

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY, THE 9TH DAY OF MARCH, 2016
BEFORE HIS LORDSHIP, HON. JUSTICE A.R.MOHAMMED
JUDGE

SUIT NO: FHC/ABJ/CS/1092/2014

BETWEEN:

DR. OBIORAH OKONKWO PLAINTIFF

AND

1. PEOPLES DEMOCRATIC PARTY
2. ALHAJI ADAMU MUAZU
(National Chairman PDP)
Sued for himself and Representing the
National Executive Committee of the
Peoples Democratic Party. (PDP)
3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC) } **.... DEFENDANTS**

4. CHIEF (MRS) UCHE EKWUNIFE DEFENDANT/APPLICANT

RULING



This ruling is on the two applications brought by the 4th Defendant and the 1st and 2nd Defendants.

The application of the 4th Defendant is a motion on notice dated and filed on 15/2/16. In the said application, the 4th Defendant seek the following reliefs:-

1. AN ORDER granting leave to the 4th Defendant/Applicant at this stage of the proceedings to terminate this proceedings as same is academic as presently constituted.



2. AN ORDER of this Court permitting the 4th Defendant/Applicant to wit: Amend the 4th Defendant/Applicant written Address already filed and adopted in this issue to raise;

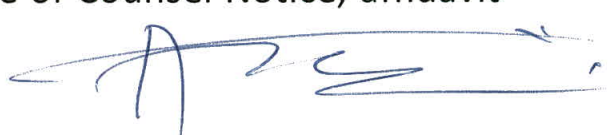
- (i) The issue (1) above on the academic nature of this suit as presently constituted.

- (ii) An order setting aside the proceedings of 9/2/16 especially the evidence and cross examination of Alaye Tremie as same is a nullity.

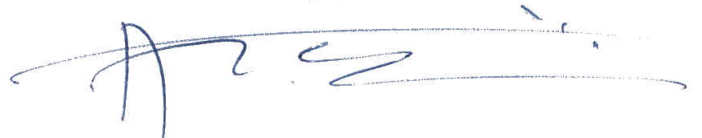
- (iii) Permitting 4th Defendant/Applicant to file a Further Written Address incorporating all the issue (i) and (ii) and any other issue based on the case so far and other that

may arise from the taking of any other witness or witnesses in the bid to resolve the conflict in the affidavit.

The grounds upon which the application is predicated are as follows:-

1. The current lead Counsel to the 4th Defendant/Applicant Dr. Alex A. Izinyon, SAN was briefed on 10/2/2016, to take over this matter as shown in the Change of Counsel Notice, affidavit and exhibit filed in this suit. 
2. That lead Counsel upon perusal of the processes, proceedings and documents discovered that as an officer of this Court it is better to put all facts and issue before this Honourable Court to enable the Court arrived at a final decision once and for all on all the issues.
3. That following the decision of the Court in **APENA & ORS. V. AIYETOBA (1989) 1 NWLR (PT. 95) 85 AT 97, PARAS. A – C** this Court permit the new Counsel to take different position from the former Counsel.
4. That in order not to waste any other time, the Applicant is prepared to file a further 4th Defendant/Applicant's Written Address incorporating all the issues with liberty to the Plaintiff and other parties to respond to same and all taken together.


5. That it is a known fact that the cause of action in this suit is the Anambra Central Senatorial Seat of Peoples Democratic Party (PDP) primaries in which 4th Defendant/Applicant was presented as her candidate for the 28/3/2015 National Assembly Election in which the 4th Defendant/Applicant was so returned.



6. That the 4th Defendant/Applicant said election was challenged in a petition before the National Assembly Election Tribunal sitting in Awka which said Tribunal dismissed the petition but on Appeal the Court of Appeal allowed the appeal and nullified the said election of the 4th Defendant/Applicant, holding that she was not qualified to be so sponsored by the 1st Defendant in this suit – Peoples Democratic Party (PDP).

7. That INEC the 3rd Defendant/Applicant in this suit has schedule a fresh election/re-run election for Anambra Central Senatorial District in which it clearly stated that PDP is excluded in fielding any candidate because of the Judgment of the Court of Appeal on 7/2/05 in **CA/E/EPT/28/2015**.

