

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON WEDNESDAY THE 18TH DAY OF MAY, 2016
BEFORE THE HONOURABLE JUSTICE M. A. ONYETENU
JUDGE

SUIT NO. FHC/AI/CS/38/2015

BETWEEN:-

HON. PETER NNAMDI NDUDE - PLAINTIFF

AND

INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC) - DEFENDANT

JUDGEMENT

By an originating summons filed on 24/3/15 the plaintiff sought for determination of the following questions

1. Whether the Defendant is not under legal obligation to publish the name of the plaintiff in the Defendant's final lists of the qualified candidates for the Senatorial Election coming up on the 28th March 2015 or any other date thereafter as it affects Ebonyi North Senatorial Zone, having been validly and legally

M. A. Onyenu

nominated by his party unopposed in the party's primary elections, and having regard to Sections 31 (1), 34 and 87 (1) (2) (3) (4) (c) (ii) (9) of the Electoral Act 2010 (as Amended).

2. Whether the Defendant is not under legal obligation to recognise the plaintiff as the validly nominated candidate of the All Progressives Grand Alliance (APGA) for the Senatorial Election for Ebonyi North Senatorial zone scheduled to hold on 28th March 2015 or any other date thereafter having regard to the provisions of the Sections 31 (1), 34 and 87 (1) (2) (3) (4) (c) (ii) (9) of the Electoral Act 2010 (as Amended).

and consequently the following reliefs

- (1) A Declaration that by virtue of the Electoral Laws, the defendant is under legal obligation to publish the name of the plaintiff as his party's validly nominated candidate for the senatorial elections Ebonyi North Senatorial Zone scheduled to hold on 28th March 2015 having been nominated unopposed by his party, the All Progressives Grand Alliance in its primary elections.
- (2) A declaration that the defendant is under legal obligation to recognise the plaintiff as the validly and

M. A. Oyelewa

legally nominated candidate of the All Progressives Grand Alliance (APGA) to run for the position of senator for Ebonyi North Senatorial zone in the senatorial election scheduled to hold on 28th March 2015 or any other date thereafter having been elected unopposed by his said party in its primary election and his name having been forwarded to the defendant for recognition.

- (3) A declaration that by virtue of the combined interpretations of the relevant laws, the defendant's omission, neglect and or refusal to publish the name of the plaintiff in the list of qualified candidates for the senatorial elections for Ebonyi North Senatorial Zone for the said election scheduled to hold on 28th March 2015 is illegal, arbitrary, null and void.
- (4) A declaration that the plaintiff is entitled to all the rights and benefits of his candidature as the validly nominated candidate of the All Progressive Grand Alliance (APGA) for the Senatorial Election scheduled to hold nationwide on 28th March 2015 or any other date thereafter.
- (5) A declaration that any senatorial election conducted by the defendant without the name of the plaintiff being

M. A. Oyelewa

published and included as one of the contestants for the Ebonyi North Senatorial Election scheduled to hold on 28th March 2015 or any other date thereafter is illegal, unconstitutional, null and void.

In support of his summons the plaintiff filed a 27 paragraph affidavit which they relied on and exhibit to wit:-

Exhibit A membership card of the plaintiff

Exhibit B clearance form of the plaintiff

Exhibit C copy of form CF 001

Exhibit D letter to the defendant by plaintiff's party

Exhibit E letter written to the defendant by plaintiff's counsel. Counsel to the plaintiff gave the questions for determination as issues for determination.

On issue one plaintiff counsel answered in the positive referring to S. 34 of the Electoral Act 2010 (As amended) which contains the word 'shall' counsel argued that this does not confer discretion on the defendant but makes it mandatory for defendant to publish the names of persons standing nominated and by refusing to publish the said names the defendant acted ultra vires its powers as by S. 31 of the Evidence Act it has no power to disqualify a candidate nominated by a political party.

M.A. Oyeleke

Issue 2 counsel to the plaintiff also answered in the positive referring to S. 87 (4) (c) (ii) of the Electoral Act 2010 (As amended) submitting that the defendant must recognise a party's nominee where that nominee met all the party's requirements. He submitted that Exhibit C copy of form CF 001 shows clearly that the plaintiff was nominated by his party and the defendant having issued it cannot refuse to publish the name of the plaintiff as one of the qualified candidates to stand for election in Ebonyi North Senatorial Zone as the defendant is meant to be an umpire citing

UZODINMA v. IZUNASO (No 2) 2011 17 NWLR Pt 1275
at 30

Counsel finally submitted that the defendant has no power to disqualify any candidate as that power lies with the court citing

AMECHI v. INEC

2008 5 NWLR Pt 1080 227 at 1

ADOGUN v. FASOGBON

2011 3 KLR Pt 292 at 662

He urged the court to hold in favour of the plaintiff and grant them the reliefs sought.

