IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 13

DATE:2nd MARCH, 2020

BETWEEN:

FCT/HC/CV/837/2020

1. COMRADE MUSTAPHA SALIU **2. ANSLEM OJEZUA** **3. ALHAJI SANI GOMNA** **4. OSHAWO STEVEN** **5. HON. FANI WABULARI** **6. EVANG. PRINCEWILL EJOGHARADO**	**PLAINTIFFS/ RESPONDENTS**

AND

1. ADAMS ALIYU OSHIOMHOLE **2. ALL PROGRESSIVES CONGRESS**	**DEFENDANTS/APPLICANTS**
3. THE INSPECTOR GENERAL OF POLICE **4. STATE SECURITY SERVICE**	**DEFENDANTS/RESPONDENTS**

RULING

The 1st – 6thPlaintiffs herein commenced the instant suit against the 1st – 4th Respondents vide originating summons (accompanied by affidavit with exhibits) seeking the determination of various questions. The Plaintiffs also seek various declaratory and injunctive reliefs.

Upon being served with the originating processes, the 1st and 2ndDefendants filed the instant Notice of Preliminary Objection dated and filed on 29th January,2020 pursuant to the provisions of Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the inherent jurisdiction of this Court contending as follows:-

i) That the suit as constituted is incompetent and ought to be struck out or dismissed.
ii) That this Honourable Court lacks the jurisdiction to entertain this suit as constituted.

The grounds of the preliminary objection are set out by the 1st and 2ndDefendants on the face of their notice.

In support of the preliminary objection, the 1st and 2ndDefendants filed an affidavitof 7 main paragraphs (deposed to by one Reuben Harbooson)with three exhibits marked (Exhibits A, B and C) as well as Counsel's written address dated 29th January,2020.

In opposition, the Plaintiffs filed a 19-paragraphs Counter Affidavit as well as their Counsel's written address.

Learned Counsel to the Defendant formulated five issues for determination of the preliminary objection, to wit:-

1. Whether this suit is not an abuse of Court process in the light of Suit No.: FCT/HC/CV/522/2019 BETWEEN **MR. STEPHEN OSHAWO &2 ORS V. COMRADE ADAMS ALIU OSHIOMHOLE & 2 ORS**. pending before the High Court of the Federal Capital Territory, Apo.
2. Whether the Honourable Court can entertain this suit as constituted, the subject matter being strictly predicated on the internal affairs of a political party.
3. Whether this Honourable Court has the requisite jurisdiction to entertain this suit over a dispute that occurred in Edo State.
4. Whether Originating Summons is an appropriate form of action for commencing an action with an air of friction and hostile proceedings.
5. Whether the Plaintiffs possess the locus standi to initiate this action.

The Plaintiffs' Counsel responded on the above issues.

ISSUE NUMBER ONE

Whether this suit is not an abuse of Court process in the light of Suit No.: FCT/HC/CV/522/2019 BETWEEN MR. STEPHEN OSHAWO & 2 ORS V. COMRADE ADAMS ALIU OSHIOMHOLE & 2 ORS.pending before the High Court of the Federal Capital Territory, Apo.

On this issue, learned Counsel to the 1st and 2ndDefendants submitted that once two or more similar processes are used to exercise the same or similar rights, an abuse of Court process has arisen. She relied on the case of***PML & ANOR V. FRN (2017) LPELR-43480(SC***). She submitted that originating summons filed before the High Court of FCT sitting at Apo on 4th December, 2019 in Suit No.: FCT/HC/CV/522/2019 against the 1st and 2ndDefendants seeking the removal of the 1stDefendant as the National Chairman of the 2ndDefendant as well as motion on notice for interlocutory injunction bear an undeniable resemblance in the subject matter, reliefs and parties as the instant suit. She contended that the pendency of the two suits on the same subject matter is an abuse of Court process. He cited a plethora of decided cases in support of her position. LearnedCounsel posited that the consequence of this is that an order of Court ought to be made dismissing the later suit and relied on the case of ***IGBEKE V. OKADIGBO & ORS (2013) LPELR-20664(SC).*** He urged this Court to dismiss the instant suit with substantial costs.