8. That the cause of action in this suit was rooted on the primaries leading to the election of 28/3/15 which was nullified by the Court of Appeal and hence this suit is now academic.

9. That there is no relief in this suit as presently constituted that has any utilitarian value to the Plaintiff having regards to the nullified election as such never existed and PDP to which the Plaintiff belongs has been excluded in the fresh election of 5/3/2016.
10. That until the said Judgment of the Court of Appeal is set aside it remained binding and the current action in this Court has no root to continue which must be struck out/dismissed.
11. That by the proceeding of 9/2/2016, the said Alaye Tremie was never a witness or deponent for the Plaintiff but filed one affidavit of fact suo motu in the Court and could not be called as witness as this affidavit of fact was never filed on behalf of any party as such is only left for the Court on what weight to place on it at address stage. 
12. That the Plaintiff had in the processes before this Court made allegation against the said Alaye Tremie who cannot be summoned now as a witness by the Plaintiff or the Court in the circumstance to give a contrary evidence.
13. That this Honourable Court can set aside the said proceeding relating to the said Alaye Tremie.
14. That upon a calm review of the processes, lead counsel want to make further written address on the above issues and other

new issues flowing from the suit so that this Honourable Court will appreciate all facts before it and resolve once and for all.

15. That the Plaintiff and the Defendants will not suffer any injustice as they have opportunity to react to these issues as no Judgment has been delivered yet on them.

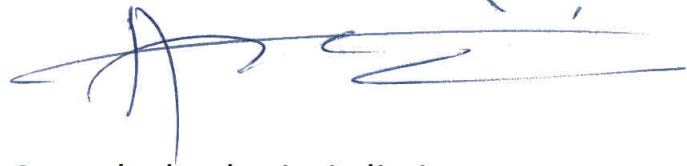


The motion is supported by affidavit of 19 paragraph deposed to by Charity Adah, a legal practitioner in the law firm of Solicitors to the 4th Defendant/Applicant. Attached to the affidavit in support are exhibits marked A, B and C respectively. There is a written address in support of the 4th Defendant's motion dated 15/2/16.

The Plaintiff reacted to the 4th Defendant's motion on notice dated 15/2/16 with a counter Affidavit filed on 16/2/16 and deposed to by Charles Iwuchukwu Esq., a legal practitioner in the law firm of Solicitors to the Plaintiff. Attached to the Plaintiff's counter Affidavit are two exhibits marked PCA¹ and PCA² respectively. There is also a written address in support of the counter affidavit.

The 1st and 2nd Defendants' application is in the nature of a Notice of preliminary objection filed on 16/2/16. In the said objection, the 1st and 2nd Defendants seek for:

AN ORDER striking out this suit for being incompetent and on the ground that this Court lacks jurisdiction to entertain same.



The ground of the objection is that the Court lacks the jurisdiction to entertain suits which are academic and confer no utilitarian value on the Plaintiff. The 1st and 2nd Defendants' Notice of preliminary objection is supported by a 4 paragraph affidavit deposed to by Micheal Aniakor, a litigation secretary in the law firm of counsel for the 1st and 2nd Defendants. Attached to the Affidavit in support of the preliminary objection is one exhibit marked PDP1. There is also a written address in support of the Notice of preliminary objection.

The Plaintiff then filed written address in opposition to the 1st and 2nd Defendants' Notice of preliminary objection.

The 4th Defendant has filed Further Affidavit in support of the motion dated 15/2/16.

I have carefully read the affidavit in support of the 4th Defendant's motion dated 15/2/16, the exhibits attached thereto and the written address that accompanied the said motion. I have also read the Plaintiff's counter affidavit in opposition to the motion dated 15/2/16, the exhibits attached thereto and the written address. I have further read the 4th Defendant's further affidavit with the attached exhibit.



In the same vein, I have read the 1st and 2nd Defendants' Notice of preliminary objection filed on 16/2/16, the exhibit attached thereto and the written address. It seems to me that the two applications of the 1st and 2nd Defendants and indeed the 4th Defendant have one common feature, which is: that by virtue of the judgment of the Court of Appeal, Enugu division, (which is exhibit A to the 4th Defendant's motion) and (exhibit PDP1 to the 1st and 2nd Defendants' Notice of preliminary objection), which said judgment nullified the election of the 4th Defendant as Senator representing Anambra Central Senatorial Zone on the ground that 4th Defendant was not qualified to be so sponsored, this suit has become academic and would not confer any utilitarian value to the Plaintiff.

