EXAMINATION OF THE DOCTRINE OF POLITICAL QUESTION UNDER THE ELECTORAL ACT 2022[1]

Abstract

The "political question" doctrine refers to the principle that certain issues are more appropriately addressed by the executive or legislative branches of government, rather than by the judiciary. In the context of Nigeria's electoral process, this doctrine emphasizes the boundaries of judicial intervention in politically sensitive matters, particularly regarding elections and related controversies. Intra-party conflicts have been part and parcel of Nigeria democratic journey. In recent times they have become much more pervasive and have assumed crisis dimensions, with negative implications for democratic stability and consolidation. This paper examines the relevant concepts, theories of the doctrine of political question, the judiciary and the doctrine of political question and the Electoral Act 2022 and the doctrine of political question as well as the circumstances where the court can interfere in the internal affairs of a political party. This will go a long way in strengthening Nigeria's democracy and the doctrine of separation of powers.

Key words: Political question, Electoral Act 2022, Intra – party disputes, Nigeria.

1.1Introduction

The political question doctrine is crucial in Nigeria's electoral process, ensuring that the judiciary does not encroach on the functions of political bodies and electoral institutions. While courts may adjudicate electoral disputes, they often defer to INEC and other political institutions on issues that involve political discretion and management. This approach reinforces the separation of powers, ensures institutional competence, and protects the integrity of Nigeria's democratic processes. Political parties are made up of individuals with divergent opinions, value and interests. As platforms for recruiting personnel to occupy public offices, political parties cannot but be an arena of conflict arising from mutually exclusive views, thoughts and interests. Conflict, in different shapes and dimensions, is part and parcel of the operational architectures of political parties in a liberal democracy.

The most debilitating aspects of intra-party dispute are those arising over the selection of party leadership and candidates. Under normal circumstances, political parties are expected to put in place adequate institutional frame works for mediating conflicts that may occasionally arise among their members. By institutionalizing such frameworks that do not only engender consensus building within their floods, but also contribute overtly to the stability of the entire system.

The foregoing ideal would appear to have been internalized and institutionalized in mature liberal democracies where institutions for regulating power contestations within political parties have been

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entrenched. But in a democratizing Nigeria, as in most illiberal democracies, the opposite seems to be the case. Since the country re-democratized itself in 1999,[2] it may not be out of place to assert that political parties' records in the area of internal conflict management have not been disappointing, but in the last few years, the lack of conflict management has resulted in unending intra-party wrangling, ceaseless litigations, wanton party defections, among other acrimonies that are rare in liberal climes.

Intra-party disputes are not new, but have been manifested during the country's previous republics; the dimensions of the problem in the Fourth Republic are indeed alarming. This is evident from the acrimonies and crises that trailed primaries of major political parties across the country. Against the backdrop of the foregoing and considering the crisis dimension that intra-party disputes have assumed in recent times, it is thus imperative to interrogate the political question doctrine and the Electoral Act 2022 in intra-party disputes resolution in Nigeria. The significance of this research work is therefore predicated on deepening the discourse in this area. This paper examines the terrain of political question doctrine in Nigeria, the theories behind it and the role of the judiciary in resolving same.

2.1Meaning and Concept of Political Question in Nigeria's Electoral Process

The political question doctrine is a legal principle that establishes certain disputes as unsuitable for judicial review because they inherently belong to the political domain. In the context of Nigeria's electoral process, the political question doctrine surfaces in matters such as the internal workings of political parties, decisions by the Independent National Electoral Commission (INEC) on candidate qualifications, and other discretionary functions of political bodies that do not involve clear constitutional or statutory breaches. In *Buhari v Obasanjo*,[3] Muhammadu Buhari challenged the election of Olusegun Obasanjo as president, alleging widespread electoral malpractice. The respondent argued that the issues raised involved political questions that the courts should not entertain. The Supreme Court held that the issues were not purely political, as the courts had a duty to ensure compliance with the Electoral Act and constitutional provisions on fair elections. The court clarified that where electoral irregularities are alleged; the judiciary must intervene to uphold the law, rejecting the argument that all election matters are non-justiciable political questions. In *Ojukwu v Obasanjo*,[4] Odumegwu Ojukwu challenged the validity of Olusegun Obasanjo's election. Obasanjo contended that the issues raised were political questions unsuitable for judicial resolution. The court held that while certain political issues are non-justiciable, allegations of violations of the law, such as electoral fraud, fall within the courts' jurisdiction. This case reinforced the judiciary's role in intervening when constitutional provisions, particularly those ensuring electoral integrity, are violated. Similarly, in *Ugwu v Ararume*,[5] Ifeanyi Ararume was substituted by his political party as its gubernatorial candidate after winning the primaries. He challenged his substitution in court, and the defendants argued that it was a political decision and not justiciable. The Supreme Court ruled that the substitution of a candidate, if done contrary to the Electoral Act and party rules, is justiciable. The court emphasized that political questions are not immune from judicial review when legal or constitutional rights are violated.