The term 'abuse of Court process' and what it amounts to was carefully examined by the Supreme Court in the case of ***UMEH V. IWU (2008) 8 NWLR (PT. 1089) P. 225.***The apex Court**at PP. 260-261 paragraphs F-B** per Muhammad JSC held as follows:-

The terms "abuse of Courtprocess" and "abuse of judicial process", are one and the same thing. I once, observed that:-

> *"Abuse of Court process simply means that the process of the Court has not been used **bonafide** and properly. It also connotes the employment of judicious process by a party in improper use to the irritation and annoyance of his opponent and the efficient and effective administration of justice."*

See the case of ***EXPO LTD. V. PAFAB ENTERPRISES LTD. (1999) 2 NWLR (Pt. 591) 449 at 462.*** It is a multiplicity of same action in same Court or even before another Court or Courts being pursued simultaneously by the Plaintiff/Applicant as the case may be. The claim(s) relief(s) may be worded differently, but it still amounts to an abuse of process where the substance or the end result of the two or more actions is the same. Thus, where by the grant of one relief/claim, in favour of the Plaintiff/Applicant, the aim of the Plaintiff/Applicant would have been achieved; this will amount to an abuse of process if same question is placed before the same or another Court. It follows therefore that where two Courts (or even the same Court) are faced with substantially the same question, it is always desirable to be sure that that question is litigated before only one of these Courts several authorities are in support of that principle of law.

In ***NGIGE V. ACHUKWU (2004) 8 NWLR (pt. 875) P. 356 at P. 361 Paragraphs. G-H*** the Court of Appeal impressed that before applying the principle of abuse of Court process the Court must ensure that the parties are the same, issues and subject matter are the same.

The 1st and 2ndDefendants attached certified true copies of originating summons and accompanying processes in Suit No.: FCT/HC/CV/522/2019 before the High Court of the FCT. I have looked at the parties and the reliefs in that suit. I have compared them with the instant suit and I have come

to the inevitable conclusion that they are not the same. While the 4th Plaintiff, the 1st Defendant and the 2nd Defendant in the instant suit appear to be parties in Suit No.: FCT/HC/CV/522/2019, the other parties 1st, 2nd 3rd, 5th, 6th Plaintiffs and 3rd and 4th Defendants are not parties and are quite clearly different in the instant suit. Also, the reliefs sought in the instant case include reliefs that are not envisaged in Suit No.: FCT/HC/CV/522/2019. Further, by the averment of the Plaintiffs at paragraph16 of their counter affidavit which have not been denied there is no such pending suit no. FCT/HC/CV/522/2019. In otherwords even if where the two suits exist, the two suits are dissimilar.

I therefore hold the view that the instant suit does not constitute a multiplicity of actions and is not an abuse of the process of this Court and I so hold. Issue number one is hereby resolved infarour of the Plaintiffs and against the 1st and 2nd Defendants.

ISSUE TWO

Whether the Honourable Court can entertain this suit as constituted, the subject matter being strictly predicated on the internal affairs of a political party.

Arguing his second issue, Counsel to the 1st and 2nd Defendants submitted that the central issue for determination in this suit is whether or not the 1st Defendant has been suspended as a member of the 2nd Defendant. She posited that officers of a political party run the affairs of the party in accordance with the Constitution, Rules and Convention of such association. She contended that the instant suit involves a matter entirely within the internal competence of the party, the determination of which is outside the jurisdiction of this Honourable Court. She relied on the case of A***GI (SAN) V. PDP & ORS (2016) LPELR-42578(SC)*** and a plethora of other decided cases. She argued that the issue before this Court bothers on internal affairs of a political party and Courts do not concern

themselves with the affairs of political parties. She urged this Court to decline jurisdiction in this matter.

