeal.)
2. Whether the learned justices of the court below were right in their findings and holding that Section 77(5), (6) of the Electoral Act, 2026 and Activity No. 2 of the Appellant's Schedule of Activities for the 2027 General Election are inconsistent with the provisions of Section 65(2)(b), 106(d), 131(c), 142(2), 177(c) and 187(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, null, void and of no effect whatsoever. (Appellants Grounds 2, 3, 4, 5, 6 & 8).

3. Whether the lower court was right when it held that Section 84(2) of the Electoral Act 2026 which gave the Appellant power to dictate how political parties choose their candidates in their primary elections is in conflict with Section 222(c) of the 1999 Constitution as amended). (Derived from Ground 7 of the Notice of Appeal)."

The respondent filed and argued a preliminary objection to this appeal, but withdrew same at the hearing of this appeal.

This appeal is determined on the basis of the issues raised for determination in the appellant's brief.

Let me start with issue No. 1 that asks –

"Whether the learned Justices of the Court of Appeal lack the jurisdiction to entertain and allow Respondent's appeal having regards to the suit as constituted".

I have carefully read and considered the arguments in all the briefs on this issue.

Learned SAN for the appellant argued that in the suit nisi priu, the respondent herein as plaintiff made several complaints against the National Assembly, that the principal reliefs were targeted at the National Assembly, that the trial court made far reaching findings against it, that it is therefore a necessary party

to the suit and that the non-joinder of the National Assembly as a party in the suit renders the suit incompetent and robbed the court of the jurisdiction to entertain same.

Learned SAN for the respondent argued in reply that it is evident from the questions raised for determination and the reliefs claimed for in the originating summons that it is the appellant that the respondent has grouse with, that the suit challenged the actions, directives and regulations of the appellant pursuant to S.77(4) –(7) and 84(2) of the Electoral Act 2026 that affect the respondent's activities as a political party, that considering the validity of the said statutory provisions under which the actions, directives and regulations were made on the basis of Ss. 65(2)(b), 106(d), 131(c), 142(2), 177(c), 187(2), 221, 222(b) and (c) and 228 of the Constitution of the Federal Republic of Nigeria, 1999 (the 1999 Constitution) does not necessarily imply a challenge of the authority or action of the National Assembly, that there is nothing in the reliefs claimed for that targets the National Assembly, that to require that the National Assembly must be joined as a party in every action that challenges the constitutional validity of an Act of the National Assembly would be absurd, that the questions raised for determination and the reliefs claimed for in the suit were

effectually and completely determined in the judgment of the trial court without the National Assembly joined as a party and that the National Assembly is not a necessary party to the suit. For these submissions, Learned counsel relied on Order 9 Rule 14 of the Federal High Court (Civil Procedure) Rules 2019, *Mbanefo V Molokwu &Ors* (2014) LPELR- 22257(SC) and *Sifax (Nig) Ltd & Ors V Migfo Nig Ltd & Anor* (2018) LPELR- 49735(SC).

Let me now determine the merit of these arguments.

The questions raised for determination and the reliefs claimed for in the originating summons glaringly show that the suit challenged the constitutional validity of Ss.77(4) –(7) and 84(2) of the Electoral Act 2026 under which the appellant's actions, directives and regulations that affect the respondent's rights and activities as a political party were made on the basis of their alleged inconsistency with Ss. 65(2)(b), 106(d), 131(c), 142(2), 177(c), 187(2), 221, 222(b) and (c) and 228 of the 1999 Constitution. The appellant is the competent authority established by Paragraphs 14 and 15 of Part 1 of the Third Schedule to the 1999 Constitution and S.2 of the Electoral Act 2026 to administer and enforce the provisions of the Electoral Act 2026 in the conduct of elections. The appellant's disputed actions, directives and regulations were carried out in the execution of its statutory

duty to enforce and administer the Electoral Act 2026, an Act of the National Assembly. The joinder of the National Assembly as party in this suit is not made compelling merely because the suit challenged appellant's actions, directives and regulations on the ground that the provisions of the Act of the National Assembly under which the appellant acted are unconstitutional. The National Assembly does not have to be joined as a party in every suit challenging the constitutionality of an Act or any provision of such an Act made by it. There is no law requiring it must be joined as a party in every such action. To require that it be so joined would result in the unreasonable situation in which the National Assembly is faced with an overwhelmingly excessive and unnecessary number of litigations concerning the constitutionality of its Acts.

