

FHC/ABJ/CS/736/2014: YOUNG DEMOCRATIC PARTY v. INEC, delivered on the 4th day of March, 2015”.

Pursuant to the said leave granted on 11/11/16, the Applicant filed its substantive “Motion on Notice” dated 14/11/16. By the said “Motion on Notice”, the Applicant seeks against the Respondent, “*the following orders*”:

I. *“AN ORDER OF MANDAMUS TO COMPEL THE RESPONDENT TO DO HER DUTY ACCORDING TO LAW TO WIT:- TO ISSUE THE APPLICANT WITH A CERTIFICATE OF REGISTRATION BEARING THE DATE, 2ND DAY OF MAY, 2014, BEING THE DATE WHEN THE APPLICANT WAS DEEMED REGISTERED AS A POLITICAL PARTY BY OPERATION OF LAW AND IN COMPLIANCE WITH THE ORDERS OF THIS HONOURABLE COURT, IN SUIT NO.: FHC/ABJ/CS/736/2014 – YOUNG DEMOCRATIC PARTY vs. INDEPENDENT NATIONAL ELECTORAL COMMISSION, DELIVERED ON THE 4TH DAY OF MARCH 2015.”*

II. *“A DECLARATION THAT THE REFUSAL OF THE RESPONDENT TO COMPLY WITH THE JUDGMENT OF THIS HONOURABLE COURT, DIRECTING THE RESPONDENT TO ISSUE THE APPLICANT WITH THE CERTIFICATE OF REGISTRATION DATED THE 2ND DAY OF MAY 2014 BEING THE DATE IT WAS DEEMED*

REGISTERED BY OPERATION OF LAW, IS UNLAWFUL, ILLEGAL AND UNCONSTITUTIONAL."

III. "THE SUM OF N50,000,000.00 (FIFTY MILLION NAIRA) BEING SPECIAL AND GENERAL DAMAGES AGAINST THE RESPONDENT FOR THE UNLAWFUL AND UNCONSTITUTIONAL DENIAL TO THE APPLICANT OF HER RIGHTS AND PRIVILEGES AS A POLITICAL PARTY FROM THE 2ND DAY OF MAY 2014 TILL DATE."

"AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit and expedient to make in the circumstances."

The instant proceedings relate to a "Motion on Notice" dated and filed on 13/2/17 by (1) MR. BOLAJI ONI (NATIONAL SECRETARY, YOUNG DEMOCRATIC PARTY) and (2) BARR. GEORGINAL DAKPOKPO (NATIONAL CHAIRMAN, YOUNG DEMOCRATIC PARTY) – both Applicants are described as "*Parties sought to be joined*". The said "Motion on Notice" prays for: (1) "*AN ORDER of this Honourable Court joining MR. BOLAJI ONI (National Secretary, Young Democratic Party) and Barr. Georgina Dakpokpo (National Chairman, Young Democratic Party) the Applicants, as Defendants in this suit;*" and (2) "*AND FOR SUCH FURTHER OR ORDERS as this Honourable Court may deem fit and expedient to make in the circumstances.*"

The said "Motion on Notice" is supported by a 15 paragraphed Affidavit deposed to by Bolaji Oni who in paragraph 1 of the Affidavit, says that "I

am the National Secretary of the Plaintiff in this suit by virtue whereof I am well seised of and quite conversant with the facts as stated herein".

When I read this deposition, I was wondering why a so called National Secretary of the Plaintiff will offer to be joined as a "Defendant" in a suit instituted by the Plaintiff. But, just as I was pondering on this rather awkward arrangement, I saw a "Counter-Affidavit in Opposition to the Motion for Joinder" filed by one Ambassador Raphael Sebibo Horsfall" on 9/3/17. In paragraph 1 of the said "Counter-Affidavit", the deponent states that: "*I am the acting National Chairman of the Plaintiff and as such conversant with the facts of this case.*" Again, I went back to re-read prayer 1 on the "Motion on Notice" which was argued on 1/6/17, and the 2nd person, i.e. Barr. Georgina Dakpokpo who wanted to be joined as a "Defendant" along with Mr. Bolaji Oni also describes himself as the "*National Chairman, Young Democratic Party*". It seems that the Plaintiff has two (2) National Chairmen, one of whom is "*substantive*" and the other one is "*acting*". The "Counter-Affidavit" filed by Ambassador Raphael Sebibo Horsfall by its paragraph 2, was filed on behalf of the Plaintiff.