Arguing par contra, Counsel to the Plaintiffs submitted that the Supreme Court has held that the onus is on the individual who attempts to deny a litigant access to Court on the ground that a Court has no jurisdiction over internal affairs of a political party to show that the political party in fact obeyed its own Constitution. He relied on the case of ***TARZOOR V IORAER (2016) 3 NWLR (pt. 1500) P. 463***

Now, the general position of the law is that members who have voluntarily subscribed to the party's Constitution are bound by its provisions and where a party had exercised its legitimate rights under its Constitution in conducting its affairs, the Court cannot inquire into such rights being an intra-party affair. – see the cases of ***EHINLAWO V. OKE (2008) 16 NWLR)PT. 1113) P. 357, PAM V. ANPP (2008) 4 NWLR (PT. 1077) P. 224, UGWU V. ARARUME (2007) 12 NWLR (PT. 1048) P. 367*** *and* ***LP & ORS V. OYATORO (2016) LPELR-40135(CA)****.*

However, it must be noted that Constitutions and guidelines are made by members of political parties to regulate the conduct of their affairs and those of their members. Once made and agreed upon, Constitutions and guidelines become binding on the respective political parties and their members. The law is settled that a political party is duty bound to obey its own Constitution and guidelines. Therefore, Courts do not allow a political party to act arbitrarily nor will it allow a member of a political party to disobey the Constitution and guidelines of his own political party. See the cases of ***ERUE & ANOR V. OKOTIE-EBOH & ORS (2017) LPELR-42655(CA)***, ***TARZOOR V. IORAER & ORS (2015) LPELR-25975(CA)***, ***HOPE UZODINMA V. SENATOR O. IZUNASO (NO.2) (2011) 11 NWLR (PT. 1275) P. 30*** *and* ***LP & ORS V. OYATORO (SUPRA)****.*

A Courtwould therefore have jurisdiction to interfere in the affairs of a party so as to keep it in line with its Constitution. In the case of ***SHERIFF & ANOR V. PDP & ORS (2017) LPELR-41805(CA)*** the Court of Appeal held as follows:-

> *"The Courts of this country have since the Supreme Court decision in ONUOHA v. OKAFOR, and so many other decisions decided upon its principles, always been wary of getting to make decision for political parties. In fact the Courts have remained restrained in deciding matters that are within the exclusive domain of political parties such as choice of candidates to contest political offices. However, where the appropriate jurisdictions of the Courts have been invoked, the Courts will not shy away from deciding that political parties must avoid arbitrariness, impunity and illegality and must obey their Constitutions. See* ***UZODINMA V. IZUNASO (No.2) (2011) 17 NWLR (PT.1275) 30****. This exhortation of the Supreme Court in UZODINMA V. IZUNASO (supra) remains eternally relevant because there is a golden thread in the fabric that represents the Constitution of a political party in a democracy anchored on the well understood principles of rule of law. This fabric wraps around it to give it shape, life, warmth, succour and security etc., and even in the worst of darkness this thread shines like a million stars."*

I have looked at the Plaintiffs' claim in the instant case. Their grouse essentially is that certain activities of the 2nd Defendant party is not being carried out in accordance with the provision of its Constitution. Their complaint is in respect of alleged breach of the 2nd Defendant's Constitution and a bid to enforce its provisions. In the circumstances, I hold the view that this Honourable Court has jurisdiction to look into these nature of complaints brought before it by the Plaintiffs. The instant issue ought to be resolved against the 1st and 2nd Defendants and in favour of the Plaintiffs.

ISSUE THREE

Whether this Honourable Court has the requisite jurisdiction to entertain this suit over a dispute that occurred in Edo State.

Learned Counsel to the 1st and 2ndDefendants submitted on this issue that the jurisdiction of a State High Court is limited to matters arising from that State and where the subject matter of an action is within the jurisdiction of a particular State, it is the High Court of that State that would have territorial jurisdiction to entertain any action arising from that transaction. She relied on the cases of ***USMAN V. STATE (2014) LPELR-22879(SC), MAILANTARKI V. TONGO (2018) 6 NWLR (PT. 1614) P. 69 and DALHATU V. TURAKI (2003) 15 NWLR (PT. 843) P. 310.*** She contended that since no element of the cause of action that falls within the FCT Abuja to confer jurisdiction on the High Court of the FCT, this Court sitting in the FCT, Abuja lacks jurisdiction to entertain the matter.

