

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE MAKURDI JUDICIAL DIVISION  
HOLDEN AT MAKURDI  
ON THURSDAY THE 19<sup>TH</sup> DAY OF NOVEMBER 2015  
BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE  
BINTA F.M. NYAKO  
JUDGE**

**SUIT NO.FHC/MKD/CS/13/2015**

**BETWEEN:**

JOSEPH HEMEN BOKO	)	PLAINTIFF/APPLICANT
AND		
1. BENJAMIN B. NUNGWA	}	DEFENDANTS/ RESPONDENTS
2. ALL PROGRESSIVE CONGRESS (APC)		
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)		

Parties: Plaintiff and 1<sup>st</sup> Respondent in Court

Counsel: Shaager Boayally for plaintiff with I. Jev.

G.T. Mbasuen for 1<sup>st</sup> defendant holding brief of T.Y. Ornguga  
for 2<sup>nd</sup> defendant.

G.O. Ochai for 3<sup>rd</sup> defendant.

**RULING**

The applicant by his Originating Summons seeks the determination of question and reliefs there under as follows:-

1. Whether or not by the combine provisions of section 87(4) (c)(i)(ii) of the Electoral Act 2010 (as amended), Articles 20(iii) and (v) (c) of the All progressives Congress (APC) Constitution 2013 (as amended); paragraphs 14 and 15 (d) of the (APC) 2014 guidelines for the nomination of candidates for public

offices and the APC result sheet for the party primaries for State House of Assembly Kwande West Constituency No. APC/NHQ/BN 0103, the plaintiff who scored the majority of votes case at the 2<sup>nd</sup> Defendants' congress for Kwande West State Constituency held at the Adikpo Township Stadium on the 2<sup>nd</sup> December 2013 is the valid, lawful and proper candidate of the 2<sup>nd</sup> defendant for the February 2015 general election.

2. Whether or not by the express provision of sections 31, 33 and 35 of the Electoral Act, 2010 (as amended), the declaration evidenced by the All Progressive Party Result sheet for party primaries for House of Assembly Kwande West State Constituency No. APC/NHQ/BN 0103 of 2<sup>nd</sup> December 2014; the plaintiff who filed and returned to the 3<sup>rd</sup> defendants' Forms EC 4B (iii) and CF 001 issued to him through the 2<sup>nd</sup> Defendant and whose name was submitted to the 3<sup>rd</sup> defendant together with the Forms (amongst others) as 2<sup>nd</sup> Defendant's candidate for the Kwande West State Constituency at the February 2015 polls, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants could have the 1<sup>st</sup> defendant name substituted for his own when he (plaintiff) had neither died nor submitted a written withdrawal from the election as required by law.

3 Whether or not the sudden appearance of the 1<sup>st</sup> defendant's name on the 3<sup>rd</sup> defendant's Website as the All Progressives Party's candidate for Kwande West State Constituency on the 29<sup>th</sup> January 2015 when the plaintiff neither withdraw from the election as prescribed by law nor died is not an unlawful, invalid and an unwarranted publication of the 1<sup>st</sup> defendant as APC candidate for Kwande West State Constituency in violation of sections 31, 33 and 35 of the Electoral Act 2010 (as amended) and prejudicial to the candidate of the plaintiff.

**AND THE PLAINTIFF CLAIMS AS FOLLOWS:**

1. A declaration that by combined operation of section 87(4) (c)(i) and (ii) of the Electoral Act 2010 (as amended), Article 20(iii), (v) (c) of the All Progressives Party Constitution, paragraphs 14 and 15 (d) of the APC guidelines for party primaries and the APC result sheet for party primaries for House of Assembly, Kwande West State Constituency No. APC/NHQ/BN 0103 of 2<sup>nd</sup> December 2014 the plaintiff is the lawful and validly nominated 2<sup>nd</sup> defendant's candidate for Kwande West State Constituency at the February 2015 polls.
2. A declaration that the plaintiff having been returned as the winner vide APC/NHQ/BN 0103, filed and returned the Statutory forms EC4 B (iii) and CF 001 to the 3<sup>rd</sup> defendant upon 2<sup>nd</sup> defendant's

submission of his name as her candidate for Kwande West State Constituency cannot lawfully and validly have the 1<sup>st</sup> defendant's name substituted for his (plaintiff's) name as the 2<sup>nd</sup> defendant's candidate for Kwande West State Constituency with the plaintiff's written and submitted withdrawal from the election.

