

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE MAKURDI JUDICIAL DIVISION  
HOLDEN AT MAKURDI  
ON THURSDAY THE 10<sup>TH</sup> DAY OF DECEMBER 2015  
BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE  
BINTA F.M. NYAKO  
JUDGE**

**SUIT NO.FHC/MKD/CS/18/2015**

**BETWEEN:**

ORBAM NGUSHA BATHLOMEW	)	PLAINTIFF/APPLICANT
AND		
1. BARR. BENJAMIN WAYO	}	DEFENDANTS/ RESPONDENTS
2. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)		
3. ALL PROGRESSIVE CONGRESS (APC)		

Parties: Plaintiff in Court

Counsel: P.D. Adi holding brief of G.C. Ugwuweze for plaintiff  
N.N. Collins for 2<sup>nd</sup> Defendant

**RULING**

The Applicant by an Originating Summons seeks the determination of three (3) questions and relief against the respondents as follows:-

1. Whether upon proper perusal of INEC Form C.F. 001 and the letter dated 4<sup>th</sup> September, 1997 referenced JSC/SEC/P/1192/1/40 attached to it and submitted by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant through the 3<sup>rd</sup> Defendant as the evidence of the 1<sup>st</sup> Defendant's termination and looking at the Certified True Copy of the said letter dated 4<sup>th</sup> September, 1997 and referenced JSC/SEC/P/1192/1/40 the

information contained on the said Form CF 001 submitted by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant through the 3<sup>rd</sup> Defendant is not false.

2. Whether upon the perusal and comparing two letters: i. The letter from Benue State Judicial Service Commission referenced JSC/SEC/1192/1/39 and dated 4<sup>th</sup> September 1997 and addressed to the 1<sup>st</sup> defendant titled "Termination of Appointment" citing "doubtful integrity" as reason for terminating the 1<sup>st</sup> defendant's appointment and ii. The letter dated 4<sup>th</sup> September, 1997 and referenced JSC/SEC//P/1192/1/40 submitted by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant through the 3<sup>rd</sup> Defendant as the evidence of the 1<sup>st</sup> Defendant's termination; is it not manifest that the 1<sup>st</sup> defendant's submission to the 2<sup>nd</sup> Defendant through the 3<sup>rd</sup> Defendant is false?
3. Whether by the combined effect of Section 31(5) and (6) of the Electoral Act 2010 (As Amended) vis-à-vis the false information submitted by the 1<sup>st</sup> Defendant in Form CF. 001, this Honourable Court cannot disqualify the 1<sup>st</sup> Defendant from contesting the forthcoming National Asembly Election, 2015 as candidate of the 3<sup>rd</sup> Defendant into the Kwande/Ushongo Federal Constituency of Benue State.

**AND TAKE NOTICE** that upon the determination of the questions above, the Plaintiff shall seek the following reliefs:-

1. A declaration that the information submitted by the 1<sup>st</sup> Defendant to the 3<sup>rd</sup> Defendant in Form CF 001 is false.
2. An order of this Honourable Court disqualifying the 1<sup>st</sup> Defendant from contesting the forth coming election of 14<sup>th</sup> February, 2015 into Kwande/Ushongo Federal Constituency of Benue State.
3. And for such other orders that this Honourable Court may deem fit to grant in the circumstances of this case.

The Originating Summons is supported by an Affidavit with Exhibit and a written address.

The Plaintiff is a registered voter and domiciled at RCM College Mbakuha, Ushongo Local Government Area of Benue State, entitled to vote particularly for the election into the House of Representatives for Kwande/Ushongo Federal Constituency of Benue State.

That the 1<sup>st</sup> Defendant in his completion and enclosures of 2<sup>nd</sup> Defendant's Form CF 001 falsely submitted under oath that his appointment was terminated by the enclosed letter dated 4<sup>th</sup> September 1997, while in truth a letter dated 4<sup>th</sup> September 1997 citing 1<sup>st</sup> defendant's termination of appointment for doubtful integrity exists and was concealed by the 1<sup>st</sup> Defendant by non-inclusion of same and false, inclusion of another letter **Exhibit ONB, 3A, 3B, 3C, 3D and 3E.**

That the INEC Form CF 001 requires the 1<sup>st</sup> defendant to state reasons for leaving and to attach evidence, but the 1<sup>st</sup> Defendant detached the letter with referenced No. JSC/SEC/P/1192/1/39 and submitted same to the 2<sup>nd</sup> Defendant without attaching evidence of leaving in INEC Form CF 001.