However, in line with the general law deriving from established case law that the need to join a party in a suit becomes compelling if it is a necessary party in the suit, it can be considered if the National assembly is a necessary party in the particular proceedings, having regard to the reliefs sought and the issues that the court is being asked to determine. In other words, the need to join the National Assembly as a party in a suit of this nature can only be compelling if it is found to be a

necessary party, having regard to the questions raised for determination and the reliefs claimed for in the originating summons. In *Re: Mogaji* (1986) N.W.L.R. (pt 19) 759, this Court restated **that from the earliest times, the consideration has always been, whether the entry of the party sought to be joined is necessary for an effectual and complete adjudication of all questions in the case.** In *Green V Green (Supra)* this court again held that **necessary parties are those who are not only interested in the subject matter of the proceedings, but also who, in their absence, the proceedings could not be fairly dealt with.** In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the Plaintiff. In *Mbanefo V Molokwu & Ors* (2014) LPELR- 22257(SC) this court restated that **"a necessary party to proceedings is a party whose presence is essential for the effectual and complete determination of the claim before the court. It is a party in the absence of whom the claim cannot be effectually and completely determined."** See also *Sifax (Nig) Ltd & Ors V Migfo Nig Ltd & Anor* (2018) LPELR- 49735(SC)

It is obvious from the record of this appeal that the suit in the trial court was effectually, completely and conclusively determined, resulting in the dismissal of the suit for lack of merit. The appellant has not contended that the said determination of the suit was not effectual and complete. Learned SAN for the appellant has merely argued that the National Assembly is a necessary party in the suit because the respondent made several complaints against it, that the principal reliefs were targeted at the National Assembly and that the trial court made far reaching findings against it. The appellant did not allege or contend that the non-joinder of the National Assembly made the effectual, complete and conclusive determination of the reliefs claimed for impossible and did not point out or show any complaint made against the National Assembly or any issue or relief that targeted it in the suit. The assertion of the appellant that National Assembly is a necessary party in the suit is baseless. The argument of Learned SAN for the appellant that there was a compelling need for the joinder of the National Assembly without showing that it is a necessary party in the suit is invalid.

It is noteworthy that the appellant herein, in whose favour the suit in the trial court was effectually, completely and conclusively determined, resulting in the dismissal of the suit for

lack of merit without its joinder, is now contending for the first time in this appeal against the Court of Appeal judgment that on the merits set aside the judgment of the trial court in part and granted some of the reliefs claimed for, that it is a necessary party to the suit. It is obvious that if the Court of Appeal had dismissed that appeal entirely and affirmed the judgment of the trial court, the appellant would not have raised this issue. As it is, having accepted the judgment of the trial court as a complete and effectual determination of the issues and the claim in the suit, issue No.1 herein and the appellant's arguments of same are rendered invalid. See **Onayemi V Okunubi(1966) NMLR 50 and CBN V Interstella Communications Ltd &Ors(2018) 7 NWLR (Pt.1618)294.**

In any case, Order 9 Rule 14 of the Federal High Court (Civil Procedure) Rules 2019 provides that **"A proceeding shall not be defeated by reasons of mis-joinder or non-joinder of parties and a judge may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him."** This provision prescribes the legal effect of non-joinder of a party and gives the court the discretion to deal with the matter in controversy so far as regards the rights and interest of the parties actually before it.

The courts have remained consistent in their enforcement of this or similar provisions over time. The judicially settled case law through a long line of cases that no proceedings shall be defeated by reason of mis-joinder or non-joinder of parties and that the Court shall deal with the case as presented in respect of the rights of the parties before it is the result of the consistent enforcement by the Courts over time of the Rules of Court that save proceedings from being vitiated by non-joinder or mis-joinder of the parties. This settled judicial position has now crystallized into a general principle of law. In **A.G. of Rivers State vs A.G. of Akwa-Ibom State (2011) 29 W.R.N. 1at 30**, this Court held that "the Courts have held it for quite long that no cause or matter shall be defeated by reason of mis-joinder or non-joinder of the parties and the Court may in every cause or matter, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Implicit in this principle is the notion that, provided that the named Plaintiff has the locus standi to bring the action and the action discloses a cause for it against the named Defendant, the non-joinder of another Plaintiff with the requisite locus standi or another Defendant against whom there is a cause of action, should not defeat the proceedings. The Court should determine it

as presented by the Plaintiff. In my view, this principle gives the Court the discretion to allow or not allow the proceedings depending on what it considers to be the justice of the case in the peculiar circumstances of that case .