3. A declaration that the 3<sup>rd</sup> defendant's publication of the 1<sup>st</sup> defendant on her Website purporting that 1<sup>st</sup> defendant is the substitute for the plaintiff as the 2<sup>nd</sup> defendant's candidate for Kwande West State Constituency is unlawful, unwarranted, invalid, null and void not flowing from statutory qualification and contrary to sections 31, 33 and 35 of the Electoral Act 2010 (as amended).
4. An order that the 3<sup>rd</sup> defendant further withdraw, delete, erase or remove the name of the 1<sup>st</sup> defendant from her Website and records as the 2<sup>nd</sup> defendant's candidate for the February 2015 election into the Kwande West State Constituency and to publish the plaintiff's name in all its records and Website as the 2<sup>nd</sup> defendant's candidate for Kwande West State Constituency.
5. An order of Court that the plaintiff is and remains the lawful and valid candidate of the 2<sup>nd</sup> defendant for Kwande West Constituency at the 2015 polls.

6. An order that any return at the February 2015 polls whenever same must have been held for election into Kwande West State Constituency in respect of votes cast for the All Progressives Congress (APC) shall be deemed to be a return of votes cast for the plaintiff at the election, AND
7. Any other/further order(s) as the Court may deem it fit to make in the interest on justice.

The Originating Summons is supported by an affidavit with exhibits and a written address.

Upon being served with the process the 1<sup>st</sup> and 2<sup>nd</sup> respondents each filed notice of objection to the jurisdiction of the court to hear the suit and also filed their Counter Affidavit to the Originating Summons. The 3<sup>rd</sup> respondent did not file an objection, but filed its Counter Affidavit to the Originating Summons all with written addresses.

Because jurisdiction is the life wire of any litigation, I shall deal with that first before dealing at the Originating Summons if the need arises.

The two (2) preliminary objections are précised on virtually the same grounds seeking that the suit be dismissed in its entirety:

- a. The originating summons was not filed in accordance with due process having not complied with the form and content prescribed

under the Federal High Court Civil Procedure Rules 2009 and Sheriff's and Civil Process Act 2004.

- b. That the originating summons and other processes served on the 1<sup>st</sup> defendant commanded the 1<sup>st</sup> defendant to enter appearance within 14 days instead of 30 days.
- c. The originating summons is fundamentally defective having not complied with the due process of law.
- d. That the claims of the plaintiff is base on contentious, controversial and disputable fact bordering of allegation of fraud and as such cannot be adequately and properly heard and determined by way of originating summons.
- e. That this Honourable Court lacks the requisite jurisdiction to entertain and/or hear this suit.

The 2<sup>nd</sup> defendant simply says the case was not commenced vide due processes.

The 1<sup>st</sup> Respondent filed an affidavit in support of his preliminary objection to the effect that the process served on him does not say it was for service out of jurisdiction and that the return date endorsed on the Originating Summons says the return date is 14 days from the date of service. Also that the applicant's claim is based on controversial and

disputable bordering on allegations of fraud and should not have been began by Originating Summons.

Learned counsel filed written address and formulated a lone issue for determination to wit:-

- Whether in the circumstances of this case this court has the requisite jurisdiction to entertain this suit.

On the issue of marking the processes as concurrent, I refer to Order 3 Rule 20 of the Federal High Court Rules which provides for marking the processes for service within and outside jurisdiction as concurrent. The provisions uses the word 'may' I opine that the most important thing is that leave is sought and obtained for service out of jurisdiction and the processes for service out of jurisdiction is so marked concurrent. This non-marking as concurrent as long as leave has been obtained can and should be treated as a mere irregularity particularly as parties are not in doubt of this.

On the issue of endorsing that the return date is 14 days after service on the respondents on the Originating Summons I refer to Order 7 Rule 110 of the Federal High Court Rules which requires a party that has been served an Originating Process and intends to defend same to file the defence within 30 days of having been served.