Counsel to the Plaintiffs responded on this issue that the 1stDefendant's office from whence he unlawfully directs the affairs of the 2ndDefendant is within jurisdiction.

The position of the law is that a Court can only assume jurisdiction over a matter where the cause of action arose from within its territorial jurisdiction. Therefore, a Court in one state does not have jurisdiction to hear and determine a matter which is exclusively within the jurisdiction of another State. See the cases of ***RIVERS STATE GOVT. V. SPECIALIST KONSULT (2005) 7 NWLR (PT.923) P. 145****and****ECONOMIC AND FINANCIAL CRIMES COMMISSION & ORS V. PHILIP ODIGIE (2012) LPELR-15324(CA)****.*

It is trite law that it is the Plaintiff's pleadings that determines the jurisdiction of the Court over a matter before it. Consequently, in the determination of cause of action and its jurisdiction, a Court is restricted or should be confined to the consideration of the Plaintiff's originating processes (which are the originating summons and affidavit in support thereof filed by the Plaintiffs in the instant case). – see the cases of ***ABUBAKAR V. BEBEJI OIL & ALLIED PRODUCTS LTD & ORS. (2007) 18 NWLR (PT. 1066) P. 319*** *and* ***OGUNDIPE V. NDIC (2009) 1 NWLR (PT. 1123) P. 473****.*

I have looked at the Plaintiffs' originating processes in this suit. By their affidavit the Plaintiffs case is that despite the 1st Defendant's suspension from the 2nd Defendant party, he (1st Defendant) has continued parading himself as the ***National*** Chairman of the 2nd Defendant. This is the Plaintiffs' grouse in a nutshell. In my considered view, this gives the Plaintiffs the right to commence the instant action in this Court in the FCT as the 2nd Defendant resides in the FCT as well as the 1st Defendant from where he conducts the affairs of the 2nd Defendant. The instant suit commenced before this Court was therefore appropriately commenced and the instant issue ought to be resolved against the 1st and 2nd Respondents and in favour of the Plaintiffs.

ISSUE NUMBER FOUR

Whether Originating Summons is an appropriate form of action for commencing an action with an air of friction and hostile proceedings.

On this issue, learned Counsel to the 1st and 2nd Defendants submitted that the Plaintiffs wrongly commenced the instant action by originating summons instead of a writ of summons. She submitted that the depositions in the Plaintiffs' affidavit are hostile and contain serious air of friction which makes the mode of commencement inappropriate. She relied on the case of ***OSSAI V. WAKWAH (2006) 4 NWLR (PT. 969) P. 208****.* Counsel

urged this Court to resolve this issue in favour of the 1st and 2ndDefendants.

On this issue, learned Counsel to the Plaintiffs for his part submitted that it is trite law that where a matter is commenced by originating summons instead of writ, the proper order for the Court to make is to direct the parties to file pleadings and not to strike out the matter. He relied on the case of ***ZENITH BANK & ANOR V OLIMPEX NIG. LTD (2018) LPELR- 45575 (CA)***. He posited that this Court can and should direct parties to file pleadings rather than strike out the case.

The instant action was commenced by Originating Summons. **Order 2 Rule 3(1) and (2) of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** provides as follows:-

(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.
(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.

It was held by the Supreme Court in ***OSSAI V. WAKWAH (2006) 4 NWLR (PT. 969) P. 208 at PP. 228-229 paragraphs A-B*** that originating summons is principally ideal for use in an action involving the construction and interpretation of a written law or documents or in an action where there is no dispute on question of facts or likelihood of such dispute. In other words, originating summons is not suitable for commencing hostile proceedings. - See also ***EGBARIN V. AGHOGHOVBIA (2003) 16 NWLR (PT. 846)***

P. 380 at PP. 389-390 paragraphs H-A, U.B.A. V. EKPO (2003) 12 NWLR (PT. 834) P. 332 at P. 342 paragraphs E-F,AGBAKOBA V. INEC (2008) 18 NWLR (PT. 1119) P. 489, ADEYELU II V. AJAGUNGBADE III (2007) 14 NWLR (PT. 1053) P. 1 *and* ***INAKOJU V. ADELEKE (2007) 4 NWLR (PT. 1025) P. 423****.*

I have looked at the Plaintiffs' claims in the instant suit. Although they have relied on documents, the effect of which they want this Court to act on, the circumstances of some of those documents raise the likelihood of dispute. In short the issues in this suit are contentious.