In the light of the foregoing, issue No 1 is resolved against the appellant.

Let me now consider issue No.2 which asks Whether the provisions of Section 77(2)(4)(5)(6) & (7) of the Electoral Act, 2026 and Activity Number 2 of the Appellant's Schedule of Activities for the 2027 General Election are inconsistent with the provisions of Section 65(2)(b), 106(d), 131(c), 142(2), 177(c) and 187(2) and Paragraph 15(a)-(i)) of the Third Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore null and void.

The part of the judgment of the Court of Appeal that is the subject of this issue reads thusly –

"I have however taken note of Section 77(5) of the extant Electoral Act to the effect that only members, whose names are contained in the Register shall be eligible to vote and be voted for in a political parties' primary election. Section 77(6) of the said Electoral Act (2026) insists that the only Register that can be used to conduct primaries and conventions of a political party is the one submitted to the Respondent and Section 77(7) of the Electoral Act 2026 removes the eligibility of a Political Party who failed to submit the Register within the stipulated time to participate in the general election.

When construing a provision, it is always proper to consider the purport behind the legislation Section 77(5) – (7) of the Electoral Act, 2026 places

several types of restrictions from the clear and unambiguous wordings therein. By that subsection, an individual whose name is not in the Register at stipulated 21 days period cannot contest in primaries and also cannot vote. I wonder whether this can be seen as an addition or not. The Respondent suggests that because the Constitution is silent on this, it is not inconsistent with the Constitution. In fact, it is clear that the provisions above even affect those who would have joined a political party when Political parties were not requesting for NIN.

The question then is, whether the observations as noted, construe an addition or subtraction to the qualification to participate in an election.

.....

In as much as I am persuaded that the idea in Section 77 of the Electoral Act, 2026 is geared towards verification and making internal democracy of Political Parties more democratic, I do feel that the provision does more than mere verification for administrative reasons. The provisions vested the power to disqualify which originally is vested in the Courts, on the Respondent.

.....

"However, Section 77(5) – (7) of the Electoral Act (2026) clearly places disqualification for failure to submit the Register within stipulated time. It placed disqualification on an individual whom the Constitution had already cleared, merely because the individual joined another party after the deadline to submit Register, even if the new party is willing to sponsor him. I am unwilling to accede to the argument that membership of a political party should have a deadline, as long as the candidate is sponsored within the timetable for sponsorship and is a member of the sponsoring party when the timetable for nomination and sponsorship was still on.

.....

Guided by the foregoing, it is my humbly held view that no law can disqualify an individual already qualified by the Constitution. To my mind, the qualification as to age, member of political party and sponsorship by the political party is what is key. Any law seeking to put studs on the path of a political party to even have the right to sponsor its candidate cannot, in my mind, be seen as Constitutional. Section 77 of the Electoral Act, 2026 and the requirements of the timetable within which an individual must be a member of a party within stipulated time, is not within the field already covered by the Constitution. By the provisions of the Constitution, the person must be a member as at the date he wins his nomination. It is only an aspirant from his party that can challenge this nomination in a pre-election matter. Section 77 of the Electoral Act, 2026 vies dangerously into territory that Courts have avoided for ages, which is an internal affair of political parties.

I do not take for granted the duty of the Respondent to monitor but a class monitor does not flog erring students. He only writes down a list of noise makers or offenders and leaves the punishment to the teacher. In the instant case, the right duty on the Respondent as statutorily mandated, is to attend party primaries, as an observer and makes his report. The Respondent should not use this mandate to cherry pick who to disqualify. This duty must be left to the Courts, when an aspirant who participated in a primary election seeks to raise it. Furthermore, I do not see why the Respondent can administratively start considering issues of members who can vote or be voted for in a primary election, congresses and conventions.

.....

All I know is that a person who cannot be voted for in a primary election, cannot be a candidate in a general election. Unless maybe by consensus.

However, this point has not been legally tested. The issue of sponsorship and nomination was even made non-justiciable for being internal affairs of Political Parties.

