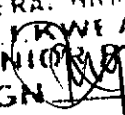


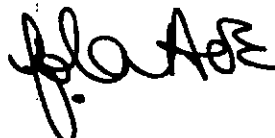
discretion in favour of the Applicant. See EREKORO V. GOVERNMENT OF CROSS RIVER STATE (1991)4 NWLR (PART 185) PP. 322 at 338 Per Niki Tobi JCA (as he then was).

Since the discretion of the court is involved, such discretion must, as always, be exercised judicially and judiciously, based on the peculiar facts of the application and in the light of established principles of law and procedure.

The facts upon which the Applicant placed reliance in seeking for the exercise of the court's discretion in its favour are stated in:

- (a) - the 15 paragraph Affidavit of Urgency dated 09/11/16 deposed to by Alhaji Abdulkadir A. Salam, the National Chairman of the Labour Party;
- (b) - the 24 paragraph Affidavit in Support of Motion Ex-parte, dated 09/11/16, also deposed to by the National Chairman of the Applicant, with attached Exhibits "A to E", being:
 - (i) Exhibit "A" - A letter dated 4/10/16 signed by the Party's National Chairman, addressed to Mr. Taiye Adeuti enquiring why there has been

CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKI
KWE ALA B.C.
SENIOR REGISTRAR
SIGN  DATE 11/11/17

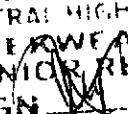


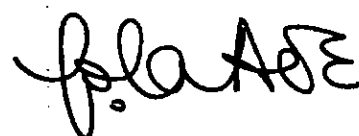
a lack of political activity regarding his campaign towards the Governorship Elections;

(ii) Exhibit "B1" – A letter dated 7th October, 2016, addressed to the National Chairman of the Labour Party signed by Stephen Taiye Adeuti wherein he withdrew from the 2016 Governorship race as a candidate of the Labour Party due to health challenges, and his Doctors advise that he is not healthy enough to cope with the rigours of the electioneering campaign. A medical certificate signed by the Chief Medical Director of State Specialist Hospital, Ondo is attached to that letter as Exhibit "B2".

(iii) Exhibit "C" – A letter dated 10/10/16 addressed to the Chairman of the Independent National Electoral Commission, Abuja, signed by the Labour Party National Chairman, forwarding Exhibits "B1 – B2" to Independent National Electoral Commission (INEC) and applying for the withdrawal of that party's Governorship Candidate and approval to forward the name of a substitute;

(iv) Exhibit "D"- A letter dated 2nd November, 2016 signed by the National Chairman of the Labour Party, addressed to the Chairman of

CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKURE
KAWAGAR C
SENIOR REGISTRAR II
SIGN  DATE 11/11/17



Independent National Electoral Commission , reminding the latter of Exhibit "C" and the Party's request to withdraw the name of Mr. Adeuti Stephen Taiye as Governorship candidate, and to substitute that name. Exhibit "D" bears a stamp of the office of the Chairman of Independent National Electoral Commission indicating that the letter was received on 02/11/16. I observe that Exhibit "C" does not bear any such stamp to indicate when Exhibit "C" was received at the National Secretariat of INEC;

(v) Exhibit "E" is a letter dated 01/11/16 signed by Mrs. Augusta C. Ogakwu as Secretary to Independent National Electoral Commission addressed to the National Chairman of Labour Party regarding the latter's application to withdraw the Governorship candidate and refusing to accede to that request.

(c) The Applicant has also filed a Statement in Support of the application which is dated 08/11/16 as well as a Verifying Affidavit of 7 paragraphs dated 9/11/16.

Briefly, the Applicant has informed this Honourable Court vide all the aforementioned processes that following its Governorship

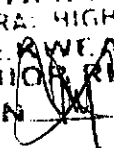
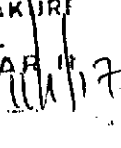
CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKURE
EKWE ALA B.C.
SENIOR REGISTRAR
SIGN [Signature] DATE 11/17

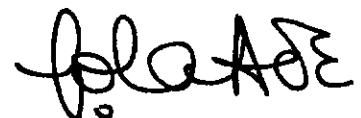
[Handwritten Signature]

candidate's application to withdraw his candidature for the upcoming Governorship elections, the Respondent was duly informed, but the Respondent refused to accede to the Applicant's request for withdrawal of that candidate and substitution by presenting another candidate. The Applicant hereby seeks leave of court to apply for an Order of Mandamus to interalia compel the Respondent to allow the withdrawal and substitution of Applicant's Governorship candidate.