Even though the Originating Summons says 14 days on the face of it, the respondent only filed his Counter Affidavit in April well over 2 months of having been served.

The mere mention of the wrong return of day for return cannot make a proceeding as it can easily be rectified. No miscarriage of justice was thus occasioned.

On controversy in the applicant's claim, I have looked at the applicant's claims which is what confers jurisdiction on the court and determines the mode of commencement of the action and as reproduced above, it appears to me only based on interpretation of documents and laws/by laws. This case easily be ventilated by Originating Summons. The respondents have not filed a C/C to show that there are other issues to be waited out other than the ones submitted by the applicant for determination.

The preliminary objection of the 2<sup>nd</sup> defendant is premised on the ground that the applicant's claims and the 2<sup>nd</sup> defendant response show disputes of facts and therefore not suitable under the Originating Summons procedure.

It is my opinion that facts that have been reduced into writing are now documents and can be ventilated by Originating Summons.

On the whole, the 2 sets of preliminary objection fail and are thereby struck out.



Going back to the Originating Summon and the questions for determination. The Originating summons is supported by grounds upon which the reliefs are sought; a supporting affidavit with exhibits and a written address, wherein learned counsel formulated two (2) issues for determination to wit:-

- i. Whether or not the plaintiff has shown himself as the lawfully and validly nominated candidate of the All progressives Congress for Kwande West State Constituency at the February 2015 polls and entitled to have his name published as APC candidate for the election and not the 1<sup>st</sup> defendant.
- ii. Whether or not the purported publication of the 1<sup>st</sup> defendant as the 2<sup>nd</sup> defendant's candidate for Kwande West State Constituency is unlawful, invalid, unwarranted, null and void and if the answer is in the affirmative whether or not the plaintiff is and remains the All Progressives Party candidate for Kwande West State Constituency at the February 2015 polls and the return for votes cast for the All Progressives Party at the election necessarily votes cast for the plaintiff at the election.

On issue one (1) learned counsel submitted that the plaintiff has shown by statements and guidelines for party primaries that he is the lawful

candidate for the APC for Kwande West State Constituency at the February 2015 polls.

That the primaries of the 2<sup>nd</sup> defendant took place for the Kwande West State Constituency on the 2<sup>nd</sup> December 2014 at the Adikpo township stadium with 194 delegates where at 4 persons contested with the plaintiff/applicant, scoring 97 votes while the 1<sup>st</sup> respondent scored 86 votes as announced by the Chairman and Secretary of the election committee at the venue of primaries and forwarded to the 2<sup>nd</sup> defendant.

Consequent upon this, the plaintiff was issued form EC4B(iii) and CF 001 to fill. That all these confirm with paragraph 14(i) of the party guidelines having scored the highest votes at the primaries same as Article 20(iii) of the 2<sup>nd</sup> defendant Constitution.

That pursuant to this, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are bound to accept this. He relied on the cases of **AMACHI VS. INEC (2008) 5 NWLR (PART 1080) 227** and **UGWU VS. ARARUME (2007) 31 WRN 1 AT 36**.

That having submitted the plaintiff's name to the 3<sup>rd</sup> defendant, the 3<sup>rd</sup> defendant is duly bound to publish the name of the plaintiff forwarded to them by virtue of section 31(3) of the Electoral Act.

On issue 2, learned counsel submitted that the plaintiff's name having been submitted to the 3<sup>rd</sup> defendant as the candidate of the 2<sup>nd</sup> defendant for Kwande West State Constituency, in accordance with section 31 of the

Electoral Act, the 3<sup>rd</sup> defendant is obliged by virtue of section 31(3) to cause the name of the plaintiff to be so published within 7 days of the receipt of same for public attention. This, the 3<sup>rd</sup> defendant failed to do.

That the name of the 1<sup>st</sup> defendant could not be so forwarded or published as he did not score the highest votes at the primaries.

That upon the submission of the name of the plaintiff to the 3<sup>rd</sup> defendant, he had neither withdrawn his candidature nor has he died. That by section 33 of the Electoral Act, the 2<sup>nd</sup> defendant cannot change or substitute a candidate whose name had been submitted to the 3<sup>rd</sup> defendant except in cases of death or withdrawal by the candidate.