I do not mind Section 77(1) - (4) of the Electoral Act 2026 as they will mean nothing more than mere monitoring. However, when subsection (5)-(7) are added, it vies into disqualification. It is on this note that I humbly hold that Section 77(5) – (7) of the Electoral Act are in conflict with Sections 221 of the Constitution and all Sections relating to qualification.

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I therefore grant the following reliefs:-

1. It is hereby declared that upon the proper interpretation of the combined provisions of Sections 221, 222(b), 228(a) and (b) of the Constitution of the Federal Republic of Nigeria (As amended), the plaintiff must NOT maintain and submit a digital register containing particulars such as date of birth, ward, polling unit and National Identification Number of its members to the Defendant as a precondition for the plaintiff to be eligible to field candidates in the 2027 General Elections as provided in Section 77(2), (4) and (7) of the Electoral Act 2026 and Activity Serial Number Two (2) of the Defendant's Revised Timetable and Schedule of Activities for the 2027 General Elections AND the said provisions of Section 77(2), (4) and (7) of the Electoral Act, 2026 and Activity Serial Number Two (2) of the Defendant's Revised Timetable and Schedule of Activities for the 2027 General Elections.
2. It is hereby declared that upon the proper interpretation of Sections 65(2)(b), 106(d), 131(c), 141(2), 177(c) and 187(2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), which prescribe as one of the constitutional qualifications being the

political party membership and sponsorship of candidates of the plaintiff seeking elections as Member of the House of Representatives or Senate, Member of a State House of Assembly, President, Vice President, Governor or Deputy Governor, without the stipulation of any minimum duration....."I therefore grant the following reliefs:-

3. It is hereby declared that upon the proper interpretation of the combined provisions of Sections 221, 222(b), 228(a) and (b) of the Constitution of the Federal Republic of Nigeria (As amended), the plaintiff must NOT maintain and submit a digital register containing particulars such as date of birth, ward, polling unit and National Identification Number of its members to the Defendant as a precondition for the plaintiff to be eligible to field candidates in the 2027 General Elections as provided in Section 77(2), (4) and (7) of the Electoral Act 2026 and Activity Serial Number Two (2) of the Defendant's Revised Timetable and Schedule of Activities for the 2027 General Elections AND the said provisions of Section 77(2), (4) and (7) of the Electoral Act, 2026 and Activity Serial Number Two (2) of the Defendant's Revised Timetable and Schedule of Activities for the 2027 General Elections.
4. It is hereby declared that upon the proper interpretation of Sections 65(2)(b), 106(d), 131(c), 141(2), 177(c) and 187(2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), which prescribe as one of the constitutional qualifications being the political party membership and sponsorship of candidates of the plaintiff seeking elections as Member of the House of Representatives or Senate, Member of a State House of Assembly, President, Vice President, Governor or Deputy Governor, without the stipulation of any minimum duration or period of membership of a political party of the plaintiff's candidate in the 2027 General Election, the provisions of Section 77(5), (6) and (7) of the Electoral Act, 2026 and Activity Serial

Number Two (2) of the Defendant's Revised Timetable and Schedule of Activities for the 2027 General Election are inconsistent with Sections 65(2)(b), 106(d), 131(c), 142, 177(c) and 187(2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and therefore unconstitutional, null, void and of no effect whatsoever.

5. It is hereby declared that having regards to Sections 221 and 222 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), which guarantee the plaintiff's right to function as a political party and sponsor candidates for the various elective positions in the 2027 General Elections, it is NOT within the contemplation of the Constitution that the plaintiff must submit a digital register of its members not later than 21 days before its primary elections as a precondition or qualification to function as a political party and to sponsor its candidates for elective offices; AND the provisions of Sections 77(4), (5) (6) and (7) of the Electoral Act 2026, as well as Activity Serial Number Two (2) of the Defendant's Revised Timetable and Schedule of Activities for the 2027 General Elections, to the extent that they impose additional qualification or disqualification criteria on the plaintiff to participate in the 2027 General Elections are inconsistent with Sections 221 and 222 of the Constitution of the Federal Republic of Nigeria 1999 *(As Amended) and therefore unconstitutional, null, void and of no effect whatsoever.
6. It is hereby declared that having regard to the provisions of Sections 228 and particularly 222© of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which recognize and require the registration of the Plaintiff's Constitution with the Defendant, the provisions of Section 84(2) of the Electoral Act, 2026 which restrict the modes of primary elections available to the Plaintiff to only direct primary and consensus, to the exclusion of indirect primary as accommodated by the Plaintiff's Constitution registered with the

Defendant, are inconsistent with the Constitution and therefore unconstitutional and consequently null, void and of no effect whatsoever, as the said provision constitutionally recognized right to regulate its internal affairs and internal democratic processes in accordance with its registered Constitution.