The "*Persons seeking to be joined*" as "Defendants" through their Counsel, Ugo Nwofor, Esq. filed a written address to argue the said "Motion on Notice". In paragraph 3.1 of the address, set down one issue for determination. It is: "*Whether this Court ought to grant this application being that the Applicants have an interest in this suit?*" The said issue was argued in paragraphs 4.0 – 4.4 of the address filed and it was contended that by the "Affidavit filed in Support of the Motion on Notice", the Applicants "*have shown by their Affidavits that they have an interest in this*

suit and shall be directly affected by the outcome of this suit". The Court was urged to grant this application in the interest of justice.

The Plaintiff's Counsel, Frank Molokwu, Esq. also filed a "*Written Address to argue the Counter-Affidavit in Opposition to the Motion for Joinder*". The Plaintiff also filed a "Further and Better Affidavit of the Applicants". It was deposed to by Sinmiloluwa Omole who in paragraph 1 describes herself as the "*Deputy Legal Adviser of the Plaintiff*".

The Plaintiff, again through one Engr. Chimaka Ezenwa – who in paragraph 1 of his deposition, describes himself as "*the acting National Organizing Secretary of the Plaintiff*" on 23/3/17 filed a "Further Counter-Affidavit in Opposition to the Motion for Joinder".

On 13/4/17, the Court listened to the Applicants' "Motion on Notice" dated 13/2/17 which was argued by the Applicant's Counsel, U. Nwofor, Esq.

The Plaintiff's Counsel, Frank Molokwu, Esq. was heard in his "Reply to the Applicants' Motion on Notice". The Plaintiff's Counsel who had filed a "Motion on Notice" dated 30/3/17 in order to *regularize* the Plaintiff's "Counter-Affidavit" filed out time, kept quiet when the Applicants' Counsel was about to move the "Motion on Notice" dated 13/2/17. It was after he (Mr. Molokwu) had finished responding to the Applicants' "Motion on Notice", that he made reference to the Plaintiff's "Motion on Notice" to *regularize* the "*Counter-Affidavit filed by the Plaintiff in Opposition to the Applicants' Motion on Notice*". It was then, that it became clear that the Applicants' Counsel had not been served with the said "Motion on Notice" to *regularize*. The proceeding was at the stage when the Plaintiff's "Motion

on Notice" was served on the Applicants' Counsel, adjourned to 15/5/17 in order to take the Plaintiff's "Motion on Notice" dated 30/3/17 which its Counsel, neither served nor mentioned to Court when the Applicants' Counsel was about to open argument on the Applicants' "Motion on Notice" dated 13/2/17.

The Defendant's Counsel, A.A. Umar, Esq. at the resumed proceedings on 15/5/17, advised that he was not opposed to the Applicants' "Motion on Notice" dated 13/2/17. The case was subsequently stood down on 15/5/17, but I was unable to get back to hearing it and it was adjourned to 30/5/17.

At the proceedings of 30/5/17, the Plaintiff's Counsel informed the Court, that the Plaintiff had already argued its "Counter-Affidavit in response to the Applicants' Motion on Notice" dated 13/2/17 and that his attention was later drawn to the fact, that the Plaintiff's "Counter-Affidavit" was filed outside the seven (7) days period prescribed by the provision of Order 26 Rule 5 of the **Federal High Court (Civil Procedure) Rules, 2009**. It was at this stage, that the Plaintiff's Counsel, sought to argue the "Motion on Notice" dated 30/3/17 which was filed in order to *regularize* the "Counter-Affidavit" filed by the Plaintiff through one Ambassador Raphael Sebibo Horsfall. As would have been expected, the Applicants' Counsel, U. Nwofor, Esq. has filed a "Counter-Affidavit in Opposition to the Plaintiffs' Motion on Notice" dated 30/3/17 and the main issue which the Applicants' Counsel raised, was that the Plaintiff's "Motion on Notice" dated 30/3/17 which was to be argued after the Plaintiff's Counsel has argued his "Counter-Affidavit" is incompetent because, he requires leave of Court to

do so as both parties had already joined issues on the Applicants' "Motion on Notice" dated 13/2/17, *albeit* on an irregularly filed "Counter-Affidavit" by the Plaintiff. Why the Plaintiff's Counsel kept quiet about the pendency of the said "Motion on Notice" until after he had addressed the Court on the contents of the "Counter-Affidavit" remains for me, a *mystery*.

