

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON THURSDAY, THE 17<sup>TH</sup> 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 in respect of two applications, both dated and filed on 10<sup>th</sup> March, 2016.



The first application was at the instance of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. In the said application, the 1<sup>st</sup> and 2<sup>nd</sup> defendants seek:

1.        AN ORDER of this Court granting the Defendants leave to recall and cross-examine the Plaintiff's witness in this suit.

2. AN ORDER of this Court granting leave to the defendants to lead oral evidence in defence of this suit.

The grounds of the 1<sup>st</sup> and 2<sup>nd</sup> defendants' application were given as follows:

1. This Honourable Court upon an application by the Applicants ordered parties to lead oral evidence on conflicting facts in the various affidavits.
2. Plaintiff's witness was led in evidence in chief in the absence of the Applicants' Counsel.
3. Applicants are yet to cross examine Plaintiff's witness and also lead oral evidence as ordered by this Honourable Court.
4. Interest of Justice and fair hearing.



The application is supported by a 14 paragraph affidavit deposed to by Paul Omoluabi, a counsel to the 1<sup>st</sup> and 2<sup>nd</sup> defendants law firm. There is a written address dated 10/3/16 in support of the motion.

The second application was brought by the 4<sup>th</sup> defendant. In the said application, the 4<sup>th</sup> defendant seeks for:

1. An Order of this Court setting aside the decision of this Court made on 9<sup>th</sup> March, 2016 refusing the 4<sup>th</sup> defendant from calling oral evidence as directing by this Court in order to resolve the conflict in the affidavit evidence and documents of the parties.

2. An Order re-opening the proceedings and granting leave to the 4<sup>th</sup> defendant to call oral evidence in line with the earlier order of this Court for the purpose of resolving the conflict in the affidavit of the parties and documents before it.

The grounds upon which the application is brought were as contained on the body of the motion paper. The 4<sup>th</sup> defendant's motion is supported by a 22 paragraph affidavit deposed to by Chike Ekeocha, a legal practitioner in the law firm of solicitors to the 4<sup>th</sup> with a written address. In reaction to the two applications as above, the Plaintiff filed two separate counter affidavits in opposition. The two counter affidavits were accompanied with written addresses.

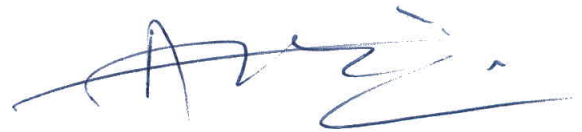


I have carefully read the 1<sup>st</sup> and 2<sup>nd</sup> defendants' motion dated 10/3/16 seeking to recall Plaintiff's witness who gave evidence on 9/2/16. The 1<sup>st</sup> and 2<sup>nd</sup> defendants also seek leave of the Court to call evidence in defence of the Suit. A careful reading of the affidavit in support of the 1<sup>st</sup> and 2<sup>nd</sup> defendants' application would show that the grounds for the application are encapsulated in paragraphs 6, 7, 8 and 9 of the affidavit. The said paragraphs are primarily to the following effect:

- a. That the matter was adjourned to 13/2/16 but hearing notice was served against 9/2/16.
- b. That hearing notice served on the secretary in counsel office was not brought to the attention of counsel.

- c. That the absence of 1<sup>st</sup> and 2<sup>nd</sup> defendants' counsel in Court on 9/2/16 was not deliberate.
- d. That the 1<sup>st</sup> and 2<sup>nd</sup> defendant have a sole witness which they intend to call in line with the order of the Court.

In response to the 1<sup>st</sup> and 2<sup>nd</sup> defendants' depositions in paragraphs 6, 7, 8 and 9, it was deposed in paragraphs 7, 8 and 9 of the Plaintiff's counter affidavit essentially as follows:



- a. That the Suit came up on 9/2/16 at the instance of the Court.
- b. That paragraph 7 of the 1<sup>st</sup> and 2<sup>nd</sup> defendants' affidavit confirmed service on them.
- c. That failure of 1<sup>st</sup> and 2<sup>nd</sup> defendants' counsel to be in Court was deliberate and a calculated attempt to delay the case.

Let me observe that this Suit came up on 13/1/16 for report on the interlocutory appeal against the ruling of this Court on joinder, then pending in the Court of Appeal. On that day, this Court was informed that the Appellant in the Court of Appeal had withdrawn his appeal at the Court of Appeal. Learned senior counsel Mr. Owonikoko urged the Court to proceed with the present matter since what stopped the hearing was the pending appeal. This Court took the view that since the Court of Appeal had reserved Judgment in the interlocutory appeal, only a formal order striking out the said Appeal could make this Court to proceed with hearing in the suit. I recalled vividly that when I adjourned the matter to 16/2/16, learned senior counsel Mr. Owonikoko stood up, though off-record and pleaded with the Court to review

the date if they are able to obtain a ruling of the Court of Appeal striking out the interlocutory Appeal, which I agreed. This off – record conversation was done in the presence of all counsel in Court on 13/1/16.



When therefore, a few days later, the Registrar drew my attention to the fact that she has received a Certified True Copy of a ruling of the Court of Appeal dismissing the interlocutory appeal, I directed the Registrar to issue fresh hearing notices to the parties to appear in Court on 9/2/16. It was on the said 9/2/16 that the Plaintiff took the witness that he subpoenaed.