7. An Order is hereby made, nullify in and striking down the unconstitutional provisions of Section 77(5), (6) and (7) and Section 84(2) of the Electoral Act 2026.
8. An Order is hereby made nullifying and setting aside the Activity Serial Number Two (2) of the Defendant's Revised Timetable and Schedule of Activities for the 2027 General Election published on 26th February, 2026 to the extent of its inconsistency with Section 77(4) of the Electoral Act, 2026.
9. An Order is hereby made restraining the RESPONDENT, whether by itself, its Officers, Agents or Privies, from giving effect to or enforcing the said unconstitutional and unlawful provisions of 2026 and the Activity Serial Number Two (2) of the defendant's Revised Timetable and Schedule of Activities for the 2027 General Elections published on 26th February, 2026 against the APPELLANT."

I have carefully read and considered the arguments in all the briefs on this issue.

The question thrown up by the said arguments and upon which the determination of issue No 2 herein is predicated is whether Subsections (5),(6) & (7) of Section 77 of the

Electoral Act, 2026 and Activity Number 2 of the Appellant's Schedule of Activities for the 2027 General Election disqualify from a general election a member of a political party for the failure of the party to make a digital register of its members available to the Independent National Electoral Commission(the Commission) not later than 21 days before the date fixed for the party primaries, congresses or conventions or prescribe a ground of qualification for or disqualification of the members of such party from the general election. The arguments deal with the correctness of the judgment of the Court of Appeal that Subsections (5),(6) & (7) of Section 77 of the Electoral Act, 2026 and Activity Number 2 of the Appellant's Schedule of Activities for the 2027 General Election disqualify from a general election a member of a political party that did not make a digital register of its members available to the Commission not later than 21 days before the date fixed for the party primaries, congresses or conventions by providing that only members whose names are contained in the register shall be eligible to vote and be voted for in party primaries, congresses and conventions and that a party that fails to submit the membership register within the stipulated time shall not be eligible to field a candidate for the general election, that this ground of

disqualification from a general election is not prescribed in the 1999 Constitution as a ground of qualification for or disqualification from a general election, that such grounds are prescribed in Ss. 65,66, 106,107, 131, 137, 142, 177 and 182 of the 1999 Constitution, that the failure of a political party to make a digital register of its members available to the Commission not later than 21 days before the date fixed for the party primaries, congresses or conventions is not stated in the 1999 Constitution as a ground for disqualification from a general election, that the Constitution has covered the field on grounds for disqualification from general election, that the failure of a political party to make a digital register of its members available to the Commission not later than 21 days before the date fixed for the party primaries, congresses or conventions is not covered by the Constitution as such a ground, that therefore Subsections (4), (5),(6) & (7) of Section 77 of the Electoral Act, 2026 and Activity Number 2 of the Appellant's Schedule of Activities for the 2027 General Election that have introduced it as a ground of disqualification from general election is in conflict with Ss. 65,66, 106,107, 131, 137, 142, 177 and 182 of the 1999 Constitution and is to that extent void.

Let me now consider the merits of these arguments.

Section 77 of the Electoral Act, 2026 provide as follows –

(1) A Political party registered under this Act shall be a body corporate with parties to perpetual; succession and a common seal and may sue and be sued in its bodies corporate name.

(2) A party shall maintain a digital register of its members containing the name, sex, date of birth, address, State, Local Government, ward, polling unit, National Identification Number and photograph in both hard and soft copies.

(3) Upon registration, a membership card shall be issued to the member.

(4) Each political party shall make such register available to the Commission not later than 21 days before the date fixed for the party primaries, congresses or conventions.

(5) Only members whose names are contained in the register shall be eligible to vote and be voted for in party primaries, congresses and conventions.

(6) A political party shall not use any other register for party primaries, congresses and conventions except the register submitted to the Commission.

(7) A party that fails to submit the membership register within the stipulated time shall not be eligible to field a candidate for that election.