Section 6(6)(b) of the Constitution[6] provides that judicial powers shall extend to all matters between persons, or between government or authority and any person in Nigeria, including any question of

[2] When the Nigerian 4th Republic started.

[3] (2005) 13 NWLR (Pt. 941) 1

[4] (2004) 12 NWLR (Pt. 886) 169.

[5] (2007) 12 NWLR (Pt. 1048) 367

[6] Constitution of the Federal Republic of Nigeria 1999 (as amended)

whether any law or executive action conforms to the Constitution. Also section 134(1) of the Electoral Act[7] stipulates that an election may be questioned on various grounds, such as non-compliance with the provisions of the Act, which implies that electoral matters are not purely political questions when violations of law are involved. The political question doctrine in Nigeria's electoral process is circumscribed by the principle that the judiciary must uphold constitutional and legal standards, even in matters involving political actions. While some issues, such as the internal affairs of political parties, may be considered non-justiciable, courts will intervene when there are clear violations of electoral laws or the Constitution.

2.2Judiciary Defined

The judiciary[8] is the system of courts that adjudicates legal disputes/disagreements and interprets, defends, and applies the law in legal cases.[9] The judicial branch of government refers to a country's court system. Judiciaries are responsible for interpreting and applying a country's laws in particular cases, and can also be invested with the power to strike down laws that it deems unconstitutional.[10]

2.3Meaning of Political Party

Political party means any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice - President, Governor, Deputy - Governor, or membership of a legislative house or a local government council.[11] Political Party, according to the Black's Law Dictionary[12] is an organization of voters formed to influence the government's conduct and policies by nominating and electing candidates to public office. A political party "is any political group identified by an official label that presents at election candidates for public office. It is also a voluntary association, organized by persons bound by common interests, which seeks to acquire or retain power through the election of its candidates into public office. From the foregoing, a political party is an entity made up of people whose aim is to translate the agenda that unites them into policy-based actions after gaining political power *via* the electoral process. Political party should have internal mechanism for managing disputes arising among its members. A political party has been defined as a group of people who have ideas about running a government and who seek to win election in order to put these ideas into effect.[13] However, it is doubtful whether this definition of political party is appropriate for Nigerian political parties. In Nigeria, politics is about acquiring power in order to have unlimited access to State resources. In effect, electioneering becomes warfare and the judiciary is often called upon to intervene. Because of the number of political cases going to court, people now talk about the judicialization of politics in Nigeria. In view of our recent experience, it is now debatable whether judicial intervention in political party disputes in Nigeria is a solution or part of the problem.

In most common law countries, the judiciary has devised means of shielding itself from the muddy waters of political disputes through the doctrine of political question.

2.4 Intra-Party Disputes

Black Law Dictionary[14] sees dispute as a conflict or controversy, especially, one that has given rise to a particular lawsuit. Intra-party dispute would suggest a clash of interest among members of a political

[7] Electoral Act 2022.
[8] Also known as the judicial system, judicature, judicial branch, judicative branch, and court or judiciary system.
[9] See https://dictionary.cambridge,org (obtainable on 12/7/2024).
[10] See https://www.polyas.com>judiciary (obtainable on 12/7/2024).
[11] See *NCP v N.A. of the FRN*(2016) 8 WRN 159, per Iyizoba, JCA at p. 175, lines 25-30.
[12] BA Garner (ed) Black's Law Dictionary, Thompson Group, USA, 2004, p. 1197.
[13] ON Ogbu "Revisiting the Watergate Scandal and the Political Decisions Thereon: What Lesson for Nigeria" (2005) 1 UDUSU, p. 70.
[14] BA Garner (ed) Black's Law Dictionary, Thompson Group, USA, 2004, p. 841.

party who are struggling over the control of the decision-making machinery of the party and other resources that could confer certain benefits on themselves. It arises when members of the same political party pursue incompatible political goals or try to influence the decision making process of the party to their advantage.

Specifically, disputes among members often arise over issues of internal leadership recruitments, the selection of candidates for general elections, the sharing of appointive posts[15] among others. Disputes among members of a political party, if not well managed within the context of the legal and institutional framework of the party, could escalate into intense competition[16] and eventually, into violence.[17]

3. 0 Theories of Political Question in Nigeria

Below are the theories behind the political question doctrine in Nigeria's electoral process:

3.1Separation of Powers Theory

This theory is grounded in the constitutional separation of powers between the judiciary, executive, and legislature. The judiciary may refuse to intervene in matters it considers to be within the purview of the executive or legislative branches, particularly where political discretion is exercised. In Nigeria, electoral matters often involve decisions made by political institutions that courts may deem unsuitable for judicial review due to the discretionary nature of political decision-making. See *A.G. Federation v Abubakar* [18] where the Supreme Court held that certain issues relating to political actions of the executive branch are non-justiciable as they involve political discretion. In *Okafor v Governor of Lagos State,*[19] the court recognized that certain electoral matters, particularly disputes within political parties, are primarily political in nature and should be handled within the party, not the courts.