It is my expectation, that as soon as the Applicants' Counsel announced his readiness to argue the Applicants' "Motion on Notice" dated 13/2/17 for joinder, a more diligent Counsel in the Plaintiff's Counsel's position would have readily introduced the said "Motion on Notice" dated 30/3/17 so that it can be taken before the Applicants' "Motion on Notice" dated 13/2/17 is heard. This is to ensure that the Court's process with which the Plaintiff intends to oppose the Applicants' "Motion on Notice" is proper before the Court. But, Mr. Frank Molokwu thought differently, and he assumed that the Plaintiff's "Motion on Notice" dated 30/3/17 can be taken at any time. I doubt if he would have even bother to mention it if the Applicants' Counsel did not object to the Plaintiff's "Counter-Affidavit" as a process not filed in accordance with the Rules of Court.

The Plaintiff's "Motion on Notice" dated 30/3/17 was argued on 31/5/17 and was opposed on *technical* grounds by the Applicants' Counsel as the "Plaintiff's Counsel", by the order in which he chose to argue the Plaintiff's "Motion on Notice" dated 30/3/17, and in view of lack of a prayer for leave of Court which duly acknowledges that the Applicants' "Motion on Notice" dated 13/2/17 had been argued, is like *putting the cart before the horse!* The said "Motion on Notice" was summarily struckout as incompetent. See the Court of Appeal's decision in **NWEKE v. ORJI (1989) 2 NWLR**

(pt.104) 484 @ 491 per Uwaifo, JCA (as he then was) and now (JSC, Rtd.).

By the event of striking out the Plaintiff's "Motion on Notice" dated 30/3/17, the Applicants' "Motion on Notice" dated 13/2/17 was without any opposition. But the apposite question to ask is: Will that event, makes it grantable as a matter of course?

I do not think so because, when the provision of Order 9 Rules 14(1), (2) and (3) and 15(1) and (2) of the **Federal High Court (Civil Procedure) Rules, 2009** are carefully read, it confer on the Court, a *discretionary power* which it is required to exercise *judicially* and *judiciously*, and based on the materials placed before the Court by both parties and in the interest of justice. In this case, the only material this Court has, is the Applicants' Affidavit deposition of Mr. Bolaji Oni who by the prayer on the "Motion on Notice" dated 13/2/17 wanted to be joined as a "Defendant" in the suit of the Plaintiff in which he describes himself as "*the National Secretary of Young Democratic Party*". When I read through his "Affidavit in Support of the Motion on Notice" and having regard to conflicting parties' appearances in Court, I am not left in any doubt, that the leadership of the Plaintiff is *factionalized*. As I had noted earlier, one of the Applicants "seeking to be joined" as a "Defendant" is one Barr. Georgina Dakpokpo – who is described as "*National Chairman, Young Democratic Party*". The "Counter-Affidavit" filed out of time by the Plaintiff "in Opposition to the Applicants' Motion on Notice" was deposed to by one Ambassador Raphael Sebibo Horsfall – who says that he is the "*Acting National Chairman of the Plaintiff*".

At the commencement of this Ruling, I had alluded to the Plaintiff's suit which was commenced by a "Motion on Notice" dated 14/11/16 and the reliefs which the Plaintiff seeks against the Defendant sued. It relates to the date inserted by the Defendant on the "Certificate of Registration" issued to the Plaintiff after it had secured Courts' Judgment on its application to be registered as a "Political Party".