In **EJURA V. IDRIS (2006) 4 NWLR (PT. 971) P. 538 at P. 561 paragraph C**, the Court of Appeal held that when the Court finds an originating summons to be inappropriate it ought to order the parties to file pleadings and come by way of writ of summons and not dismiss the suit.

Also in ***GOVT., C.R.S. V. ASSAM (2008) 5 NWLR (Pt. 108)1 P. 658*** it was held that proceedings, which are likely to provoke hostility should not be commenced by originating summons, and where they are so commenced, the trial Court should treat the originating summons as a writ of summons and order the parties to file pleadings in the matter.

In view of the foregoing, I hold the view that the instant action was commenced by the wrong procedure i.e. vide originating summons. The instant action ought to have been commenced by way of a writ of summons. The proper order to make in the circumstances is not one dismissing this suit but ordering for pleadings to be filed. See also **Order 2 Rule 3(3) of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018.**Accordingly therefore, pleadings are hereby ordered to be filed and exchanged between the parties.

ISSUE NUMBER FIVE

Whether the Plaintiffs possess the locus standi to initiate this action.

Learned Counsel to the 1st and 2ndDefendants submitted on this issue that having failed to comply with the 2ndDefendant's Constitution, the Plaintiffs lack the legal standing to seek the reliefs as contained in the originating summons. She contended that there is no office known as 'major stakeholder' as the 3rd, 5th and 6thPlaintiffs have been described in the Plaintiffs' affidavit in support of their originating summons. She argued that the 3rd, 5th and 6thPlaintiffs have not disclosed interest or legal right capable of protection and cannot institute the instant action. She argued therefore that they do not possess the locus standi to institute the action. She further contended that the 2nd and 4thPlaintiffs are no longer members of the 2ndDefendant as evidence in the affidavit in support of the preliminary objection shows. She relied on Articles of the 2ndDefendant's Constitution. She submitted that the purported suspension of the 1stDefendant was ultra vires the 2ndDefendant's Constitution as same was done by an organ of the party having passed a vote of no confidence by a two thirds majority of members. She submitted therefore that the Plaintiffs lack the locus standi to institute the instant suit. She urged this Court to resolve this issue in favour of the 1st and 2ndDefendants and dismiss the instant suit.

Counsel to the Plaintiffs in response, argued that all the Plaintiffs need to show to establish they have locus is a right. He cited the case of ***YAR' ADUA V YANDOMA (2015) 4 NWLR 5.***

Before I consider this issue for resolution, it is important to understand the meaning of *locus standi.*The Supreme Court in***ADENUGA V. ODUMERU (2002) 8 NWLR (pt. 821) P. 163 at P. 184 paragraphs. E-H****;* held as follows:-

"Locus standi denotes the legal capacity, based upon sufficient interest in the subject-matter, to institute proceedings in a Courtof law to pursue a certain cause. In order to ascertain whether a Plaintiff has **locus standi**, the

statement of claim must be seen to disclose a cause of action vested in the Plaintiff and also establish the rights and obligations or interests of the Plaintiff which have been or are about to be violated, and in respect of which he ought to be heard upon the reliefs he seeks: See ***ADEFULU V. OYESILE (1989) 5 NWLR (PT. 122) 377; ODENEYE V. EFUNUGA (1990) 7 NWLR (PT. 164) 618; ADESOKAN V. ADEGOROLU (1997) 3 NWLR (PT. 493) 261; OWODUNNI V. REG. TRUSTEES OF CCC (2000) 10 NWLR (PT. 675)315.***
The interest which a Plaintiff alleges must be such, as pleaded, which can be considered real not superficial or merely imaginary.