It is glaring that there is no provision in S.77 of the Electoral Act 2026 that personally disqualify an individual member of a political party from contesting a general election on the ground that the political party failed to submit its digital membership register to INEC 21 days before its primary. S.77 of the Electoral Act 2026 has not disqualified from a general election a member of a political party for any reason. The statutory consequence in subsection 7 is directed at the political party's eligibility to field candidates for a general election, not an express personal disqualification of every individual member of that political party from the general election.

The notion that there is a resulting disqualification from the political party's ineligibility to field the candidate for a general election under Subsection 7 of Section 77 of the Electoral Act 2026 is as attractive as it might appear sound. But there is a distinction between a political party being unable or ineligible to field its members as candidates and each member as an individual being disqualified or not qualified as a candidate. The qualification or non-qualification can only arise after the person has been presented or fielded by the political party as its candidate at the general election. The political party's ineligibility to field candidates for a general election excludes the members

from being presented as candidates at a general election. So section 77(7) does not in any way disqualify the individual member of a political party personally from being a candidate in an election. The practical legal effect of section 77(7) of the Electoral Act 2026 is the exclusion of the members of a political party from being fielded as candidates in the general election by their political party because of its failure to submit to INEC the digital register of its members within 21 days before the primary election.

Qualification or disqualification concerns whether the person is legally qualified meets the constitutional or legal requirements to contest the election if fielded by any political party as a candidate for the election. Exclusion concerns the prevention of the political party from fielding its members as candidates for a general election. The members become prevented from participating in the election due to an impediment affecting the political party, nomination, sponsorship or electoral process rather than from a personal fault or feature of a person. The fact that the ultimate difference on the individual is that he has no opportunity to be fielded as a candidate to contest the election, does not by itself, amount to him being personally disqualified from contesting the election.

Since S.77(5) –(7) of the Electoral Act has not disqualified any member of a political party from contesting any general election, the question of whether it is in conflict with Ss. 65,66, it is in conflict with Ss. 65,66, 106,107, 131, 137, 142, 177 and 182 of the 1999 Constitution on the grounds for disqualification cannot arise. Therefore, the judgment of the Court of Appeal that S.77(5) –(7) of the Electoral Act is in conflict with Ss106,107, 131, 137, 142, 177 and 182 of the 1999 Constitution and is therefore void is wrong. Clearly the Court of Appeal wrongly nullified Ss. 77(5)-(7) of the Electoral Act. Its decision nullifying Ss. 77(5)-(7) of the Electoral Act 2026 is set aside.

I agree with Learned SAN for the appellant that the objective of S.77 of the Electoral Act 2026 is to ensure that political parties observe the practices of internal democracy, including the fair and transparent conduct of party primaries, party congresses and party conventions. The requirements that each political party shall make such register available to the Commission not later than 21 days before the date fixed for the party primaries, congresses or conventions, that only members whose names are contained in the register shall be eligible to vote and be voted for in party primaries, congresses and conventions, that a political party shall not use any other register

for party primaries, congresses and conventions except the register submitted to the Commission and that a party that fails to submit the membership register within the stipulated time shall not be eligible to field a candidate for that election are clearly meant to ensure a fair and transparent conduct of party primaries, party congresses and party conventions. This is in keeping with S.228 of the 1999 Constitution that provides that –

The National Assembly may by law provide –

- (a) Guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of party primaries, party congresses and party conventions; and
- (b) The conferment on the Independent National Electoral Commission of powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the practices of internal democracy, including the fair and transparent conduct of party primaries, party congresses and party conventions;
- (c) For an annual grant to the Independent national Electoral Commission for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions; and

(d) For the conferment on the Commission of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the provisions of this part of this Chapter”.

In *Ardo V Nyako*(2014) 10 NWLR(Pt.1416) 591 @ 620 this court held that –

“The power donated to the National Assembly in section 228 of the Constitution is to make laws which provides guidelines and rules to ensure internal democracy within political parties and this includes making laws for the conduct of party primaries, party congresses and party conventions. The power to nominate candidates for election still resides with the political parties but the procedure for the nomination is not left to the whims and caprices of party officials. The parties must hold either direct or indirect primaries for the aspirants to all elective positions.”

