

IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON FRIDAY THE 10TH DAY OF JUNE, 2016
BEFORE THE HONOURABLE JUSTICE
M. B. IDRIS
JUDGE

SUIT NO: FHC/L/CS/637/2016

BETWEEN:-

ALH. FATAI ADEWALE ADEYANJU PLAINTIFF

AND

- | | | |
|--|---|-------------------|
| 1. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC) | } | DEFENDANTS |
| 2. PEOPLES DEMOCRATIC PARTY (PDP) | | |

RULING

By a Notice of change of Counsel dated 18th May 2016, the 2nd Defendant in this suit purportedly changed its Counsel from Messr Ahmed Raji SAN and Dr Yemi Oke of Ahmed Raji & Co, 10, Santana Close, off Fandriana Close, Off Malahal Drive, Oda Crescent, Off Dar-es - Salam Street, Wuse 2, Abuja to Godswill Mrakpor of Westpoint Chambers, Suite 160 Naowa Complex, Off Aso Rock Presidential Villa, Asokoro, Abuja.

An affidavit, and 2 further affidavits support the Notice of change of Counsel.

MJS Partners & Ahmed Raji SAN & Co. filed a Counter affidavit in opposition to the Notice of change of Counsel and a written address accompanied same.

At the hearing, learned Senior Counsel relied on the processes filed on the issue of change of Counsel.

Learned Senior Counsel representing Westpoint Chambers argued that the letter to Godwill Mrakpor was later in time, and that the Court rules in his favour. It was argued that the ex-parte orders of Liman J, could not be used as a plank upon which to refuse the change of Counsel. Article 36 (1) (2) of the PDP Constitution was relied on and the case of **GOV. LAGOS STATE VS. OJUKWU (1986) 1 NWLR (PT. 18) 621.**

Learned Counsel representing Ahmed Raji SAN & Co. and MJS Partners relied on the processes filed. Articles 63 (7) 42 (1) (ii) and 63 (2) of the PDP Constitution was relied on, and it was argued that only the National Legal Adviser of the 2nd Defendant has the absolute and exclusive

power to represent the party and to delegate such power for the purpose of representing the party. That the power exercised by the National Secretary and Deputy National Chairman were ultra vires their power and should be disregarded. The case of **OLORUNTOBA VS. ABDULRAHEEM (2009) LPELR – 2596** was relied on.

I have read the entirety of the processes filed. It is clear from the affidavit evidence filed that there is a crisis within the 2nd Defendant party, thus the confusion created in the appointment of Counsel to represent its interest in litigation.

There is no doubt that the 2nd Defendant has a right to Counsel. This right is guaranteed by section 36 (6) (c) of the Constitution. The right to Counsel of choice is a cardinal principle in the administration of justice. It is the Constitutional right of a litigant to determine who represents him, and not for the court to impose Counsel. See **AWOLOWO VS. SARKI (1968) ANLR 178; ABIOLA VS. FRN (1997) 2 NWLR (PT. 488) 439; TUKUR VS. GONGOLA STATE GOVT (1988) ANLR 42; NNPC VS. TRINITY MILLS INS. BROKERS CA/L/167/97, JANUARY 24TH 2002.**

Generally, it is the person represented by Counsel that can challenge the authority to appear on his behalf as the Court will not inquire into the authority of Counsel who states that he is instructed to appear. A statement by a Counsel from the Bar or even in an address oral or written has the character of an oath, and the Court is usually bound to take it into consideration. See generally **TIKA-TORE PRESS LTD VS. UMAR (1968) 2 ANLR 107; OFORUAJA VS. TARABA STATE GOVT. (2003) FWLR (PT. 178) 1036; UBA PLC VS. UJOR (2002) FWLR (PT. 88) 1014.**

This situation has to be resolved by the 2nd Defendant itself. Borrowing from Company Law and Practice, I am aware that in all cases, even in a suit at the instance of a single shareholder, the Court has discretionary power to refer an issue relating to the running of the affairs of a company to the general meeting of the company for its decision on the matter. In **B.P.R. LTD VS. AWAYEWASERERE (2002) 33 WRN 138 CA**, Aderemi JCA exercised this discretion and stated thus:

“As I have said majority rule
15 the regulating
phenomenon in the affairs or

the running of a company. That being so, I am of the view that this is a proper case in which this Court can exercise the type of discretion suggested by the Court of Appeal (England) in the Beaumont case referred to (supra) by sending the issue raised in leg 1 of the counter-claim back to the company for decision by a majority at a general meeting of the 1st appellant"

The position enunciated by Elias CJN in **OLUGBUSI VS. TUNOLASE & ORS (1973) NSCC 689** is still the commendable law. In that case the Appellant filed an action at the High Court of Lagos State on behalf of a limited liability company. The Respondent filed a counter application that the name of the company be struck off on the ground that the Appellant did not have the authority of the


Company to bring the suit. Elias CJN reading the leading judgment held thus:-

“We think that there is merit in Counsel’s contention that the Learned trial Judge acted prematurely and that he could have asked to see the articles and memorandum of association in order to determine what powers are granted to whom before deciding whether or not to strike out the appellant's name. The resolutions are by themselves insufficient to support what the learned judge did, Since they can only have been passed in pursuance of powers granted in that behalf, by virtue of the articles and memorandum of association.”

In the circumstances, I am of the view that this issue of representation should be sent back to the 2nd Defendant for a decision by the National Officers of the party in line with the Constitution of the party. A

copy of the motion duly passed by the National Officers in line with the Constitution shall be made available to this Court in proof of the resolution of this issue of representation.

This shall be the order of this Court on this issue.

A handwritten signature in dark ink, appearing to be 'M. B. IDRIS', written in a cursive style.

**M. B. IDRIS
JUDGE
10/06/2016**

I. Esom with F. Odude for the Plaintiff
O. Fakunle SAN with G. Mrakpor for the 2nd Defendant
Y. Oke with W. Liade, O. Emeti, R. Akintunde and J. Ajolor
for the 2nd Defendant.