The 4th Defendant, in addition sought leave of the Court to file further written address incorporating all issues with liberty to the Plaintiff and other parties to respond to same.

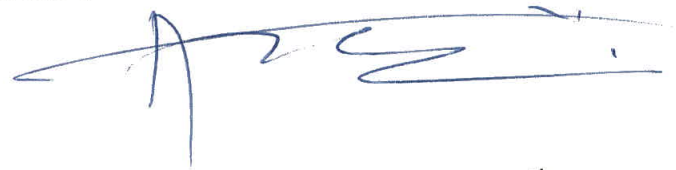
The question to be resolved in the two applications is, whether having regard to the judgment of the Court of Appeal, Enugu division in Appeal No: CA/E/EPT/28/2015, the present suit is rendered academic?



The starting point in the consideration and resolution of the above issue is to look at the said decision of the Court of Appeal, Enugu division in order to determine whether the said Judgment has rendered this suit academic. In the Judgment of the Court of Appeal in appeal No:CA/E/EPT/28/2015, which is exhibit A to the 4th Defendant's motion dated 15/2/16, the Court of Appeal held in page 11 paragraph 3 of the judgment as follows:-

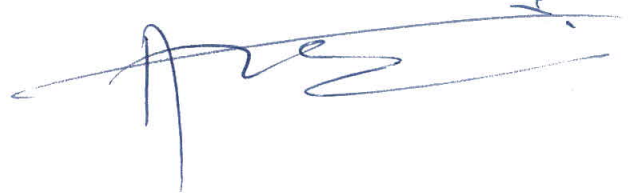
“So, whether it was the “National body of PDP in Anambra State”, the “5 man National Assembly Electoral Committee, or the Care-taker Committee that conducted the primary which produced the 11th Respondent as the nominated candidate of PDP to contest the election, it is immaterial, since by paragraph

25(i) of exhibit R1, it is the state special congress that should conduct the primary for the purpose of nominating a candidate to contest election into the National Assembly. The 11th Respondent was therefore not the product of a valid primary and was therefore not duly and legitimately nominated. That has disqualified her from contesting the election into the Anambra Central Senatorial District”.



From the above pronouncement of the Court of Appeal, the 4th Defendant was disqualified from contesting the election into the Anambra Central Senatorial District because she was not a product of a valid primary. My understanding of the above holding is to the effect that it is the 4th Defendant that was disqualified from contesting the election and not every aspirant that is said to have participated in the primary. If that were to be the intendment of the judgment, the Court of Appeal would have declared that no primary was conducted by PDP to nominate a candidate for the Anambra Central Senatorial District. Again, if the intention of the judgment was to exclude the PDP's candidate from participating in the re-run election ordered by the Court of Appeal, the consequential order would not have been thus:

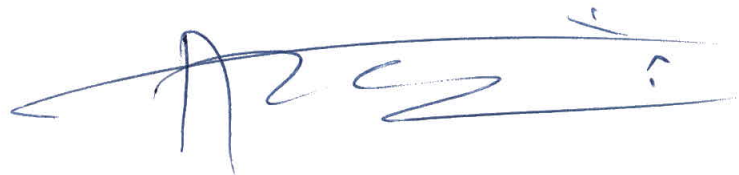
“We order the 1st Respondent herein, Independent National Electoral Commission to conduct a fresh election into the Anambra Central Senatorial District, within 90 days from today”.



If the intention of the judgment is to the effect that the PDP primary had been nullified, then perhaps, the consequential order would have been for Independent National Electoral Commission (INEC) to conduct fresh election into Anambra Central Senatorial District, without the PDP. This clearly showed that it was the 4th Defendant that was disqualified as a person from contesting in the election and not PDP as a party. I am sure if the intendment of the judgment of the Court of Appeal is to bar PDP from taking part in the ordered re-run election, the Court would have specifically make an order in that regard without leaving the issue to guess work. I am therefore of the humble view that it was the 4th Defendant that was disqualified from contesting the election by virtue of the PDP primary that produced her as a candidate.

