

**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: 4TH MARCH, 2020

**BETWEEN:
FCT/HC/CV/837/2020
FCT/HC/M/4292/2020**

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

PLAINTIFFS/APPLICANTS

AND

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

DEFENDANTS/RESPONDENTS

RULING

By the instant Motion on Notice No. M/4292/2020 dated and filed on 16th January, 2020 brought pursuant to Order 43 Rules 1 and 3(1), (2) & (3) of the Rules of this Court, Section 6(6) of the Constitution of the Federal Republic of Nigeria 1999 and under the inherent jurisdiction of this Honourable Court, the Plaintiffs herein seek the following reliefs from this Honourable Court:-

1. An order of interlocutory injunction restraining the 1st Respondent from continuing to parade himself or performing any function as the National Chairman of the 2nd Respondent

- or representing the 2nd Respondent in any capacity pending the hearing and determination of the substantive suit.
2. An order of interlocutory injunction restraining the 2nd Respondent from recognising or continuing to recognise the 1st Respondent as its National Chairman including giving effect to any of his decisions or according him any privilege/benefit accruing to its National Chairman pending the hearing and determination of the substantive suit.
 3. An order of interlocutory injunction restraining the 2nd Respondent from permitting or continuing to permit the 1st Respondent to function as its National Chairman including representing the 2nd Respondent at any engagement or allowing him access to the office of Chairman of the 2nd Respondent pending the hearing and determination of the substantive suit.
 4. An order of interlocutory injunction directing the 3rd and 4th Respondents to deploy their staff, agents and operatives to prevent the 1st Respondent from continuing to occupy the office of the National Chairman of the 2nd Respondent and from having access to the said office pending the hearing and determination of the substantive suit.
 5. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application, the Plaintiffs/Applicants filed an Affidavit of 22 paragraphs (along with exhibits) as well as their Counsel's Written Address dated 16th January, 2020. The Applicants also filed a Further Affidavit of 4 paragraphs with a further written address.

In opposition, the 1st and 2nd Defendants/Respondents filed a 5 paragraphs Counter-Affidavit (with exhibits) and accompanied by their Counsel's written address.

ISSUES FOR DETERMINATION

Learned Counsel to the Applicants formulated a sole issue for the determination of the instant application to wit:-

"Whether it is in the interest of justice to grant this application, with regards to the peculiar facts and circumstances of same."

For his part, the 1st and 2nd Respondents' Counsel distilled the following two issues for determination:-

- 1. Whether this instant suit is not an abuse of Court process considering the pendency of the Plaintiffs' originating summons and Plaintiff's Motion on Notice both filed 4th December, 2019 in 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 considering the facts and circumstances of this case, it is in the best interest of justice to grant this application.*

To resolve the contending issues in this application, I shall adopt the issue as formulated by the Applicants and address those issues raised by the 1st and 2nd Respondents thereunder. The issue reads thus:-

"Whether it is in the interest of justice to grant this application, with regards to the peculiar facts and circumstances of same."

Let me quickly address the issue of multiplicity of actions and abuse of Court process raised by the 1st and 2nd Respondents' Counsel in her address in this application. The exact same issue has already been raised in a Notice of Preliminary Objection dated and filed on 29th January, 2020 by the same 1st and

2nd Respondents. The issue has already been addressed by this Court in the determination of that Notice of Preliminary Objection. This Honourable Court is therefore *functus officio* in respect of that issue by virtue of its Ruling delivered on the Notice of Preliminary Objection dated and filed 29th January, 2020. Let me however reiterate that the instant suit does not constitute a multiplicity of actions as parties and issues are different. The issue which has been raised again in the instant application must therefore be discountenanced.

Now, by the instant application, the Applicants seek orders of interlocutory injunction pending the hearing and determination of the substantive suit.

It is clear and beyond dispute that this Honourable Court has power under **Order 42 Rule 2 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** to grant an application for order of injunction pending the trial of a matter. The position of the law is that the decision whether to grant or refuse to grant an order of interlocutory injunction lies in the discretion of the Court which must be exercised judicially and judiciously. – see ***ALCATEL KABELMETAL (NIG.) PLC. V. OJUEGBELE (2003) 2 NWLR (PT. 805) P. 429 at P. 456 paragraph H.***

Parties to this case appear to be on the same page as to what the principles that guide a consideration of an application of orders of interlocutory injunction are. I also agree. The following are principles guiding the grant or refusal of an application for interlocutory injunction:-

1. The existence of a legal right in the applicant;
2. The presence of a triable issue in the matter;
3. That the balance of convenience in the suit tilts in favour of the applicant;

4. That damages will not adequately compensate the Applicant if the injury sought to be restrained occurs;
5. The existence of other social or economic factors which makes it necessary for the application to be granted.