When I read the prayers on the instant "Motion on Notice" and the "Affidavit of Mr. Bolaji Oni," the question which I asked myself is whether, the *judicial discretion* of this Court ought to be exercised in granting or refusing the Applicants' "Motion on Notice" dated 13/2/17. The administration of justice does not leave the Court, to act on its own *whims, caprices* or *predilection*, but only on the basis of *judicial guidelines* established by the appellate Courts in determining an application such as in this instance. The often cited decision of the Supreme Court in **MOBIL OIL (NIG.) LTD. v. NABSONS LTD. (1995) 7 NWLR (pt.407) S.C. 254 @ 263^{C-D}** has laid down the relevant factors which a Court of first instance, can apply in order to come to a decision which is just. These factors are in the form of questions set down by the apex Court, and they are as follows: (a) Is the cause or matter liable to be defeated by the non-joinder of the 3rd parties? (b) Is it possible for the Court to adjudicate upon the cause of action set up by the Plaintiff, unless the 3rd parties be added as Defendant? (c) Are the 3rd parties (such as the Applicants herein) persons who ought to have been joined as "Defendants" in the first instance? and (d) Are the 3rd parties persons whose presence before the Court as "Defendants" will be necessary in order to effectually and

completely adjudicate upon and settle all the questions involved in the cause or matter? These are questions which the Court must ask and perhaps, interrogate with the facts upon which the Applicants' "Motion on Notice" is made and or being opposed by a Respondent.

The secondary question which may arise from the fourth question is whether the Applicants are really, against the reliefs being sought by the Plaintiff, *proper parties; desirable parties or necessary parties*. The *legal connotations* of each of these categories have been *comprehensively* defined by the apex Court in one of its seminal decisions often cited by Counsel in **GREEN v. GREEN (1987) 3 NWLR (pt.61) 480**. "*Proper Parties*", by the decision of the Supreme Court, are "those, though not interested in the Plaintiff's claims, are made parties for some good reasons, e.g. where an action is brought to rescind a contract, any person is a proper party to it who was active or concurred in the matters which gave the Plaintiff the right to rescind". "*Desirable Parties*" are those who have an interest or who may be affected by the result", and "*Necessary Parties*" are those who are not only interested in the subject matter of the proceedings, but also who in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the Plaintiff."

I had at the beginning of this Ruling, set out the reliefs which the Plaintiff seeks against the Defendant. The Plaintiff's suit is not a proceeding instituted to determine the authentic national officers of the Plaintiff. When these facts and the *reliefs being sought* by the Plaintiff are *x-rayed* and

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juxtaposed with the *guidelines* which I have reproduced as the factors which this Court needs to consider in coming to a decision on the applicants' "Motion on Notice" dated 13/2/17, it will be difficult to come to a decision that the Applicants be joined as "Defendants". Again, when the definitions of the categories of parties as were *judicially* spelt out by the apex Court are applied to the facts in the Affidavit of Mr. Bolaji Oni, it will amount to standing law on its head, to accept the Applicants as "co-Defendants" whether as "*proper parties*", "*desirable parties*" or "*necessary parties*" because, the subject matter of dispute centrally relate to and concern the date inserted by the Defendant on the "Certificate of Registration" it issued to the Plaintiff. I really do not see how the joinder of the Applicants will assist the Court in being able to *effectively, completely* and *effectually* to resolve the issues in contention between the Plaintiff and the Defendant. It is for these reasons and based on these judicial authorities, that I regard the Applicants' "Motion on Notice" dated 13/2/17 as one that constitutes a gross abuse of Court's process. It's accordingly dismissed.

The Plaintiff's and the Defendant's Counsel can agree as to a date when the substantive "Motion on Notice" can be argued.

This shall be the Ruling of this Court.



HON. JUSTICE G.O. KOLAWOLE
JUDGE
2/6/2017

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CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
8/6/2017
Ben Molokwu
Registrar

COUNSEL'S REPRESENTATION:

1. FRANK MOLOKWU, ESQ. for the PLAINTIFF.
2. A.A. UMAR, ESQ. with him is I.S. MOHAMMED, ESQ. for the DEFENDANT.
3. U. NWOFOR, ESQ. with him is MS. S.A. OMOLE for the Persons sought to be joined.
4. DEFENDANT is not represented by COUNSEL.

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