3.2. Justiciability and Non-Justiciability Doctrine

The political question doctrine distinguishes between "justiciable" and "non-justiciable" issues. Justiciable issues are those that are appropriate for court review, while non-justiciable ones, often involving political considerations, fall outside judicial review. In the electoral process, courts may declare certain electoral matters non-justiciable based on their inherently political nature. See *Bakare v L.S.C.S.C.*[20] where the court emphasized that questions about whether a particular election process complies with the constitution are justiciable, but broader political decisions, such as electoral policy, are non-justiciable. Section 6(6)(b) of the Constitution[21] emphasizes that judicial powers extend to all justiciable matters, leaving room for political questions to be classified as non-justiciable issues under the doctrine of separation of powers .

3.3 Political Question as a Defence against Judicial Overreach

Courts are cautious of overstepping their boundaries and interfering with political matters, which could lead to judicial overreach. In electoral disputes, the courts may invoke the political question doctrine to avoid encroaching upon the functions of election bodies such as the Independent National Electoral Commission (INEC), which is vested with the authority to manage elections. In *Ladoja v INEC,*[22] where the Supreme Court declined to intervene in matters regarding INEC's discretion to regulate elections,

[15] In the case of the ruling party.
[16] For instance, disputants taking uncompromising positions.
[17] Such as Assassination and Arson.

[18] (2007) 10 NWLR (Pt. 1041) 1.
[19] (1991) 6 NWLR (Pt. 200) 659.
[20] (1992) 8 NWLR (Pt 262) 641.
[21] Constitution of the Federal Republic of Nigeria 1999 (as amended).
[22] (2007) 12 NWLR (Pt 1047) 119.

recognizing the political nature of certain electoral decisions. Also in *Yusuf v Obasanjo*[23] that involved an election petition where the court refused to delve into matters relating to the executive's political decisions, treating them as political questions outside the purview of judicial review.

3.4. Institutional Competence Theory

This theory posits that certain institutions are better equipped to handle specific matters due to their expertise and specialized functions. In the electoral context, courts may defer to institutions like INEC on questions relating to election management, procedures, and disputes, considering them to possess the requisite competence to handle these politically sensitive issues. In *PDP v Okorocha*[24] the court refused to invalidate INEC's decisions regarding election schedules and administration, recognizing that such matters involve political questions better handled by the electoral body. Section 153 of the 1999 Constitution establishes INEC as an independent body responsible for managing elections, reinforcing the doctrine that election management is a political question that the courts should not interfere with unless clear legal violations occur.

3.5. Political Questions and the Integrity of Democratic Institutions

Another theory suggests that judicial intervention in political questions could undermine the legitimacy and integrity of democratic institutions, such as political parties and electoral bodies. Courts, therefore, avoid ruling on issues that could destabilize the political system or infringe on the sovereignty of the people as expressed through elections. In *Dangana v Usman,*[25] the court emphasized the importance of upholding the integrity of INEC and political processes; refusing to entertain a matter it considered a political question that could compromise INEC's role.

3.6. Judicial Restraint and Deference to the Political Process

This theory advocates for judicial restraint in matters where political solutions are preferable to judicial ones. Courts may defer to the political process, particularly where there are constitutional mechanisms for resolving disputes within the electoral framework, such as through electoral tribunals or political party processes. In *Nwankwo v Yar'Adua,*[26] the court exercised restraint, recognizing that the resolution of certain electoral disputes is best handled through political processes, such as legislative oversight.

4. 1The Nigerian Judiciary and the Doctrine of Political Question

The most eloquent enunciation of the doctrine of political question in Nigeria in relation to political party nomination processes was made by the Supreme Court in the cases *of Hon. Onuoha v Chief R.B.K. Okafor & 2 Ors*[27] and *Bashir Mohammed Dalhatu v Ibrahim Saminu Turaki.*[28] The facts of these cases will now be considered in some details. In *Hon. Onuoha v Chief R.B.K, Okafor & 2 Ors*[29] the plaintiff, Honourable P. C. Onuoha, and the 3rd defendant, Chief the Honourable Isidore Obasi were members of the Nigeria People's Party (NPP). They both applied to their party to be nominated for Owerri Senatorial seat. There was a body set up to select a candidate who will represent the party. The plaintiff was chosen. There was a petition by the 3rd defendant against the selection of the plaintiff. Consequently, the State Working Committee of the party
appointed a panel to look into this complaint. The panel nullified the