That by exhibit 6, the plaintiff has stated that he has not withdrawn and as such his substitution is unlawful, unwarranted, invalid null and void. That publishing the name of the 1<sup>st</sup> defendant on the 3<sup>rd</sup> defendant Website amounts to his being substituted.

That relying on the Amachi case (supra), the candidate found to have been the nomination simply steps into the shoes of the invalidly fielded candidate. He urged the court to declare as per his reliefs.

The 1<sup>st</sup> defendant filed a Counter Affidavit to the Originating Summons with exhibits and a written address wherein learned counsel formulated a lone issue for determination to wit:-

- Whether in the circumstances of this case they can be said that there was substitution and whether the issue of nomination, sponsorship and fielding of candidate for an election is purely an internal affair of a political party which a tribunal or court has power to interfere with or intervene into.

Learned counsel submits that this case does not come within sections 33 or 35 of the Electoral Act as it is not a case of substitution.

That at the conclusion of primaries as narrated by the plaintiff, he the 1<sup>st</sup> defendant petitioned the 2<sup>nd</sup> defendant on the use of Counter foil ballot papers when the original was exhausted. That the 2<sup>nd</sup> defendant Appeal Committee deliberated on the matter and recommended that the votes march on Counter foils be subtracted from the votes casts for all candidates consequent upon which he the 1<sup>st</sup> defendant now became the person with the highest votes casts. That this recommendation was upheld by the National Working Committee of the 2<sup>nd</sup> defendant. Subsequently, the name of the 1<sup>st</sup> defendant was then forwarded to the 3<sup>rd</sup> defendant as being the candidate for the 2<sup>nd</sup> defendant.

Further that the issue of candidate of a political party is an internal affair of the party. He referred to the case of **SEN. YAKUBU GARABA LADO VS. CONGRESS FOR PROGRESSIVE CHANGE & OTHERS**

**(2012) ALL FWLR (PART 607) 598; JANG VS. INEC (2004) ALL FWLR (PART 200).**

That by Article 19(iii) 2 of the 2<sup>nd</sup> defendant Constitution, the final list of candidates shall be forwarded to the 3<sup>rd</sup> defendant only after the deposal of appeals to the BOT.

That if the name of the plaintiff was indeed forwarded to the 3<sup>rd</sup> defendant, it was done in error as the 1<sup>st</sup> defendant has appealed the primaries.

He urged the Court to resolve the issues against the applicant.

The 2<sup>nd</sup> defendant filed a Counter Affidavit with exhibits and a written address and formulated one issue for determination to wit:-

- Whether given the facts and circumstances of this case, the plaintiff validly won the 2<sup>nd</sup> defendant primary election, conducted on 2<sup>nd</sup> December 2014 to entitle him to be the 2<sup>nd</sup> defendant's candidate in respect of Kwande West State Constituency in the 2015 general election.

Learned counsel submitted that the 2<sup>nd</sup> defendant was guided by the party Constitution and Guidelines in the conduct of primaries at which both plaintiff and 1<sup>st</sup> defendant participated.

That by Article 20(iv) of the Party's Constitution, the aspirant with the highest votes would be the candidate of the party. That at the conclusion of

votes, the plaintiff was said to have scored the highest number of votes and his name forwarded to it. That the 1<sup>st</sup> respondent petitioned the 2<sup>nd</sup> respondent who caused its appeal committee to look into the matter.

That at the conclusion of appeal, the committee voided the votes casts using Counter foil ballet paper for all the aspirants and upon a recount, the 1<sup>st</sup> respondent was found to have the highest votes now. That this decision was concluded by the National Working Committee. That due to the petition, the 2<sup>nd</sup> defendant has asked the 3<sup>rd</sup> defendant to hold publishing any name for the said constituency until all appeals have been exhausted. That at the end, the name of the 1<sup>st</sup> respondent was forwarded to the 3<sup>rd</sup> respondent as its candidate for Kwande West State Constituency.

He urged the court to dismiss the plaintiff's case for lacking in merit.

To this Counter Affidavit and written address, the plaintiff filed a further Affidavit and a reply address.