I have carefully examined the processes filed in support of this Ex-parte application, and I have carefully considered the application itself. This is not the substantive application for Mandamus. It is merely the application for leave. Nevertheless, at this stage, the court must consider whether there are sufficient facts placed before it to warrant exercising its discretion to grant leave to the Applicant to apply for an Order of Mandamus.

The prerogative order of Mandamus would issue to compel a Government servant to carry out his duty in respect of a party who has direct and substantial interest in the performance of that duty. The Applicant must have sufficient interest in the performance of that public

CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKURE
E. A. WELAGA B.C.
SENIOR REGISTRAR
SIGN  DATE 



duty which is imposed by statute. His interest must be above the general interest of the community or group to which he belongs; his grievance must be more than that of the other members of the public generally.

See CHIEF GANI FAWEHINMI V. COL HALILU AKILU & ANOR (1987)9 to 11 S.C. PAGE. 36; R V LONDON (CITY OF) UNION ASSESSMENT COMMITTEE (1907) 2KB PAGE 764.

The ultimate aim of an Order of Mandamus is therefore the interest of the public. Where the duty is based on the discretion of the public officer, an Order of Mandamus cannot command the performance of that duty to be carried out in a specific way.

See CHIEF FAWEHINMI V INSPECTOR GENERAL OF POLICE & ORS (2002) FWLR (PAGE 108) PP 1355 AT 1379 TO 1380; 1392, 1396 (Supreme Court). The court may however examine whether that discretion of the public officer has been properly exercised.

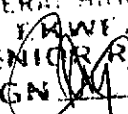
The Respondent was established by section 153 (1) (f) of 1999 Constitution as amended. Its composition and powers are in Part I of the Third Schedule to that Constitution. By paragraph 15 of Part I of that Third schedule, the Respondent's powers include organizing and

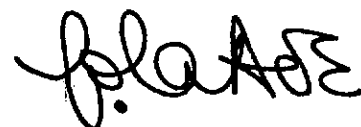
supervision of general elections to the offices of Governor and Deputy Governor of a state, and the monitoring of political campaigns and providing rules and regulations which shall govern the political parties.

See paragraph 15 (a), (b) and (f).

By section 33 of the Electoral Act 2010 as amended, a political party shall not be allowed to change or substitute its candidate whose name has been submitted to Independent National Electoral Commission pursuant to section 31 of the Act except in the case of death or withdrawal by that candidate. Section 35 of the Electoral Act (supra) allows a candidate to withdraw his candidature by notice in writing signed by him, and delivered by himself to the political party which nominated him for the election. Section 35 further provides that the political party shall convey such withdrawal to the Commission and this withdrawal shall be allowed not later than 45 days to the election.

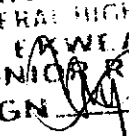
The provisions of the 1999 Constitution of the Federal Republic of Nigeria as amended, and the Electoral Act 2010 as amended, which I have highlighted impose a public duty upon the Respondent to allow withdrawal of candidature within the specified time limit i.e. not later

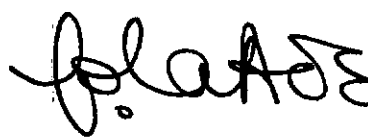
CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKURE
LAWE AGA B.C.
SENIOR REGISTRAR
SIGN  DATE 12/11/17



than 45 days to the election. The Respondent however has a discretion in the exercise of its public duties which is stated at paragraph 15 (a), (b) and more particularly paragraph 15 (f) of Part I of the Third Schedule to the 1999 Constitution as amended. In the exercise of its duties the Respondent has powers to make rules and regulations which shall govern the political parties. One of these rules and regulations is the Respondent's Guidelines for submission of Forms CF001, CF002 and Nomination Forms of candidates which is to the effect that communications to the Commission regarding candidature in elections must be submitted by personal delivery, and that courier or postal service delivery shall not be accepted. Another such rule and regulation is the Time Table and Schedule of Activities for the Ondo State Governorship election which stipulates that 12/10/16 is the last day for withdrawal and replacement of candidates by Political Parties.

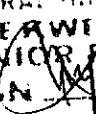
Thus, from the facts presented in support of this application, it is obvious that:

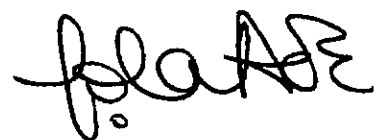
CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKURE
EKWEAGA B.C.
SENIOR REGISTRAR
SIGN  DATE 11/1/17



- 1) the Applicant has not provided Evidence that Exhibits "B1 and B2" were personally delivered to that Political Party by the candidate as required by S.35 of the Electoral Act (supra);
- 2) the Applicant has not established that it conveyed the application for withdrawal of candidature i.e. Exhibit "C" to the Respondent within the time stipulated by section 35 of the Electoral Act (supra), and by the mode of delivery specified in the Respondents Guidelines i.e. by personal delivery. As I had already observed, Exhibit "C" has no stamp to indicate when it was received at the Respondent's National Headquarters. In contradistinction to Exhibit "D" which was stamped as having been received on 02/11/16;
- 3) by Exhibit "E", Exhibit "C" was received late and the Respondent could not accede to the Applicant's withdrawal of candidature because it was no longer within the 45 days stipulated by the Electoral Act 2010 as amended.