[23](2005) 18 NWLR (Pt 956) 96.
[24] (2012) 15 NWLR (Pt 1323) 205.
[25] (2012) 7 NWLR (Pt 1300) 134.
[26] (2010) 12 NWLR (Pt. 1209) 518.
[27] (1983)2 SCNLR 244.
[28] (2003) 15NWLR (Pt. 843) 310.
[29] *Supra.*

selection of the plaintiff and went on to choose the 3rd defendant to represent the party in the Senatorial election. The plaintiff/appellant then went to court and claimed as follows:

1. A declaration that the decision of the Nigerian People's Party Nomination Elections Petition Panel on Tuesday, 19th April, 1983 nullifying the nomination election for the Owerri Senatorial Nigerian People's Party candidature of 21st March, 1983 is *null* and *void* being contrary to natural justice, equity and good conscience.
2. A declaration that the nomination election results announced by the Presiding Officer for the Nomination Election for the Owerri Senatorial District N.P.P. candidature on March 21, 1983 is valid and subsisting as being in accordance with the guidelines for the said election.
3. An injunction restraining the Nigerian People's Party from submitting the name of Hon. Isidore Obasi or any name other than that of Hon. P.C. Onuoha to the Federal Electoral Commission as the N.P.P. candidate for Owerri Senatorial District seat in the 1983 general elections.

The learned trial Chief Judge, Oputa, C. J. (as he then was) granted the two declarations and the injunction sought by the plaintiff. The decision was set aside on appeal by the Federal Court of Appeal. On further appeal, the Supreme Court held that the expressed intention of the 1979 Constitution of Nigeria and the Electoral Act 1982 is to give a registered political party the right freely to choose the candidate it will sponsor for election, and that the exercise of this right is the domestic affair of the party over which the court has no jurisdiction. According to the Court, the question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer. Consequently, the question is not justiciable in a court of law.

Persuaded by the decision of the US Supreme Court in *Powell v McCormactf* [30]Obaseki, JSC who read the leading judgment in the case held that in deciding whether a claim is justiciable, a court must determine whether the duty asserted can be judicially identified and its breach judicially determined and whether protection for the right asserted can be judicially moulded. To His Lordship, no justiciable dispute or controversy is presented to a court when parties seek adjudication of a political question.[31]In the opinion of His Lordship, the decision of questions of a political nature is exclusively for the political party, the executive and the legislature.[8] His Lordship cited the lack of satisfactory criteria for a judicial determination of a political question as one of the dominant considerations in determining whether a question falls within the category of political question. The other is the appropriateness of attributing finality to the action of the political departments and political parties.[32] His Lordship came to the conclusion that the right to sponsorship by a political party is not a right vested by the constitution, the Electoral Act or any other statute and therefore is not a civil right and obligation which can give rise to invocation of judicial power under section 6(6)(b) of the 1979 Constitution.

The last proposition calls for immediate comments. Civil rights and obligations need not arise only from constitutional or statutory guarantee. It can arise from the Constitutions or rules of private associations. According to Nnaemeka-Agu, JSC, civil rights refer to a plethora of rights which are enforced as between person and person, or person and authority or government by the ordinary courts in any civilized society.[33] Civil rights are therefore those that are recognized by a particular municipal law.

[30] 395 US 486, 89 S.C.

[31] The Court relied on the U.S. case of *Flash v. Cohen* 392 U.S. 83, 88 S.C.

[32] The Court cited and relied on *The Divina Pastora 4 Wheat* 52, 4 L Ed 512.

[33] See 1992 Judicial Lectures: Continuing Education for the Judiciary (Lagos: M.K.J. Professional Publishers Ltd, 1992) p. 79. His Lordship adopted the definition given by the Privy Council in *Harrisksoon v A.G. of Trinidad and Tobago* (1980) A.C. 265 at 280. It must however be noted that in the U.S.A. the expression "civil rights" is also

While *Onuoha v Okafor*[34] is the *locus classicus* on the doctrine of political question, the Supreme Court decision in *Bashir Mohammed Dalhatu v Ibrahim Saminu Turaki,*[35] was an unequivocal restatement and reaffirmation of the operation of the doctrine in Nigeria. In that case,[36] the All-Nigeria People's Party (ANPP) scheduled all its primary elections to hold on the 3rd day of January, 2003. In the case of Jigawa State, the primary elections were to hold in Dutse, the Jigawa State capital. However, a committee conducted the screening and the primary election in Kano in which the 1st defendant did not take part. Only the appellant did. He was declared the winner by the committee.