The law is that where a person institutes an action to claim a relief, which on the facts of the case is enforceable by another person, then the former cannot succeed because of lack of *locus standi*. – see the case of ***BEWAJI V. OBASANJO (2008) 9 NWLR (PT. 1093) P. 540***. It is also trite law that where a Plaintiff's *locus standi* is not disclosed by his originating process, there is no need to consider whether there is a genuine case on the merit and where a Plaintiff lacks *locus standi* the Court would lack jurisdiction. – see **B.*M. LTD. V. WOERMANN-LINE (2009) 13 NWLR (pt. 1157) P. 149***.

In any event in determining the issue of *locus standi* it is only the Plaintiff's claim that will be considered. – see the case of ***AYORINDE V. KUFORIJI (2007) 4 NWLR (pt. 1024) P. 341***.

In their affidavit in support of their originating summons, the Plaintiffs averred that they are variously Chairmen, members and major stakeholders of the 2nd Defendant party.

Now the Plaintiffs have averred as to who they are in relation to the instant suit. This Court having set the matter for proper trial, it is my opinion that the Plaintiffs now have

the onus of proving the facts of their right to sue as alleged by them.

I have looked at the claims of the Plaintiffs in this suit. It is my opinion that the points raised by the 1st and 2ndDefendants under this issue i.e. whether the 3rd, 5th and 6thPlaintiffs have the right to sue in view of provisions of the 2ndDefendant's Constitution, whether 2nd and 4thPlaintiffs have been removed as members and no longer have capacity to sue, whether the procedure for the suspension of the 1stDefendant is in line with the 2ndDefendant's Constitution; are all issues that affect the substantive issues in this case. This Court must refuse to look into such issues at this stage as parties and the Court are not allowed to delve into a substantive issue at the preliminary stage.

The position of the law is that where jurisdiction is challenged by way of Preliminary Objection, it is not the duty of the Court at that stage to delve into the merits of the case. Where a Court is called upon to determine substantive issues by parties in the determination of a preliminary objection, the Court must refuse such invitation. See the cases of ***OLAFESO & ORS V. OGUNDIPE & ORS (2018) LPELR-44305(CA)*** *AND* ***SODEINDE V. ALLEN & ANOR (2018) LPELR-46782(CA)****.*

See also the case of ***SHERIFF & ANOR V. PDP & ORS*** **(supra)**where the Court of Appeal held as follows:-

> *"It is not proper for a Court to determine a substantive issue while determining a Preliminary Objection. See* ***AKAPO -V- HAKEEM HABEEB (1992) 7 SCNJ 199; (1992) LPELR - 352 (SC) Pg. 23 A - E*** *where it was held per KARIBI WHYTE JSC that:-*
>
> > *"It is of paramount importance to bear in mind the fact that the application before the Court is for grant of Interlocutory Injunction pending the*

determination of the substantive claim brought by the Plaintiff. The duty of the Judge in that situation is to ensure that he did not in the determination of the application determine the same issues that could arise for determination in the substantive action".

Although this principle was established with respect to injunctions, it is also in my view sufficiently applicable to the case at hand with respect to determination of Preliminary Objection."

As regards the 3rd,5th and 6thPlaintiffs,the position of the law is that misjoinder or non-joinder by itself does not affect jurisdiction of the Court*per se*. The appropriate orders can be made to remedy a situation of misjoinder or non-joinder.

In conclusion, this issue must also be resolved against the 1st and 2ndDefendants and in favour of the Plaintiff.