Now, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants is not by his affidavit denying service of hearing notice on his office on the proceedings of 9/2/16. What I understand counsel to be saying is that his attention was not drawn to the hearing notice by the Secretary in the office who received the hearing notice. The question therefore is, how could this Court determine whether counsel attention was drawn to the hearing notice on the proceedings of 9/2/16? It should be borne in mind that counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants left the Court on 13/1/16 with the date of 16/2/16 as the next appointment in Court over the matter. If the date is reviewed to an earlier date and in the absence of any concrete evidence that counsel was aware of the date, the Court should not in this circumstance of uncertainty deny the 1<sup>st</sup> and 2<sup>nd</sup> defendants the right to call evidence and to recall the Plaintiff's witness for cross-examination. Justice in adjudication lies in the determination of dispute and matters on the merit, by giving each party the chance to put his case across unimpeded. This is the decision of the Court of Appeal in the case of **ESHINAKE VS GBINJE (2006)1 NWLR PART 961, 228 at 251 paragraphs B – G**, where it was held thus:

“The rule of Audi alteram partem which is one of the ingredients of fair hearing postulates that:

- (a) A Court should hear both sides not only in the case but also on material issues in a case before reaching a decision which may be prejudicial to any party in the case.
- (b) A Court or tribunal should give equal treatment, opportunity and consideration to all parties.
- (c) A Court or tribunal should give the parties an opportunity to cross-examine or otherwise confront or contradict all the witnesses that testify against them.
- (d) Having regard to all the circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done”.

See also section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).



I am therefore of the firm view that since the Plaintiff had been allowed to call a witness and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have now indicated their desire to also call evidence in defence and to also cross-examine the Plaintiff's witness, any decision other than according them this opportunity would amount to a wrong exercise of discretion and a denial to fair hearing.

Although, learned silk for the Plaintiff has argued in his written address that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' application is an attempt to arrest the Judgment of

this Court which was reserved, citing the cases of NEWSWATCH COMMUNICATIONS LTD VS ATTA (2006)12 NWLR PART 933, 144 and NWANKUDO VS IBETO (2011)2 NWLR PART 1231, 209 and the argument that when the matter was adjourned to 11/2/16, 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed preliminary objection rather than calling evidence, let me quickly observed that filing preliminary objection is aimed at the competence of a suit. It is not by any means saying that a party who challenged the competence of a suit or jurisdiction of a Court loses the right to defend the matter, if he so wished or indicated desire to do so. The key word is "indication of desire to defend a suit on the merit". If the application to re-open the suit were to be on ground other than the need to be heard or to put their defence across on the merit, this Court would not hesitate to refuse the application. The application of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is brought solely and squarely on ground of fair hearing. Let us not forget that any proceeding that failed the test of Audi alteram partem would not stand the test of time.



It is for the above reasons that I find the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' application dated and filed on 10<sup>th</sup> March, 2016 highly meritorious and the same is accordingly granted as prayed. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are hereby granted leave to recall Plaintiff's witness and to also call evidence in defence.

Now, coming back to the 4<sup>th</sup> defendant's application also dated and filed on 10<sup>th</sup> March, 2016, one can see that the grounds of the application are also on the issue of fair hearing. In this wise, since I have held in respect of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' application that they are entitled to call evidence in defence, then the same position or treatment shall be accorded to the 4<sup>th</sup> Defendant. This is because; both applications are founded on the need for this Court to

allow the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and indeed the 4<sup>th</sup> Defendant to call evidence. I therefore adopt all the reasoning and conclusions reached on the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' application in resolving and determining the 4<sup>th</sup> Defendant's application. I equally adopt and rely on the decision of the Court of Appeal in the case of ESHINAKE VS GBINJE Supra at page 251 paragraphs B- G and the provision of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in coming to the conclusion that having read the grounds of the 4<sup>th</sup> defendant's application, the affidavit in support and the written address as well as the Plaintiff's counter affidavit and written address, the 4<sup>th</sup> defendant's application is equally granted as prayed.



In this wise, the proceedings of this Court on 9<sup>th</sup> March, 2016 wherein this suit was reserved for Judgment on 10<sup>th</sup> March, 2016 is hereby set aside. The 4<sup>th</sup> Defendant is granted leave to call evidence in defence of this suit.

Although, the Court had granted the applications of the 1<sup>st</sup> and 2<sup>nd</sup> defendants and that of the 4<sup>th</sup> defendant, let me however observe that a careful reading of the applications filed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants and the 4<sup>th</sup> defendant would show clearly allegation of denial of fair hearing by the Court against them. Notwithstanding the fact that the Court has now permitted the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants to call evidence, the apprehension or lack of confidence on the part of this Court in future proceedings could linger in their minds.

This Court is of the view that since Justice is rooted in confidence and the fact that the applications of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants have succeeded on the issue of fair hearing, it will be most appropriate for the Court to excuse itself in the further adjudication of this matter.



In consequence of the above holding, this suit is hereby remitted to the Hon. Chief Judge of this Court for re-assignment in the interest of Justice.



**HON. JUSTICE A. R. MOHAMMED**  
**JUDGE**  
**17/3/2016.**

**APPEARANCES:-**

**C. N. Nwagbo Esq., with U. C. Ndubuisi Esq., Stan Chike Ofoma Esq., Kelechi A. Ologwu Esq. and Charles Iwuchukwu Esq. for the Plaintiff.**

**P. A. Omoluabi Esq., for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**

**C. Nnamah (Miss) for the 3<sup>rd</sup> Defendant.**

**C. S. Ekeocha Esq., with L. O. Fagbemi Esq. and C. U. Adah (Miss) and E. O. Dina Esq., for the 4<sup>th</sup> Defendant**