Meanwhile, another primary election was conducted in Dutse, in which the 1st respondent participated. The appellant did not participate in that primary. The 1st respondent was declared the winner. The results of these elections were released to the ANPP by the Chairman of the election committee. The ANPP recognized the same and duly announced the 1st respondent as the winner and issued him a certificate of such recognition. The appellant commenced an action against the respondents at the High Court of the Federal Capital territory, Abuja, claiming a declaration that the purported return of the 1st respondent as the ANPP gubernatorial candidate for the 2003 election in Jigawa State was unconstitutional and *void* and that the return was a violation of the appellant's right to fair hearing and right to be elected for any elective office.

The 1st, 2nd and 3rd respondents filed a notice of preliminary objection challenging the jurisdiction of the court to entertain the action. This was dismissed by the trial court whereupon they appealed to the Court of Appeal. Meanwhile, the trial court concluded the hearing of the matter and gave judgment for the appellant. Though the attention of the trial court was called to the case of *Onuoha v Okafor,*[37] the trial court ignored the decision. It went on to hold that although the court has no duty to nominate or elect a candidate for a political party as it cannot campaign for the candidate, where as in this case, the party had encouraged and permitted an individual to strive toward the realization of his constitutional right as a citizen to vote and be voted for through the acceptance of prescribed fee, processing of his nomination forms, screening him for that purpose to stand for the election and he won, the political party should not be allowed to turn its back against all the obvious solid grounds that entitles him to be the candidate of the party for the post he is seeking, as such an act was dishonest and fraudulent, and contravened item 15(5) of the 1999 Constitution. The trial court concluded its judgment with the following remark: "I also with the greatest respect call on the Supreme Court to re-examine its position on the internal affairs of political parties."

The respondents' appeal to the Court of Appeal against the judgment of the trial court was allowed. Being dissatisfied with the judgment of the Court of Appeal, the appellant appealed to the Supreme Court.

In unanimously dismissing the appeal, the Supreme Court held that a court of law has no jurisdiction to adjudicate on the issue of which candidate a political party should nominate or sponsor for an election. The exercise of this right, according to the Court, is the domestic affair of the party guided by its Constitution. Since there are no judicial criteria or yardstick to determine which candidate a political party ought to choose, the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction. If a court could do this, it would in effect be managing the political party for the members thereof.

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used to refer to natural rights. See for instance the Black's Law Dictionary definition of the term in this sense.

[n](2003)15NWLR(Pt.843)310.

[34] *Supra*.

[35] *Supra*.

[36] *Ibid*.

[37] *Supra*.

Niki Tobi, J.S.C, observed as follows:

> *From the decision of this court in Onuoha, it is clear that the right to sponsor a candidate by a party is not a legal right but a domestic right of the party which cannot be questioned in a court of law. The political party qua political organization has discretion in the matter, a discretion which is unfettered; in the sense that a court of law has no jurisdiction to question its exercise one way or the other. The moment a court of law dabbles into such a domestic affair of the party, it has involved itself in nominating a particular candidate, a jurisdiction which a court cannot exercise...*
>
> *One basic rationale behind this principle of law is that since persons have freely given their consent to be bound by the rules and regulations of a political party, they should be left alone to be governed by such rules and regulations. Once persons have freely mortgaged their consciences to a situation, courts of law should not interfere. I am of the view that Onuoha is applicable to this appeal and I so hold.*

The Supreme Court in this case recognized one remedy for a candidate whose political party has withdrawn its earlier nomination for election, which is an action for damages and not an action to compel the political party to sponsor him.

With due respect, it is submitted that the reasoning of the Supreme Court in this case as in the *Onuoha* case can easily be faulted. If the rules of other private organizations are justiciable, why should the rules of a political party not be justiciable? The tenor of the constitution is that political parties should be democratically run. For instance, the 1999 Constitution of Nigeria contemplates that every political party will practice internal democracy. Section 223(l)(b) of the Constitution provides that the constitution and rules of a political party shall provide for periodic election on a democratic basis of the principal officers and members of the executive committee or other governing body of the political party.[38] However, the Constitution was short of making express provisions on party primaries. Furthermore, belonging to a political party should not be synonymous with mortgaging one's conscience, notwithstanding that politics is considered a dirty game in Nigeria. The law should clean up the dirty activities of political parties in the country.

Moreover, judicial intervention in disputes regarding party nomination process does not amount to choosing a candidate for a political party. It will only ensure that the exercise does not become lawless. Again, if a court could entertain an action seeking remedy against a political party for truncating the nomination of a candidate, the court has to ultimately get into the question of which of the candidates actually won the nomination election of the party. Why should the court then not enforce the finding through granting declaratory and injunctive reliefs instead of just awarding damages to the shortchanged person?