See the cases of **ADESINA V. AROWOLO (2004) 6 NWLR (PT. 870) P. 601, ONYESOH V. NNEBEDUN (1992) 3 NWLR (PT. 229) P. 315, C.G.C. (NIG.) LTD. V. BABA (2004) 10 NWLR (PT. 882) P. 652 and KOTOYE V. CBN (1989) 1 NWLR (PT. 98) P. 419.**

A. The existence of a legal right and the presence of a triable issue:

Here, learned Counsel to the Applicants submitted that the facts show that the Applicants have legal right and there are serious issues to be tried.

The 1st and 2nd Respondents' Counsel however disagrees and she posited that the Applicants have failed to show that they have a legal right worthy of protection by this Court as they have failed to disclose any cause of action. Counsel argued that under the 2nd Respondent-party's Constitution, the power to discipline or suspend a National Chairman such as the 1st Respondent lies with the 2nd Respondent's National Executive Committee. She contended that the proper procedure (under the 2nd Respondent's Constitution) to suspend the 1st Respondent was not complied with as there was no power to suspend him. Counsel submitted therefore that the Applicants have no *locus standi* to institute this suit and any legal right in this matter.

It is trite that an applicant for interlocutory injunction must show that he has a legal right which is threatened and ought to be protected. See **COBHAM V. DUKE (2004) 2 NWLR (PT. 856) P. 150 at P. 168 paragraph D.** The applicant's case

must also raise a 'triable issue' which has been described as an issue which cannot be dismissed with a wave of hand – see **INTERCITY BANK PLC. V. ALI (2002) 7 NWLR(P.T. 766) P. 420 at P. 446 Paragraphs A-C**. In other words, the applicant must show that there is a serious question to be tried at trial, i.e. that the applicant has a real possibility of success at the trial and his claims are not vexatious or frivolous – see **AKINPELU V. ADEGBORE (2008) 10 NWLR (PT. 1096) P. 531 and KASUNMU V. SHITTA-BEY (2006) 17 NWLR (PT. 1008) P. 372**.

Now, the Applicants' claim is essentially that they are members and stakeholders of the 2nd Respondent-party from whom the 1st Respondent had been suspended as a member but who has continued acting as National Chairman of the 2nd Respondent despite his suspension as a member. The Applicants' case is that the 1st Respondent cannot continue acting as National Chairman of the 2nd Respondent in view of provisions of the 2nd Defendant's Constitution. The Applicants' grouse is thus that the provisions of the 2nd Defendant's Constitution are being breached. I am of the opinion that the Applicants have thus established a legal right to approach this Court for the relief of interlocutory injunction sought. They have also established triable issues. The position of the law is that a political party and all its members are bound by the provision of the political party's Constitution which must be respected by all including the Court. See the decision of the Supreme Court in the case of **GANA V. SDP & ORS (2019) LPELR-47153(SC)**.

I have noticed that parties in this case (particularly the 1st and 2nd Respondents) have argued freely on issues that pertain to the substantive suit. I will not be drawn into the determination of substantive issues at this interlocutory stage. It is forbidden. – see the cases of **NDABA (NIG.) LTD. V. UBN PLC. (2007) 9 NWLR (PT. 1040) P. 439 and P.D.P V. ABUBAKAR (2007) 3 NWLR (PT.1022) P. 515**. For this reason, I will refuse to consider most of the arguments by parties (particularly the 1st and

2nd Respondents) on issues that have such an effect. Such issues as the effect of the provisions of the 2nd Defendant's Constitution which invariably is part of the substantive matter before this Court. I will however say this much (without touching on specific issues). It appears that the 1st and 2nd Respondents do not understand or appreciate the Applicants' grouse in this matter. The Applicants' grouse is not that the 1st Respondent was directly removed as National Chairman of the 2nd Respondent by his suspension at his ward. No. That doesn't appear to be the contention. The Applicants' contention is that the 1st Respondent cannot continue to enjoy benefits of a member of the 2nd Respondent (such as holding office as its National Chairman) having been suspended as a member of the 2nd Respondent in the first place. This clarity about the Applicants' cause of action is necessary. I will however stop at that till the determination of the case at trial.

B. *The balance of convenience and inadequacy of damages as compensation:*

Counsel to the Applicants have contended that the balance of convenience is in the Applicants' favour as the affairs of the 2nd Respondent-party is being governed by a non-member contrary to the 2nd Respondent's Constitution. He argued that damages would not be adequate compensation in the peculiar circumstances of this case.