In *President, F.R.N V National Assembly*(2023) 3 NWLR (Pt 1870) 1 @ 32 this court restated that -

“The legislative power of the National Assembly (NASS) to make laws concerning the internal affairs of a political

party is limited by S.228(a) of the Constitution of the Federal Republic of Nigeria 1999 (the 1999 Constitution) to the making of a law to provide guidelines and rules to ensure internal democracy within political parties including making laws for the conduct of party primaries, party congress and party conventions, etc."

The respondent as plaintiff did not allege or show that Ss.77(5)-(7) of the Electoral Act 2026 would not promote, but work against the observance of its practice of internal democracy, including the fair and transparent conduct of its party primaries, party congresses and party conventions.

Ss.77(5)-(7) of the Electoral Act 2026 appear to be in response to the past experience of Political Parties refusing to strictly with S.77(3) of 2022 Electoral Act that required political parties to submit the register of their members within 30 days before the date of a primary election without prescribing the legal consequences or sanctions for the failure of any political party to so submit the register of their members. The experience was that because S.77(3) of the 2022 Electoral Act did not prescribe the legal consequences or sanctions for the failure of any political party to submit the register of their members within 30 days

before the date of a primary election, non-compliance with it was not treated as having any effect on the validity of primary elections held in such circumstance or excluding a person elected by the party in such primary from being fielded as the party candidate in the general election . See **Ambrose Ahiwe & Anor v INEC and in Otti & Labour Party(SC). S.77(3) of the 2022 Electoral Act created an environment that enabled** political parties avoid the observance of the practices of internal democracy, including the fair and transparent conduct of party primaries. In many situations the results of fair and democratic primaries conducted in accordance with the Electoral Act and the Party Guidelines and Constitution are easily and inexplicably canceled and jettisoned and fresh primaries held to allow new entrants to the party, who are obviously very wealthy and influential, to be elected candidate of the party instead, in the belief that their influence and wealth will help the party win the election. See for example of the cases **Senator Aliero V Saidu & Ors (SC/CV/1562/2022 of 30-1-2023) and Dr Abdullahi V Argungu & Ors (SC/CV/1563/2022 of 30-1-2023).**

In the light of the foregoing, I resolve issue No. 2 in favour of the appellant.

Let me now deal with issue No 3 which asks –

“Whether the learned Justices of the Court of Appeal were right in the construction and interpretation of Section 84(2) of the Electoral Act, 2026 and Sections 221, 222© of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)”.

The part of the judgment of the Court of Appeal that is the subject of this issue reads thusly -Member of Political Parties joining the party, by consent subscribe to the Constitution of that party and are bound by it. Will it be right for the National Assembly to re-write the Constitution by changing issues of membership or how a Political Party should sponsor its candidates? I think not. It is clear as daylight, that once an individual becomes a member of a Political Party, he or she subscribes to its Constitution. Therefore, on Section 84(2) of the Electoral Act 2026, the Political Party at registration must have tendered its Constitution to the Respondent and that Constitution is what every member of the party is subscribed to. For the legislative ink, to start ticking off aspects of that Constitution, that should not be lawful to my mind. As the Supreme Court has held, the issue of nomination and sponsorship is the internal affairs of a Political Party. Whether by direct, indirect primaries or consensus, I humbly believe the Law should have left it as it is and not by legislation, nullifying the Constitution already made by Political Parties on how to bring out candidates to represent them in a general election. This to my mind, conflicts with Section 222 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). I will resolve these two issues in favour of the Appellant.”

I have carefully read and considered the arguments on this issue in all the briefs.

S. 84 of the Electoral Act 2026 provides that –

- (1) A political party seeking to nominate candidates for election under this Act shall hold primaries for aspirants to all elective positions which shall be monitored by the Commission.
- (2) The procedure for the nomination of candidates by political parties for the various elective positions shall be by direct primaries or consensus”.

The only reason the Court of Appeal gave for nullifying S.84(2) of the Electoral Act is that it prescribed how the political parties shall nominate their candidates for general elections contrary to the methods stated by the party in their Constitution registered with the respondent. By virtue of S.228(a), (b) and (d) of the 1999 Constitution, the only basis upon which an Act of the National Assembly made for the conduct of party primaries can be impugned or nullified is that it would not ensure internal democracy within the political party, including the fair and transparent conduct of party primaries, congresses and conventions. The respondent as plaintiff did not allege or show that the legislative prescription of nomination of candidates by political parties for the various elective positions by direct primaries or consensus in S.84(2) of the Electoral Act 2026 would not ensure internal democracy within the political party including

the fair and transparent conduct of party primaries, congresses and conventions. The fact that the Political Party Constitution has made provision for how the party shall nominate its candidate for general election would not curtail the scope of the exercise of legislative power vested on the National Assembly by S.228 of the 1999 Constitution.