Following the amendment to the Electoral Act 2006, the courts became inclined to limited justiciability of party nomination process but only in respect of substitution of a candidate already nominated. The first statutory modification of the doctrine of the political doctrine question was the enactment of Section 34(2) of the Electoral Act, 2006 providing for justiciability of substitution of candidates, which is meant to cure the injustice that normally arises when a candidate who laboured and won a party's primary

[38] Section 203 of the 1979 Constitution contains equivalent provision.

election to contest in an election will be substituted with a candidate who either lost in the primary election or did not participate in it at all.

In *Ugwu v Ararume*,[39] a number of members of the People's Democratic Party (PDP) contested the party primary election for the governorship election for Imo State held on 14 April, 2007. The results of the primary election showed that the 1st respondent scored the highest number of votes. The PDP, therefore, forwarded his name to the Independent National Electoral Commission (INEC) as its candidate for the election.

However, on 19th January, 2007 the PDP forwarded another name, the name of the 1st appellant, to INEC as its candidate for the election without giving any reason for the substitution of the 1st respondent's name it sent earlier. In reaction, the 1st respondent instituted an action at the Federal High Court, Abuja seeking, *inter alia,* a declaration that there were no cogent and verifiable reasons for the action of the PDP. He sought an injunction restraining INEC from removing his name as the PDP candidate for the election unless or until a court order was made disqualifying him from contesting the election or until a cogent and verifiable reason was given. While the action was pending, the PDP by another letter dated 2nd February, 2007, explained to INEC that it was substituting the name of the 1st respondent with that of the 1st appellant because the name of the 1st respondent sent earlier was done in error. The trial court dismissed the 1st respondent's action holding that the PDP has the power to change its candidate. Aggrieved by the judgment, the 2nd respondent appealed to the Court of Appeal. The 1st appellant, dissatisfied with a part of the judgment of the trial court, cross-appealed. The Court of Appeal allowed the appeal and dismissed the cross-appeal holding that the trial court failed to consider all the aspects of section 34(1) and (2) of the Electoral Act, 2006 and that the trial court's decision did not meet the justice of the case.

On further appeal, the Supreme Court in dismissing the appeal, held that section 34 of the Electoral Act, 2006 which provides that a political party intending to change any of its candidates for any election shall inform INEC of such change in writing not later than 60 days to the election upon giving cogent and verifiable reasons, and that there shall be no substitution or replacement of any candidate after that date except in the case of death is mandatory.

The Supreme Court observed that from the words used by the legislature in section 34(1) and (2) of the Electoral Act, 2006, it is clear that the intention of the legislature is that even though the right of choice of a candidate to be sponsored for any election remains the special preserve of the political parties, the right is no longer to be exercised capriciously, or arbitrarily or without recourse to reasonable expectations of a decent society. The legislature intended to bring sanity into the exercise by the political parties of their rights to change or substitute their candidates. The legislature must have found the provisions of the pre-existing law grossly inadequate to tackle the problem of cynicism, mistrust, non-resoluteness, misdirection, complete absence of cohesiveness, brazen show of power, favouritism and nepotism which usually characterize the electioneering process in a given political party.
In distinguishing the instant case from the existing case law on the subject, Muhammad, J.S.C. said:

> *It appears that the Legislature has found some lapses or lacunae in the provisions of section 83(2) of the Electoral Act of 1982 under which the case of Onuoha v. Okafor (supra) and section 23 of the Electoral Act of 2002 under which Dalhatu v. Turaki (supra) were decided respectively. These sections in the 1982 and 2002 Electoral Acts left the issue of substitution of candidates entirely in the hands of the political parties without any let or hindrance. But when the Legislature realized that the political parties were abusing the unfettered powers of "making" and "unmaking" of prospective candidates for the political offices to be contested at*

[39] (2007) 12 NWLR (Pt. 1048).

election periods, it then decided to re-draft provisions relating to substitution of candidates for the elective offices. Thus, I think, is what brought about section 34 of the Electoral Act 2006.[16]

The decision was followed in *Amaechi v INEC.*[40]
Unlike the Electoral Act 2006 which prohibits substitution of a candidate without cogent and verifiable reason, the Electoral Act, 2010 absolutely prohibits the substitution of a candidate once the candidate's name has been submitted to INEC except in the case of death of or withdrawal by the candidate. The Act went further to provide for Democratic Party primaries. Section 87 of the Electoral Act 2010 made detailed, clear and unequivocal provision for Democratic Party primaries. By section 87(1) of the Act,[41] a political party seeking to nominate candidates for elections shall hold primaries for aspirants to all elective positions. The procedure for the nomination of candidates shall, in accordance with subsection (2) of section 87, be by direct or indirect primaries.

The 1st respondent's case was that the appellant was disqualified from contesting the 2nd respondent's primary election; that of all the qualified contestants at the election, he, the 1st respondent, scored the highest number of votes; and that the 2nd respondent ought to have declared him the winner of the primary election and presented him to the 3rd respondent as its candidate for the election.