It is pertinent to reproduce the contents of Exhibit "E"

CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKURE
ERWEAGA B.C.
SENIOR REGISTRAR II
SIGN  DATE 11/11/17



1st November, 2016

The National Chairman,
Labour Party,
29, Oke-Agbr Street,
Off Ladoke Akintola Boulevard,
Garki – Abuja.

Re: ONDO STATE 2016 GOVERNORSHIP CANDIDATE
MR. ADEUTI STEPHEN TAYE

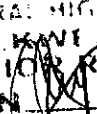
Your letter reference No. LPABJ/101/2016 dated 10th October, 2016 but received on 1st November, 2016 by Courier delivery wherein you requested for the replacement of your governorship candidate, MR. ADEUTI STEPHEN TAYE for the Ondo State Governorship election on health ground refers.

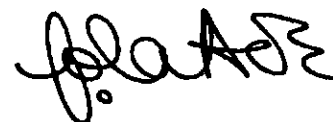
The Commission has considered your letter and hereby draws your attention to the Time Table and Schedule of Activities for the Ondo State Governorship election with 12th day of October, 2016 as the last day for withdrawal and replacement of candidates by Political Parties.

You may also note that the Commission's Guidelines for submission of Forms CF001, CF002 and Nomination forms of candidates stipulates that "All submission in respect of nomination shall be by personal delivery. Courier or postal service delivery shall not be accepted".

Consequent upon the above, the Commission shall not accede to your request for the replacement of your Governorship candidate for the election.

Sgd
Mrs. Augusta C. Ogakwu
Secretary to the Commission

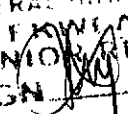
CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKURE
F. K. W. AGA B. C.
SENIOR REGISTRAR
SIGN  DATE 11/11/17

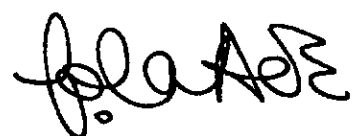


From the foregoing it is apparent that the Respondent has a duty, but it also bestowed with a discretion regarding how to exercise that duty. From the facts placed before this court, the Applicants did not deliver their application for withdrawal of candidature timeously or in the mode of delivery prescribed by the Respondent's regulations which the Constitution gives it powers to make. See Exhibit "E".

Furthermore, I am not satisfied that the Applicant has an interest which is greater than that of the general public in ONDO STATE by seeking leave to apply for an order of mandamus which interalia includes prayers to compel the Respondent to postpone the governorship election as well as a prohibitory injunction restraining the Respondent from proceeding with that election. The Applicant is one of the 28 Political Parties contesting election, in Ondo State. There is no evidence from the facts placed before this court thus far that Applicant has a grievance which surpasses that of the 27 other members of the group to which it belongs or that of the general public.

It is for the reasons which I have stated, which are based on the facts, the law and principles as enunciated in decisions of the Apex

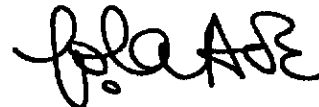
CERTIFIED TRUE COPY
FEDERAL HIGH COURT SKIIRT
F. K. W. AGA B. C.
SENIOR REGISTRAR
SIGN  DATE 11/11/17



Court which I had earlier referred to, that I am of the view that a judicial and judicious exercise of the discretion bestowed upon me in the peculiar circumstances of this application would be to refuse the application for leave.

I find no merit in the Motion Ex-parte dated 08/11/16 and filed on 09/11/16. Same is refused and dismissed.

That shall be the Ruling of this Honourable Court.



F.A. Olubanjo

Judge

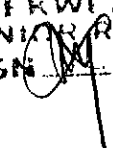
21/11/16

COUNSEL'S REPRESENTATION:

Applicant present. Represented by Wale Gbakinro State Chairman.

Respondent absent.

Reuben Famuyibo Esq with Efosa Uroghide Esq for the Applicant.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT AKURE
FKWEAGA B C
SENIOR REGISTRAR II
SIGN  DATE 21/11/17