IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE UMUAHIA JUDICIAL DIVISION
HOLDEN AT UMUAHIA
ON TUESDAY THE 17TH DAY OF NOVEMBER, 2015.
BEFORE THE HONOURABLE JUSTICE F.A. OLUBANJO
JUDGE

SUIT NO: FHC/UM/CS/12/2015

BETWEEN:

AKI NKOLE ..... **PLAINTIFF/RESPONDENT**

AND

1. **CHIEF DR. DAVID OGBA ONUOHA BOURDEX..... DEFENDANT/ APPLICANT**
2. **ALL PROGRESSIVES GRAND ALLIANCE (APGA)**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

DEFENDANTS/ RESPONDENTS

RULING

By a Writ of Summons which was filed on 4th day of February, 2015, the Plaintiff seeks the following reliefs from this Honourable Court:

"1. A DECLARATION that the following information contained IN Form CF001 of the 1st Defendant supplied by the 1st Defendant on oath to the 3rd Defendant in accordance with Section 31 of the Electoral Act is false.

First School Leaving Certificate 1966-1971.

2. AN ORDER that upon determining the falsity of the above depositions that the 1st Defendant is thereby disqualified from contesting the Senatorial Election

holding on 14th February, 2015 on the platform of the 2nd Defendant.

3. AN ORDER directing the 3rd Defendant to remove the name of the 1st Defendant as a candidate in the Senatorial Election holding on the 14th day of February, 2015.

4. AN ORDER directing that any votes accredited to the 1st Defendant at the election shall be null and void he being disqualified *ab initio* as a candidate in the election".

A twelve (12) paragraph Statement of Claim dated 2nd February, 2015, List of Witnesses and List of Documents to be tendered at the hearing of the suit, as well as the Plaintiff's Witness Statement on Oath dated 4th February, 2015 accompanied the Writ of Summons. Upon service of the Originating Processes being effected on the 1st Defendant, he entered a Conditional Appearance by filing a Memorandum of Appearance (dated 3rd day of March, 2015 and filed on 11th day of March, 2015) in that regard, through his Counsel, Dr. C. O. Chijioke. 1st Defendant's Sixteen (16) paragraph Statement of Defence dated 3rd March, 2015, List of Documents and List of Witnesses, as well as 1st Defendant's Written Statement on Oath were also filed on the 11th day of March, 2015. Plaintiff thereafter filed a Motion on Notice for Interlocutory Injunction (dated 9th March, 2015 and filed on 10th March, 2015), an Application to set down this suit for hearing, dated 12th March, 2015 and filed on 16th March, 2015, and Plaintiff's Reply to the 1st Defendant's Statement of Defence dated 12th day of March, 2015 and filed on 16th

day of March, 2015 which was accompanied by a List of Additional Witnesses, and Further Witness Statement on Oath of Plaintiff's First Witness (the Plaintiff).

On 24th March, 2015, the 1st Defendant filed a Counter-Affidavit to the Plaintiff's Motion for Injunction, while his Counsel, Dr. C. O. Chijioke, filed a Written Address dated 20th March, 2015 to oppose that Motion for Injunction. The 1st Defendant further filed a Motion on Notice dated 20th March, 2015 and filed on the 24th day of March, 2015 which is brought pursuant to **Order 16 Rules 2, 3, and 4 of the Federal High Court (Civil Procedure) Rules 2009**, wherein he seeks:

1. An Order of Court setting down the Issues raised in paragraphs 15 and 16 of the 1st Defendant's Statement of Defence (for hearing).
2. An Order of Court dismissing the substantive suit for being incompetent.

   Or in the alternative

   An Order of Court striking out the substantive suit for want of jurisdiction; on the grounds that

   a. The Plaintiff lacks the locus standi to bring the substantive suit;
   b. The substantive suit is frivolous, speculative and constitutes an abuse of the process of the Honourable Court;
   c. The Honourable Court lacks the jurisdiction to entertain the suit as presently constituted as same is non-justiciable.

I may just pause to reproduce paragraphs "15" and "16" of the 1st Defendant's Statement of Defence, wherein the issues upon which this application is predicated are raised.