After hearing the suit, the trial court delivered its judgment on 28th January, 2011. It held that in the absence of documentary evidence of the decision of the National Working Committee of the 2nd respondent, the disqualification of the appellant by the 2nd respondent's Screening Appeal Committee stood and the appellant stood disqualified from contesting the 2nd respondent's primary election. Dissatisfied, the appellant appealed to the Court of Appeal which dismissed the appeal.

Still dissatisfied, the appellant appealed to the Supreme Court. Before the appellant's appeal was heard, he filed an application for leave to tender an extract of the minutes of the meeting held on 5th January, 2011 by the National Working Committee of the 2nd respondent, which was not tendered at the trial court and the Court of Appeal. It was the appellant's case that though he applied for the minutes on 25th January, 2011, he got the minutes on 7th April, 2011. The appellant's application and appeal were heard together. The Supreme Court in unanimously allowing the appeal held that though the nomination of a candidate to contest an election is the sole responsibility of the political party concerned, where a political party nominates a candidate for an election contrary to its own constitution and guidelines, a dissatisfied candidate has every right to approach the court for redress. In such a situation, the court has jurisdiction to examine and interpret relevant legislations to see if the political party complied fully with the legislation on the issue of nomination. The court will never allow a political party to act arbitrarily or as it likes. Political parties must obey their own constitutions. Thus, the doctrine of political question as it relates to nomination of a party's candidate for an election was rested in peace. Strangely the Supreme Court has resurrected the doctrine without any further amendment to the electoral legislation.

5.1The Electoral Act 2022 and the Doctrine of Political Question

The Electoral Act 2022 in an attempt to resolve the issues/problems associated with political question has introduced some innovations in the Act.[42] The essence of the new innovation is to bring sanity into the conduct of affairs of political parties. Section 82 (1) of the Act[43] provides that every registered political party shall give the Commission at least 21 days' notice of any convention, congress, conference or

[40] (2008)15 NWLR (Pt. 1080] 227.

[41] Electoral Act 2010.

[42] See Sections 82, 83 and 84 of the Electoral Act 2022.

meeting convened for the purpose of "merger" and electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under the Electoral Act. The essence of this notice is to enable the Commission to attend such convention, congress, conference or meeting to monitor the proceedings of the political parties to ensure that they are properly executed in accordance with the provisions of the law governing same.

By Section 82(2) of the Act[44] the Commission may, with or without prior notice to the political party attend and observe any convention, congress, conference or meeting which is convened by a political party for the purpose of: (a) electing members of its executive committees or other governing bodies; (b) nominating candidates for an election at any level; and (c) approving a merger with any other registered political party. By this provision, the Commission without invitation from the political party can attend convention, congress, conference or meeting for the purposes of monitoring same.

By Section 82(3) of the Act[45] the election of members of the executive committee or other governing body of a political party, including the election to fill a vacant position in any of the aforesaid bodies, shall be conducted in a democratic manner and allowing for all members of the party or duly elected delegates to vote in support of a candidate of their choice.

Notice of any congress, conference or meeting for the purpose of nominating candidates for Area Council elections shall be given to the commission at least 21 days before such congress, conference or meeting.[46] Failure of a political party to notify the commission as stated in subsection (1) shall render the convention, congress, conference or meeting invalid.[47]

The writer sees no reason for inclusion of Section 82(2) of the Act[48] since there is prescribed punishment for failure to invite the commission to attend such congress, conference or meeting. The use of the word "shall" in Section 82(1) of the Act[49] is a word of command and must be accorded its literal and natural meaning.[50] It is a cardinal rule of interpretation of statutes that they be construed according to the intention expressed in the statutes themselves. This means that if the words of a statute are precise and unambiguous then no more is necessary than to expound the words in their natural and ordinary sense. In such a case, it is the words of the statute that best declare the intention of the lawmakers and the courts will generally decline to read into any enactment or statute words which are not to be found there and/or which will alter its operative effects.[51]

It is strongly recommended that Section 82(2) of the Electoral Act 2022 as presently constituted be removed from the Act as it serves no useful purpose.

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[43] *Ibid.*
[44] *Ibid*.
[45] *Ibid*.
[46] *Ibid*, Section 82(4) of the Act.
[47] *Ibid*, Section 82(5) of the Act.
[48] *Ibid*.
[49] *Ibid*.
[50] See *Okorocha v U.B.A.Plc* (2011) 1 NWLR (Pt 1228) 348 at p. 375, paras. F – G, *Akun v Mangu Local Govt. Council* (1996) 4 NWLR (Pt. 441) 207.
[51] See *Kabo Air Ltd v Oladipo* (1999) 10 NWLR (Pt. 623) 517, *Adewole v Adesanoye (1998) 3NWLR (Pt. 541) 176, Ahmed v Kassim* (1958)SCNLR 28, (1958) 3 FSC 51,*Mobil Oil Nig. Ltd v Federal Board of Inland Revenue* (1977) 3 SC 53, *I.N.R.B.D.A. v Olagbeg*i (2004) 45 WRN 117.