Another issue worthy of mentioning is the fact that the suit before this Court was filed as a pre-election matter even before the conduct of the general Elections held in March, 2015. The Plaintiff herein was

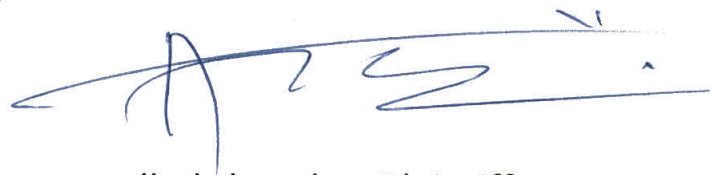
not a party in the Election Tribunal Petition that led to the judgment of the Court of Appeal, Enugu division. In fact, the contention of the Plaintiff in this suit is that the 4th Defendant was not the person who won the primary election of PDP to nominate the party's candidate for the Anambra Central Senatorial District Election into the National Assembly and that he won in the said primary election. It therefore means that the Plaintiff's cause of action is different from the cause of action canvassed and argued in both the Election Tribunal and on appeal at the Court of Appeal.



On the 4th Defendant's request to be permitted to file further written address in this matter, I should point out that hearing was conducted in this matter since the 27th of May, 2015 and the Court reserved judgment in the suit to 17th of June, 2015. However, in the course of writing the judgment, the Court saw the need to call oral evidence in view of the conflicting nature of the affidavits of the parties especially with regard to two Result sheets that is, exhibits F to the Plaintiff's affidavit and exhibit UE¹ to the 4th Defendant's counter affidavit on the primary election conducted, in order to determine the authentic Result. In the ruling of the Court delivered on 17th June, 2015 directing parties to call oral evidence, this Court held as follows:-

“The contending parties shall rely on their respective affidavits only, without the necessity of filing fresh pleadings”.

By the above pronouncement of the Court in the ruling of 17th June, 2015, the Court has foreclosed the need to file further processes by any of the contending parties since it has narrowed the area/issue that the contending parties are required to call oral evidence. It therefore means that with the above ruling, none of the parties is allowed to file further process except to call oral evidence.



On the contention that the witness called by the Plaintiff on 9/2/2016, that is, Alaye Tremie was never a witness or deponent for the Plaintiff but he filed affidavit of fact suo motu in the Court, let me observe that the said Alaye Tremie was rigorously cross-examined by the 4th Defendant's counsel, which means the 4th Defendant was given fair hearing in relation to his testimony. In any event, the Court did not limit or restricts any of the parties from calling a particular person as a witness in proof of the narrowed issue of which of the two Result sheet issued is authentic in relation to the conduct of the primary election in contention. I am therefore of the considered view that having closed argument in this matter since 27th of May, 2015, it would be most unfair and overreaching to allow

the 4th Defendant open argument in this case at this stage of the proceedings. The request to file further written address by the 4th Defendant is not even an application to amend the 4th Defendant's processes, rather, it is a request to advance further written address. In law, it is only amendment of pleadings that may be allowed after hearing in a matter has been concluded.

Having held that the judgment of the Court of Appeal, Enugu division only affected the 4th Defendant, and since both the 1st and 2nd Defendants' Notice of preliminary objection and the 4th Defendant's motion dated 15/2/16 were anchored on the said judgment of the Court of Appeal, the said applications have no merit and they are consequently dismissed.



HON. JUSTICE A. R. MOHAMMED
JUDGE
9/3/16.

APPEARANCES:-

J. N. Owonikoko SAN with C. N. Nwagbo Esq., Chief Henry Akunebu, Stan Chike Ofoma Esq, U. C. Ndubuisi Esq., Charles Iwuchukwu Esq, Kelechi Ologwu Esq. and Victor Oziegbe Esq. for the Plaintiff.

A. Omoluabi Esq for the 1st and 2nd Defendants.

Okeke Okechukwu Esq for the 3rd Defendant.

Dr. Alex A. Izinyon SAN with L. O. Fagbemi Esq. and C. U. Adah (Miss) for the 4th Defendant/Applicant.