In any case, Section 2 of the respondent's constitution, attached to its affidavit in support of the originating summons states thus:-

"Subject to the provisions of the 1999 Constitution of the Federal Republic of Nigeria (As amended) and Electoral Act, this Constitution shall be supreme and its provision shall have binding force on all members and organs of the party."

The respondent's constitution having made itself subject to the Electoral Act, the respondent cannot resile from its subjection of the party constitution to the Electoral Act and try to avoid the overriding effect of the Electoral Act over its party constitution, unless it can show that the said provision of the Electoral Act would work against internal democracy in the party and would not help a fair and transparent primary processes.

For the above reasons the part of the judgment of the Court of Appeal nullifying S.84(2) of the Electoral Act 2026 is set aside.

In the light of the foregoing, I resolve this issue in favour of the appellant.

In the light of my decision in respect of issues Nos. 2 and 3, issue No 4 is equally resolved in favour of the appellant.

Let me now determine issue No. 5 which asks **-Whether the learned Justices of the Court of Appeal were right when they nullified and set aside Activity Serial No. 2 of the Appellant's Revised Time Table and Schedule of activities for the 2027 General Election as being inconsistent with Section 77(4) of the Electoral Act 2026.**"

I have carefully read and considered the arguments of all the parties on this issue.

I do not think there is need to labour this issue. There is nothing in the affidavit in support of the originating summons that suggest or show that Activity Serial No. 2 of the Appellant's Revised Time Table and Schedule of Activities for the 2027 General Election is inconsistent with Section 77(4) of the Electoral Act 2026 that requires that each political party shall make such register available to the Commission not later than 21

days before the date fixed for the party primaries, congresses or conventions.

The undisputed facts contained in paragraph 4 (g), (h) (i) (J) of the appellant's counter affidavit at pages 111 -112 of the records of this appeal, show that the respondent was given sufficient time as required by Section 77(4) of the Electoral Act 2026 to submit the digital register of its members. AS Exhibit INEC 1 shows the appellant had shifted the initial timeline of 21-4-2026 to 23-4-2026 to a subsequent timeline of 23-4-2026 to 30-5-2026 for the respondent to submit the said digital register of its members. There was therefore no basis to nullify the Appellant's Revised Time Table and Schedule of Activities for the 2027 General Election for violating the time line in Section 77(4) of the Electoral Act 2026. As it is the said schedule of activities is in keeping with Section 77(4) of the Electoral Act 2026.

In the light of the foregoing, issue No 5 is resolved in favour the appellant.

On the whole, this appeal succeeds on issues 2,3,4 and 5. The judgment of the Court of Appeal delivered on 16-7-2026 in Appeal No. CA/ABJ/CV/750/2026 declaring as unconstitutional and void S.77(5) to (7) and S. 84(2) of the Electoral Act 2026 and Activity Serial Number Two of the INEC Revised Timetable and

Schedule of Activities for 2027 General Election is hereby set aside. I also hereby set aside the order of the Court of Appeal nullifying S.77(5) to (7) and S. 84(2) of the Electoral Act 2026 and Activity Serial Number Two of the INEC Revised Timetable and Schedule and Schedule of Activities for 2027 General Election as unconstitutional. The judgment of the trial court delivered on 5-5-2026 dismissing Suit No FHC/ABJ/CS/509/2026 is hereby restored.

The respondent shall pay costs of two million naira to the appellant.

EMMANUEL AKOMAYE AGIM
JUSTICE, SUPREME COURT

Appearances:

Dr. Alex Izinyon SAN, Dr. Alhassan A. Umar SAN with F.O Izinyon Esq, M.A Bawa Esq, O.O. Okey Ndechi Esq, O.J. Oduh Esq, O.S Ajani Esq, Goodness Obiorah Esq and Sylvia O. Izinyon Esq **for the appellant.**

Ikechukwu Anyalewechi Esq with ThankGod Eneh Esq **for the Respondent**