"1ST DEFENDANT'S STATEMENT OF DEFENCE

15. The 1st Defendant denies all the reliefs claimed by the Plaintiff in this suit and shall at the trial contend that this suit is speculative, frivolous, and lacking in merit.

16. The 1st Defendant shall contend and urge the Honourable Court to hold that the Plaintiff lacks the locus standi to bring this suit and that this suit ought to be dismissed in its entirely as same does not disclose any reasonable cause of action".

Azuma Chinagorom Esq., a Lawyer in the Law Firm of C. O. Chijioke & Co, deposed to a ten (10) paragraph Affidavit in Support of the Motion on Notice (dated 24th March, 2015) wherein the Court is informed that at paragraphs "15" and "16" of the 1st Defendant's Statement of Defence, the issues of *locus standi* vis-a-vis the competence of this suit as well as the Court's adjudicatory powers were raised, and if determined in favour of the 1st Defendant/Applicant, these would terminate this suit and save the time of the Honourable Court. In 1st Defendant/Applicant's Written Address in support of his Motion on Notice (dated 20th day of March, 2015), Dr. C. O. Chijioke, 1st Defendant/Applicant's Counsel, at paragraphs 3.01 and 3.1:2 outlined two issues for determination, to wit:

"1. WHETHER THE PLAINTIFF HAS THE LOCUS STANDI TO INSTITUTE THE SUBSTANTIVE ACTION.

2. WHETHER THE HONOURABLE COURT HAS THE JURISDICTION TO ENTERTAIN THIS SUIT AS PRESENTLY CONSTITUTED".

On Issue One, Learned 1st Defendant/Applicant's Counsel, referred to paragraphs "1" and "10" of the Statement of Claim and paragraphs "2" and "3" of the Statement of Defence and submitted that the onus of proving that he is a person known to the law as well as a registered vote lies on the Plaintiff/Respondent, and that he ought to have attached a copy of his temporary or permanent voters card to the processes filed. Failure to do so, means that he is not a registered voter and has no legal standing to file the substantive suit. He placed reliance on:

N.A.U. V. NWAFOR (1999)1 NWLR (PT 585) P. 116, and

BUA V. DAUDA (1999) 12 NWLR (PT 629)P. 59.

Dr. Chijiokes submissions on Issue Two are that paragraph "8" of the Plaintiff/Respondent's Statement of Claim is based on his personal opinion which is speculative and unsubstantiated because the Plaintiff/Respondent has not adduced any documentary evidence to debunk or contradict the documents submitted to Independent National Electoral Commission (3rd Defendant) by 1st Defendant/Applicant, which he asserts that he has reasonable grounds to believe are false.

It was also 1st Defendant/Applicant's Counsel's further submissions that this suit as presently constituted is not justiciable as it concerns the domestic affairs of a political party which is non justiciable by the decision in

ONUOHA V. OKAFOR (1983) 2 SCNLR P. 244 (Supreme Court)

He is of the view that from the reliefs sought by the Plaintiff/Respondent, he is trying to dictate to All Progressives Grand Alliance (2nd Defendant) who to nominate and sponsor for the election. The Law prohibits him from interfering in the affairs of the 2nd Defendant particularly as he is not a member of that party and is therefore an interloper. Dr Chijioke also posited that the Plaintiff/Respondent has not shown what injury he would suffer if 1st Defendant/Applicant is allowed to contest the election, and why he wants to interfere in the affairs of a political party to which he does not belong, moreso since there are candidates of other political parties which the Plaintiff/Respondent could vote for. Counsel submitted that this suit does not disclose a reasonable cause of action, and is an abuse of Court process, which, on the Supreme Court decision in

R-BENKAY (NIG) LTD V. CADBURY (NIG) PLC (2012) 9 NWLR (PT 1306) P. 596

ought to be struck out. The Court was urged to stike out this suit.