That the trial in suit No. MHC/122/97 before the High Court Benue State, the 1<sup>st</sup> Defendant tendered the two letters as one document attached to each other and the word Appointment was not cancelled in the letter reference JSC/SEC/P/1192/1/40.

That the 1<sup>st</sup> Defendant knew that the letter referenced JSC/SEC/P/1192/1/40 was not his termination letter but for the calculation of his one month salary in lieu of notice.

Learned counsel formulated a lone issue for determination to wit:

Whether upon proper consideration and comparison of submission under oath made by the 1<sup>st</sup> Defendant through the 3<sup>rd</sup> Defendant on INEC Form CF 001 and the active information relevant and subsisting, it is manifest that the 1<sup>st</sup> Defendant made false declaration to the 2<sup>nd</sup> defendant and so forfeits his candidacy?

Learned counsel argue that under Section 31 (5) of the Electoral Act 2010 (As Amended) any person who has any reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false may file a suit at the Federal

High Court against such a person seeking a declaration that the information contained in the affidavit is false.

And that the 1<sup>st</sup> defendant in his completion and enclosure of 2<sup>nd</sup> Defendant Form CF 001 falsely submitted under oath the information of his termination of appointment. **Exhibit ONB 3B**. Relying on the case of **TEXACO PANAMA INC. VS. S.P.D.C. LTD (2002) FWLR (PART 96) 579 AT 610 PARAGRAPH C**, Learned counsel submitted that the word 'any' refers to some or all or one person from Kwande/Ushongo Federal Constituency of Benue State. He submits that the plaintiff falls perfectly within the meaning of the word "any" used in the Act.

That the 1<sup>st</sup> defendant in the bid to shield this information from the knowledge of his political constituent suppressed the actual termination letter by using biro to delete 'Appointment' and write "Termination" reference No. JSC/SEC/1192/1/40 Exhibit ONB 3C.

Learned counsel submitted that by Section 31 (6) of the Electoral Act 2010 (As Amended) that where an aspirant provide a false information to the INEC (2<sup>nd</sup> Defendant) the proper action by this Honourable Court will be to disqualify the aspirant from participating and referred to **OGIDI VS. STATE (2005) ALL FWLR (PART 251) 202 AT 231 – 231 PARAGRAPHS G – A**.

He urge the Court to hold that the 1<sup>st</sup> Defendant made false declaration and accordingly disqualify him from contesting the 2015 general election into the house of Representative from Kwande/Ushongo Federal Constituency of Benue State.

The 1<sup>st</sup> and 3<sup>rd</sup> defendant filed a Counter Affidavit to the Originating Summons and preliminary objection.

In the motion the 1<sup>st</sup> and 3<sup>rd</sup> Respondent seeks to have the suit dismiss/struck out on the ground that the Originating Summons filed by the plaintiff is incompetent.

The Motion is supported by Written Addresses Learned Counsel formulated Sole issue for determination to wit:-

- Whether the Originating Summons in this suit is competent and if answer is in the negative, whether this Honourable Court has jurisdiction to entertain it?

Learned counsel submitted that the Originating Summons is incompetent and this Honourable Court lacks jurisdiction to entertain the suit. That the Question raised by the plaintiff in the Originating Summons for "determination by this Court are quite different from the sole Question/issue argued by the said plaintiff in his written address.

He submitted that this approach has offended two principals of law and rely on the provision of Order 3 Rule 7 of the Federal High Court (Civil Procedure) Rules 2009.

That since all the questions are abandoned and an issue which is alien to them has been argued by the plaintiff the Originating Summons is incompetent and no court has jurisdiction to grant an abandoned relief or question submitted, because by it being abandoned, is no more alive for determination.

He urged the Honourable Court to strike out or dismissed this suit for lack of jurisdiction.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants filed a Counter Affidavit and a Written Address.

That nothing from the plaintiff **Exhibit ONB 2** shows that it was the letter referenced JSC/SEC/1192/1/40 dated 4<sup>th</sup> September 1997 that he submitted to INEC as in plaintiff affidavit paragraphs 6 and 7.

That the INEC stamp has covered the portion where it would have been determined whether or not it was letter referenced JSC/SEC/1192/1/40 or JSC/SEC/1192/1/39 that he submitted to INEC.

That letter referenced JSC/SEC/1192/1/40 indicated clearly that his appointment was terminated which was the only information needed to be supplied by him to the INEC while filling Form CF 001. Exhibit A.