In ensuring that the political parties eschew lawlessness in their activities, Section 83(1) of the Electoral Act 2022 mandates the commission to keep records of the activities of all the registered political parties[52] by seeking information or clarification from any registered political party in connection with any activities of the political party which may be contrary to the provisions of the constitution or any other law, guidelines, rules or regulations made pursuant to an Act of the National Assembly.[53] The Commission may direct its enquiry under subsection (2) to the Chairman or Secretary of the political party at the National, State, Local Government or Area Council or Ward level, as the case may be.[54]
Penalty of N1, 000,000 is provided in subsection (4)[55] for failure of the political party to provide the required information or clarification under subsection of Section 83 of the Electoral Act.

For the purpose of seeking to nominate candidates for elections under the Electoral Act, 2022, the political party shall hold primaries for aspirants to all elective positions and same must be monitored by INEC;[56] and the procedure for the nomination of candidates by political parties shall be by direct, indirect primaries or consensus.[57] The modalities for the conduct of direct, indirect primaries or consensus primaries are clearly provided in the Act.[58]
On the issue of political question, Section 84 (14) of the Electoral Act 2022 has made provisions on this issue. The said Section 84 (14) of the Electoral Act 2022 provides that notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court for redress. By this provision it is doubtful if the political parties still enjoy the limited justiciability of party nomination process in the electoral process. This is because the Electoral Act 2022 has given aggrieved party members the opportunity to ventilate their grievances in the event of been shortchanged in the process of conducting party primaries.

6.1Circumstances where Court can interfere with the Internal affairs of a Political Party
The general principle of non-interference has remained but subject to the limited circumstances provided in Section 84(14) of the Electoral Act,[59] which provides that an aspirant who complains that any of the provisions of the Electoral Act and the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election, may seek redress in the Federal High Court, the High Court of a State or of the FCT. See *Gana v SDP & Ors.*[60]

So long as political parties adhere to the provisions of their constitution in the choice of candidates for political office, the courts will not interfere. Per kekere-Ekun, JSC at p. 179 lines 5-35. Section 84(14) of the Electoral Act 2022 provides a window of opportunity for aggrieved persons who participated in the primary election of parties to ventilate their grievance before the Federal High Court, High Court of a State or of the Federal Capital Territory.[61]

[52] Section 83(1) of the Electoral Act 2022.
[53] *Ibid*, subsection (2).
[54] *Ibid*, subsection (3).
[55] *Ibid*.
[56] Section 84(1) of the Electoral Act 2022.
[57] *Ibid*, subsection (2).
[58] See Section 84 subsection (3), (4), (5), (6), (7), (8), (9), (10) and (11) of the Electoral Act 2022.
[59] Electoral Act 2022.
[60] (2009) 32 WRN 156 decided under the Electoral Act 2010.
[61] Section 84(14) of the Electoral Act 2022.

Section 84(14) of the Electoral Act[62] confers jurisdiction on the court to hear complaints from a candidate who participated at his party's primaries and complains about the conduct of the primaries. Per Rhodes-Vivour, JSC in *Alahassan v Ishaku.*[63]

It is strange to find the inclusion of the provisions of Section 84 (15) of the Electoral Act 2022 into the new Act. The said section provides that nothing in this section shall empower the courts to stop the holding of primaries or general elections under this Act pending the determination of a suit. So, whether the primaries are properly conducted or not, the electoral processes must proceed. The implication of the provision of this subsection is that a court of law cannot be involved in the domestic affair of nomination of a candidate or candidates in primaries. There is no doubt that the internal affairs of political parties are exclusive to the parties and therefore not within the competence of the court. That is why the courts are restrained from stopping any primary election or general election whether the laws or guidelines governing the conduct of those elections were adhered to or not.

7.1Conclusion

The "political question" doctrine in Nigerian electoral jurisprudence refers to matters considered inappropriate for judicial determination because they fall within the purview of the political branches of government, namely the executive and legislature. Nigerian courts are bound by the principle of separation of powers and tend to refrain from deciding issues that are better suited for resolution by the political arms of government. However, the courts may still intervene if constitutional provisions are violated in the course of political actions. For the judiciary to play its expected role as the guardian of the rule of law and constitutionalism, it must be independent and impartial. Furthermore, it should not be politicized and it should not condone forum shopping. A pertinent question is to what extent is the Nigerian judiciary independent and impartial in the in view resolution of political party disputes of the provision of Section 84 (15) of the Electoral Act 2022.

[62] Electoral Act 2022.

[63] (2006) 9 WRN at pp 28-29, lines 45-10.