M. A. Oyetemi

The plaintiff later filed a further affidavit of 13 paragraphs in which he attached clearance form Exhibit B deposing that he mistakenly attached an Exhibit in the affidavit of his originating summons the clearance form for the screening for Federal Assemblies for Ohahkwu/Ebonyi Federal Constituency issued to him in by his party.

The defendant filed a 14 paragraph counter affidavit which they relied on.

In his written address, counsel to the plaintiff formulated a sole issue for determination by this court to wit:-

Whether the defendant has the power to dictate or rectify or disqualify a candidate not duly sponsored by the political party which he belongs.

This the defendant counsel answered in the negative submitting that the Electoral Act 2010 (As amended) provides that it is only a political party that has the power to nominate or disqualify a candidate for their party for any election and that they are only invited to be at the political party's primary election as observers to take record of the entire process citing

ACTION CONGRESS v. INEC

2007 SC 69/2007

M. A. Oyelewa

GWEDE v. INEC

2014 18 NWLR Pt 438

and referring to S. 2 of the Electoral Act 2010

counsel submitted that the plaintiff's party obtained on his behalf form CF001 and this is followed by form CF002 which is an affidavit sworn to by a candidate of a party and submitted to the defendant and that it is this form CF002 that confers on the commission the right to include a person's name to vie for any political position which the plaintiff failed to do and also his political party refused to submit the plaintiff's name on the final list.

Counsel referred to S. 87 (11) of the Electoral Act 2010 (As amended) which does not confer power on the defendant to rectify the candidates list as submitted to it.

The defendant thus urged this court to refuse this application and refuse the prayers of the plaintiff.

The plaintiff filed a further affidavit of 15 paragraphs to the defendant's counter affidavit.

In his reply counsel to the plaintiff submitted that the defendant admitted issuing form CF001 to his political party and that this was issued to the plaintiff who submitted after filing to the defendant and that facts admitted need not be proved citing

M. A. Oyelewa

MAGMISSON v. KOIKO

1991 4 NWLR Pt 183 119

Counsel moreover submitted that cases cited by counsel to the defendant does not support their case but support the cases of the defendant.

Counsel submitted that the defendant is charged with duty of issuing all forms and that this form was not issued to the plaintiff or his party and that it is when it is issued it is acted upon.

Counsel then submitted that the administrative lapses of the defendant cannot be visited on the plaintiff and urged the court to enter judgment in favour of the plaintiff.

Now I have carefully considered the application sought by the plaintiff in this case and the reply of the defendant as well as addresses of both counsel in this matter.

The law is quite clear that it is only a political party that can nominate or sponsor a candidate for any election (see the Electoral Act) and it is the duty of the political party to forward its candidate's name to the defendant.

In the present case the plaintiff alleged that his political party forwarded his name to the defendant and the defendant issued him with her form CF001 which he promptly filled and returned to the defendant Exhibit C.

M. A. Oyeferu

see paragraph 13 of the affidavit in support of this application.

The defendant however admitted issuing the said Exhibit C to the plaintiff's political party and did not admit that it was returned back to it.

I have examined the said Exhibit C. it has an acknowledgment section which ought to be filled by both the plaintiff's political party and the defendant.

Surprisingly that part of the said exhibit is empty so that there is no proof that the plaintiff or his party returned the said form to the defendant.

The defendant has stated that after Exhibit CF001 comes Exhibit CF002 which is an affidavit sworn to by a candidate of a party and submitted to the defendant and that it is this document that the defendant include a person's name of the final list of candidates.

To this the plaintiff reply was that the form was not issued to him or his political party and that this is not contained in the affidavit of the defendant.

First laws are not averred to in an affidavit so the defendant cannot depose to such

M. A. Oyetun

Secondly the plaintiff has not denied that there is any form CF002 or that it is that is that gives the defendant the authority to publish the final list.

His argument is that he was not issued with the said form.

Having examined form CF001 which does not show acknowledgement of receipt by the defendant it is clear to me that there is no proof of its receipt by the defendant.

It is only when it is shown that the defendant record it that the issue of the 2nd stage (issue of form CF002) comes into play. This is not the situation in this case.

The defendant has in its defence stated it is only when form CF002 is filled and returned that they can put the plaintiff's name on the final list and since this was not done his name could not be on that list.

The plaintiff in his further affidavit answered that the defendant did not communicate to him or his political party the existence of form CF002 but this is neither here nor there as that form comes after CF001 and nothing shows that CF001 was returned to the defendant.

In the light of the above I answer the 2 questions formulated for determination in the negative as the plaintiff has not shown that he and his political party did all that

Mr. A. Oyejide.

was necessary on their own part for the publication and recognition of the plaintiff as candidate of the plaintiff's party.

This action therefore fails and is hereby dismissed.

M. A. Oneyetenu
M. A. Oneyetenu
Judge
18/05/2016

M. A. Oneyetenu