That his appointment was terminated on the 4<sup>th</sup> September 1997 and both the letter with reference No. JSC/SEC/1192/1/40 and JSC/SEC/1192/1/39 were addressed to him and served on him by my former employers.

That the termination of his appointment was more detailed in a letter dated 4<sup>th</sup> September 1997 with referenced No. JSC/SEC/1192/1/40 addressed to him which carries the date of his employment as 11<sup>th</sup> December 1995, his salary as at 4<sup>th</sup> September 1999, termination of appointment with one month salary in lieu of notice.

That he has not at any point in time been tried and convicted either by any court of law, Tribunal or Judicial Panel of enquiry for any offence whatever.

The learned counsel formulated two (2) issues for determination to wit:-

- Whether this Honourable Court has jurisdiction to entertain this suit
- Whether from the material placed before this Honourable Court by the parties to this suit, the plaintiff is entitled to a positive resolution of the sole issue formulated by him in this Originating Summons and to being granted the Relief sought.

On issue one (1) the 1<sup>st</sup> and 3<sup>rd</sup> Defendant submits that the Originating Summons filed by the plaintiff in this suit is incompetent and adopt the said argument raised in the preliminary objection.



On issue two (2) the 1<sup>st</sup> and 3<sup>rd</sup> defendant submitted that termination of employment is not a disqualifying factor under Section 66 of the Constitution of the Federal Republic of Nigerian 1999 (As Amended).

That from the above provision the 1<sup>st</sup> Defendant would be disqualified from contesting if he had been convicted and sentenced for an offence involving dishonestly or he has been found guilty of a contravention of the Code of Conduct. He argued that nothing in the plaintiff affidavit or exhibit attached thereto show that the 1<sup>st</sup> defendant was either convicted and sentenced for an offence involving dishonest or guilty of contravention of the Code of Conduct.

That paragraph 9 of the plaintiff supporting Affidavit, the plaintiff deposes that Benue State Judicial Service Commission terminated 1<sup>st</sup> defendant appointment as Magistrate II for violating the Code of Conduct relating to Judicial Officers. He then went on to obtain **EXHIBIT ONB4** the Judgment of a court in a criminal case or a Judgment the Code of Conduct Tribunal indicting the 1<sup>st</sup> defendant which termination was affirmed by the Court of Appeal **Exhibit ONB4**.

He relied on the authority in **AMACHI VS. INEC (2008) ALL FWLR (PART 407) 1 AT 195 S.C.** that only a Court of law can convict a person for criminal offence and **AHMED VS. AHMED (2013) ALL FWLR (PART 699)**

**1025 S.C.** that only Code of Conduct Tribunal has jurisdiction to entertain complaints bordered on breach of the Code of Conduct.

He urged the court to hold that the plaintiff suit is incompetent, hence this Honourable Court lacks jurisdiction to entertain it, it should be dismissed.

The 2<sup>nd</sup> Defendant formulated one (1) issue for determination to wit:-

- Whether the 2<sup>nd</sup> defendant should recognize any person presented to it by the 3<sup>rd</sup> defendant as a candidate to sponsor in the 28<sup>th</sup> March 2015 General Election for Kwande/Ushongo Federal Constituency.

He submitted that the 2<sup>nd</sup> defendant has power to recognize any person presented to same by the 3<sup>rd</sup> defendant as the candidate the party has proposed to sponsor in 2015 General Election for Kwande/Ushongo Federal Constituency in Benue State, rely on the provision of **Section 31(1)** of the Electoral Act 2010 (As Amended).

He submitted that the recognition of a candidate presented by the 3<sup>rd</sup> defendant to the 2<sup>nd</sup> defendant as its candidate of 28<sup>th</sup> March 2015 General Election is a statutory duty of the 2<sup>nd</sup> defendant and it's duly bound to carry.

Plaintiff in his reply to the 1<sup>st</sup> and 3<sup>rd</sup> defendants written address vehemently opposed the application as unmeritorious and frivolous and ought to be dismissed, relying on the argument canvassed in opposing the said motion.

On issue two (2) he submitted that **Exhibit A** attached to the 1<sup>st</sup> and 3<sup>rd</sup> Defendant Counter Affidavit which was submitted to 2<sup>nd</sup> defendant is a deliberate misrepresentation and falsehood as representing the reason for leaving contained in INEC Form CF 001 which required the 1<sup>st</sup> Defendant to attach evidence for leaving his employment, that in suit No. MHC/122/97 wherein the 1<sup>st</sup> defendant sued the Judicial Service Commission Benue State, he tendered **Exhibit ONB3B and ONB3C** i.e. letter of termination of appointment Ref. JSC/SEC/P/1/1192/1/39 dated 4<sup>th</sup> September 1997 and JSC/SEC/P/1/1192/40 dated 4<sup>th</sup> September 1997 payment in lieu of one month salary.