It is on record that the Motion on Notice was served on Plaintiff/Respondent's Counsel on the 25th day of March, 2015. On that date, Mr. Ukairo attempted to respond orally to the application during the Court's session (regarding this suit), but

deemed it wise to file a Written Address due to his stand or view that prayers "1" and "2" of that Motion are inconsistent. He however did not file his Written Address in Opposition to the 1st Defendant/Applicant's Motion (which said Written Address is dated 27th April, 2015), until 29th April, 2015. There is no application, oral or formal/written, filed by the Plaintiff/Respondent's Counsel to enlarge time for the filling of his Written Address which ought to have been filed Seven (7) days after he was served with the 1st Defendant/Applicant's Motion. (see **Order 26 Rule 5 of the Federal High Court (Civil Procedure) Rules 2009**) Dr. Chijioke has raised this as a preliminary issue in his Reply on Points of Law dated 30th April, 2015 and filed on 4th of May , 2015. He argued therein at paragraphs 2.00 to 2.02, that failure to obtain leave of Court to file Plaintiff's/Respondent's Written Address out of time renders that process incompetent and means that 1st Defendant/Applicant's Motion on Notice is unchallenged and ought to be granted. He relied on

OKAFOR V. OKAFOR (2015) 4 NWLR (PT 1449) P. 335

and urged the court to so hold.

In this regard, based on the principle of fair hearing, as well as the desire not to award the 1st Defendant/Applicant a phyrric or cheap victory based on technicality and thus sacrifice the doing of substantial justice on the altar of technicalities, I am inclined to invoke the provisions of **Order 56 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009** in order to extend time for the filing of the Plaintiff/Respondent's Written Address which was filed in Opposition to the 1st

Defendant/Applicant's Motion on Notice. I am of the view that the interest of justice would be better served and promoted by so doing. **TIME IS THEREFORE EXTENDED FOR THE FILING OF THE WRITTEN ADDRESS OF THE PLAINTIFF IN OPPOSITION TO THE 1ST DEFENDANT'S MOTION DATED 20TH DAY OF MARCH, 2015 AND FILED ON 24TH DAY OF MARCH, 2015. THAT WRITTEN ADDRESS IS ACCORDINGLY DEEMED AS HAVING BEEN PROPERLY FILED AND SERVED.**

At paragraphs 2.1 to 2.5 of his Written Address, Plainiff/Respondent's Learned Counsel, Ukpai O. Ukairo Esq., submitted that the First prayer in the 1st Defendant's/Applicant's Motion was not argued by 1st Defendant/Applicant's Counsel and is therefore deemed abandoned. That unless prayer One (1) is argued and granted, there cannot be any further proceedings on this application regarding the two issues outlined for determination by Dr. Chijioke. At paragraphs 3.01 to 3.2.2 of his Reply on Points of Law, 1st Defendant/Applicant's Counsel contended that prayer One (1) of the application is statutory and does not require arguments for it to be granted, particularly because that prayer is predicated on the issue of jurisdiction. He submitted that once the 1st Defendant/Applicant has raised the issue of Law in his pleading and applied for it to be set down for hearing, the duty of hearing the application shifts to the Court. Prayers one (1) and two (2) of the Motion are therefore not severable.

It is important to pause again, to consider this argument, in the light of the provisions of **Order 16 of the Federal High Court (Civil Procedure) Rules 2009.** When a party raises any point of Law in his pleading in accordance with **Order 16 Rule 2(1),** that point or issue may be disposed of at or after the trial (by the Court). **Order 16 Rule 2 (2)** however gives either party in the suit the opportunity of applying that those issues or points of Law should be heard or disposed of at any time before trial. Depending on the outcome of this hearing, which is a proceedings in lieu of Demurrer, the substantive action may be dismissed or pleadings may be struck out or Judgment delivered as provided for in **Order 16 Rules 3 and 4.**

In this instance, at paragraphs 15 and 16 of the 1st Defendant's Statement of Defence, he has raised issues or points of Law, viz that this suit does not disclose a reasonable cause of action, that the Plaintiff lacks locus standi and that this suit is speculative, frivolous and lacking in merit. He has, by instant motion, applied that those issues or points of Law be set down for hearing. The act of allowing both Counsel to argue the application tantamounts to this Court having granted the 1st Defendant/Applicant's First prayer, i.e. that the points raised in his Statement of Defence be heard. Thus, when learned Counsel for the parties adopted their Written Addresses on the 7th of October, 2015, prayer One (1) of this Motion was granted. I do not have to make an order granting leave to set down prayer two (2) for hearing and a separate Order pertaining to when I will listen to arguments concerning prayer two (2). The 1st Defendant/Applicant has not abandoned his prayer One (1) of instant