The plaintiff insists that he was neither served the petition of the 1<sup>st</sup> defendant nor was he called by the appeal committee and that he was informed that the National Working Committee did not sit and deliberate on this case.

The 3<sup>rd</sup> defendant filed a Counter Affidavit with a written address. That they are duty bound to accept any candidate submitted to it by a political party within the time frame for doing so and that is all they did.

This is the position of parties.

Taking the question as asked, Section 81(4) C (i) and (ii) of the Electoral Act is very clear and unambiguous.

It provides that a party wishing to field a candidate into an elective post will conduct primaries and the person with the highest votes shall be forwarded as the candidate of the party.

In fact this provision of the law is agreed upon by all the parties.

Further, it is not disputed that at the primaries conducted by the party for Kwande West State Constituency, the plaintiff scored the highest votes casted which votes included those on ballot paper and those casted on Counter foil ballot paper when the ballot papers ran out.

The only condition provided by the Electoral Act for the substitution of a candidate is voluntary withdrawal of death.

The plaintiff averred that he neither withdraws nor is he dead.

The issue that arises here is why was the name of the plaintiff not published by the 3<sup>rd</sup> defendant as the candidate of the 2<sup>nd</sup> defendant.

From processes before the court which are not disputed, the 1<sup>st</sup> defendant being dissatisfied with the use of Counter foil paper to conduct the primaries, petitioned the 2<sup>nd</sup> defendant the same day the primaries were conducted.

On the averment of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, an appeal committee was set up which came into Benue State and advertised their presence. The petition of the 1<sup>st</sup> respondent was deliberated upon and it decided and made 2 recommendations;

- delete all votes casted on counter foil and deduct same from all votes casted and
- Do a re-run of the primaries

The Committee recommended the 1<sup>st</sup> option to the 2<sup>nd</sup> respondent which the 2<sup>nd</sup> respondent accepted.

Upon deleting the votes cast on counter foil, the 1<sup>st</sup> defendant now became the person with the highest votes casted.

Upon receipt of the petition, the 2<sup>nd</sup> respondent had asked the 3<sup>rd</sup> respondent to hold publishing a name of candidate for the Kwande West State Constituency due to the petition. Upon taking a position by the National Working Committee of the 2<sup>nd</sup> defendant, it now forwards the name of the 1<sup>st</sup> respondent to the 3<sup>rd</sup> respondent as its candidate.

This explains why there was initially no candidate named for the said constituency on the 3<sup>rd</sup> defendant Website for some time.

The question that appears to me to calls for determination is whether the 2<sup>nd</sup> respondent had the power to resolve the petition in the manner that it did?



I refer to Article 16 of the APC Guidelines for nomination of candidate, sub (b) provides for the appeals committee while sub (d) provides that the decision of the National Working Committee shall be final on all appeals.

If this is the case, then I fail to fault the act of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. It may be true and correct that to have conducted a rerun of the primaries, maybe name equitable and fair but the guidelines to which the plaintiff and respondents are subsisted.

Consequent upon this, the case of the plaintiff fails and it is thus dismissed.

Ruling delivered in open Court this 19<sup>th</sup> day of November 2015.



**Hon. Justice Binta F.M. Nyako**  
**Judge**  
**19/11/2015**



Mr. Sule: I urge the court to convict the accused as charged.

Mr. Gwange: No objection

Court: In the light of the plea of the accused admitting his guilt, the exhibits tendered including the confessional statement of the accused and the recovered Cannabis Sativa, I hereby find the accused guilty as charged and by virtue of Section 11(c) of the National Drug Law Enforcement Agency Act convict him accordingly.

**Signed**  
**Hon. Justice Binta F.M. Nyako**  
**Judge**  
**8/12/2015**

Mr. Gwange: I plead allocutus on behalf of the accused. He is married man with children with aged parents. I plead passionately for him and the court to temper justice with mercy.

Court: In consideration of the passionate plea of counsel, I hereby sentence the convict is hereby sentenced to a term of Two (2) years imprisonment from the date of his arrest. The National Drug Law Enforcement Agency is to destroy the recovered drug at the expiration of the appeal period.

**Signed**  
**Hon. Justice Binta F.M. Nyako**  
**Judge**  
**8/12/2015**