He submitted that the case of **ANPP VS. NA'ALLAH (2009) ALL FWLR (PART 492) AT 119** was consideration the provision of **Sections 34, 35 and 38** of the Electoral Act 2006 and there is no similar provision of **Section 31 (5) and 6** of Electoral Act 2010 (As Amended) in the Electoral Act 2006. The said provision of **Sections 34, 36 and 38** only dealt with change of candidate by more than one political party and withdrawal and nomination of candidate by more than one political party and/or in more than one Constituency and that the same decision in Na'allah's case is a pre-electoral Act 2010 (As Amended).

He urged the court to discountenance the arguments of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and resolve all the questions in the Originating Summons in favour of the plaintiff and granted relief sought.

The plaintiff reply on point of law to the oral objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendant on non-compliance with **Section 104(2)** of the Evidence Act and signing of Written Address.

Learned counsel submitted that the required of the law has been complied with by the plaintiff in **Exhibit ONB 1 – 4** which is the record of a superior court was certified by the Registrar of the Court of Appeal Jos Division as a bundle, it has the name of Andy Danjuma as a Register, 28<sup>th</sup> January 2015, the date of certification and stamp of the Court of Appeal Jose showing that it is a certified true copy by the Registrar, the receipt No. 009788348 attached **Exhibit ONB5**.

He relied on the authority of **DAGGASH VS. BULAMA (2004) ALL FWLR (PART 220) 1371 CA** where the Court of Appeal held that substantial compliance is what is require in certification of Public document. And submitted that the provision of Section 146(1) of Evidence Act 2011 has been complied with.

On the second issue on the ground of who sign the written address between the two counsel.

Learned counsel submitted that the unreported case of **OKEY EZEA VS. IFEANYI UGWUANJI** was not made available to them so as to enable them distinguish the fact from the one at hand, but argue that the case is decision of Court of Appeal which is inferior to Supreme Court decision in **OKETADE VS. ADEWUNMI & 4 OTHERS (2010) ALL FWLR (PART 526) 511** and **SLB CONSORTIUM LTD VS. NNPC (2011) ALL FWLR (PART 583) PAGE 1902 AT 1904 PARAGRAPH 2.**

He submitted that the names alluded to by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are legal practitioners registered to practice law and whose names are on the roll at the Supreme Court. And the said names appeared on top of the law firm in which they carried out their practice in compliance with the decision of Supreme Court in the case of **SLB CONSORTIUM (Supra)** which is binding on any other Court under the doctrine of judicial precedent.

He urged the Court to follow the decisions in **PANALPINA WORLD TRANSPORT HOLDING AG VS. CEDDI CORPORATION LTD. (2011) ALL FWLR (PART 600)** and more especially regarding the fact that the objection is essentially a technicality and the days of justice by technicality are definitely over since the names listed are qualified legal practitioners duly registered to practice law on Roll at the Supreme

Court; it has complied with the provision of the Legal practitioners Act and Rule of this Court.

This case all material fact is similar and premised on the same grounds to the previous case just ruled upon.

As I have ruled in the earlier case, the preliminary objection fails and is struck out.

On the Originating Summons, I have read addresses from both side and the provisions of the law. They are all well set out.

The only question that arises for determination is did the 1<sup>st</sup> defendant submit false information in his Form CF 001 as to disqualify him from contesting election as envisaged by the Constitution?

I have looked at Exhibit **ONB2**. The said Form clearly states thereon, that the employment of the 1<sup>st</sup> defendant was terminated with immediate effect. What more does the plaintiff want the letter to say?

This Exhibit is a JSC Form. It is used for both appointment and or termination. The appropriate one is retained while the other is cancelled or deleted. I don't think that it was an attempt to mislead anyone. It is in the Public domain that the appointment of the 1<sup>st</sup> defendant was terminated as it is well reported in the law reports.

For all the reasons contained in the sister case, having found that termination of appointment is not a disqualification to contest election

and having found that the 1<sup>st</sup> Defendant did not submit false statement to the 2<sup>nd</sup> defendant, this case fails and the claims are thus dismissed.

Ruling delivered in open Court this 10<sup>th</sup> day of December 2015.



**Hon. Justice Binta F.M. Nyako**  
**Judge**  
**10/12/2015**