Finally I hold the view that the 1st and 2ndDefendant's instant Notice of Preliminary Objection fails and it ought to be dismissed and it is accordingly dismissed.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
2/03/2020

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 13

DATE:2nd MARCH, 2020

BETWEEN: Motion No FCT/HC/M/5361/2020

COMRADE MUSTAPHA SALIU

7. ANSLEM OJEZUA
8. ALHAJI SANI GOMNA **PLAINTIFFS/ RESPONDENTS**
9. OSHAWO STEVEN
10. HON. FANI WABULARI
11. EVANG. PRINCEWILL EJOGHARADO

AND

5. ADAMS ALIYU OSHIOMHOLE] **DEFENDANTS/APPLICANTS**
6. ALL PROGRESSIVES CONGRESS]

7. THE INSPECTOR GENERAL OF POLICE] **DEFENDANTS/RESPONDENTS**
8. STATE SECURITY SERVICE]

RULING

The instant motion on notice was filed by the 4th Defendant on 14th February, 2020 praying the Honourable Court for the following:-

(1) An order of this Honourable Court striking out the name of the 4th Defendantfrom this suit and for such order (s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the 4th Defendant predicated the instant application are set out on the face of the motion and numbered 1-4.

In support of the application, the 4th Defendant supported its application by a 10 paragraph affidavit duly deposed to by one Tanko Musa, a personel of the 4th Defendant attached to its Legal Department.

Incompliance with the Rules of this Court, the 4th Defendant's Counsel filed a written address and adopted same as his oral arguments. The Plaintiffs/Respondents and the 1st and 2nd Defendants/Respondents were served with the 4th Defendant's motion No. M/5361/2020 filed on 14th February, 2020. However, it appears from the processes filed in this suit, none of the sets ofDefendants/ Respondents responded to the 4th Defendant's motion. However the Plaintiffs filed a counter affidavit and a written address in opposition to the grant of the 4th Defendant's application.

Be it as it may, in the written address of the 4th Defendant's Counsel, learned Counseldistilled the following for determination thus:-

> *"Whether the Plaintiff's suit discloses any cause of action against the 4th Defendant."*

Arguing the sole issue, learned Counsel observed that a holistic look at the Plaintiffs suit and the reliefs sought shows clearly that the 4th Defendant has by no act or omission of its own wronged the Plaintiff. In other words learned Counsel submitted that the action against the 4th Defendant by the Plaintiff discloses no cause of action against it. He relied on the case of ***UWAZURUONYE V GOV, IMO STATE, (2013)8 NWLR (pt 1355) page 28.***

In conclusion, he urged me to strike out the name of the 4th Defendant because the Plaintiffs did not disclose any cause of action against the 4th Defendant.

Now I have earlier ruled that the law is trite in determining the Plaintiff's cause of action, it is the processes filed by the Plaintiff the Court is obliged to look atsee***ONUOHA NWANKWO V OGBONWAYA NWANKWO, (2017) LPELR 42832 (CA) and ATIBA IYALAMU SAVINGS AND LOANS LTD V SIDIKU AJALA SUBERU (2018) LPELR 44069 (SC).***

In the instant case, I have perused the affidavit evidence in support of the Plaintiffs originating process including the reliefs sought.

It appears by the Plaintiffs averment at paragraph 13 (a) of their affidavit, they alleged that the 3rd and 4thDefendants have actively connived with the 1stDefendant to keep him in the office by deploying their agents. A cause of action has arisen.

Although I have seen the Plaintiffs averment in their affidavit in support and the reliefs sought from the 3rd and 4thDefendants, which appears to disclose the complaint of the Plaintiffs against the 3rd and 4thDefendants, I must state here that there are certain statutory bodies like the 3rd and 4thDefendants whose presence in a suit may not be real active parties but might be referred to as "passive" or "nominal" parties for the purpose of enforcement of any decision of a competent Court of law. In the instant case, the 3rd and 4thDefendant's presence in this suit as nominal parties is to enforce and maintain their statutory responsibilities of law enforcement and provide security to all citizens of this great country including the parties herein. Thus, the order striking out the name of the 4thDefendant in this suit is hereby refused and application is accordingly dismissed.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
2/03/2020

OluwaleAfolabi:- For the Plaintiffs

GinikaEzeoke:-With me Udeze for the 1st and 2nd Defendants

S.O John:-Holding the brief of S.M Bello for the 4th Defendant.

Ugowe:- For the 3rdDefendant.

Sign
Judge
2/3/2020