The 1st and 2nd Respondents' Counsel for her part posit that the balance of convenience is in the 1st and 2nd Respondents' favour as the 1st Respondent is charged with the functions as National Chairman of the 2nd Respondent. She urged this Court to hold that damages would be adequate compensation to the Applicants if the instant application is refused and they succeed at trial.

In the case of **AKINPELU V. ADEGBORE** (*supra*) the Supreme Court per Tobi JSC (of blessed memory) held that an applicant

for interlocutory injunction must show that the balance of convenience is on his side; that is, that more justice will result in granting the application than in refusing it. The learned jurist also held that the applicant must show that damages cannot be an adequate compensation for his damage or injury, if he succeeds at the end of the day.

In **ADEWALE V. GOV., EKITI STATE (2007) 2 NWLR (PT. 1019) P. 634 at P. 657 paragraphs C-D** Abdullahi JCA held that

"The objective of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The applicant also has to show that the balance of convenience is on his side, that is to say more justice will result than in refusing it."

See also **ORJI V. ZARIA IND. LTD. (1992) 1 NWLR (PT. 216) P. 124** and **MODILE V. GOVERNOR OF LAGOS STATE (2004) 12 NWLR (PT. 887) P. 354 at P. 381 paragraphs A-F**.

In **COBHAM V. DUKE (supra) at P. 180 paragraphs A-B** it was held that in determining the balance of convenience in an application for interlocutory injunction, the court must weigh the inconvenience and damage that will be suffered by the applicant against that of the respondent in deciding whether or not to grant the order of interlocutory injunction sought.

I have looked at the affidavits filed by the respective parties in the instant application for interlocutory injunction before this Court. The Applicants averred in their affidavits that the 1st Respondent has continued to act as National Chairman of the 2nd Respondent despite his suspension as a member of the

2nd Respondent-party. That the 3rd and 4th Respondents have connived to illegally keep him in that office by deploying their agents for this purpose. That the 1st Respondent will cause irreparable damage to the 2nd Respondent and its members with his decisions as National Chairman if the instant application is not granted. That he is therefore likely to plunge the 2nd Respondent into serious crisis which may affect its chances in future elections. That the 2nd Respondent has competent hands to effectively navigate the affairs of the 2nd Respondent if this application is granted.

The 1st and 2nd Respondents deny that the 1st Respondent was effectively removed. They averred in their Counter affidavit that the 1st Respondent has been performing duties as National Chairman and the 2nd Respondent will become chaotic in the absence of a Chairman. That the grant of this application will cause untold hardship on the 2nd Respondent as management of its affairs will be foisted in the hands of people.

Now, I do believe the 2nd Respondent has organs and structure in place for the effective running of its affairs. The impression created by the Respondents of the 1st Respondent appearing indispensable is therefore incredible. Where good and cogent reason is presented, the 1st Respondent can and should step aside temporarily as National Chairman of the 2nd Respondent. I believe such good and cogent reason has been presented by the Applicants in this application.

The 1st Respondent is certainly an interested party in this case with his own personal interest to defend and protect. The Applicants have made it quite clear that leaving him in control of the affairs of the 2nd Respondent in view of the instant suit (and issues involved) during the pendency of this case would not be in the interest of all. And when I say 'All', I mean the 2nd Respondent and its members. This is because of the decisions he may likely take as National Chairman while his capacity to act in such office is being challenged in this suit. I therefore hold the

view that the Applicants have been able to establish that the balance of convenience is in their favour i.e. in favour of granting the instant application for interlocutory injunction and I so hold. The nature of damages that would ensue is clearly not one that can be envisaged in monetary terms. They have established that damages would not be adequate compensation should the instant application be refused and their substantive claim succeeds at trial at the end of the day.

It is also relevant to note that Applicants offered undertaking as to damages should the application be granted and the substantive suit is prove unmeritorious.

In the circumstances, I hold the view that it would be judicious and judicial exercise of the discretion of this Court to grant the orders of interlocutory injunction sought in the instant application and I so hold. It would be in the interest of justice to so do. The issue for determination is thus resolved in favour of the Applicants. Thus, the Applicants are entitled to the grant of the orders of interlocutory injunction sought vide the instant application. Accordingly, reliefs 1- 4 on the face of the motion papers are hereby granted pending the hearing and determination of the substantive suit.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
4/03/2020

Parties:- Absent.

O.C Ugwu:-Holding the brief of OluwaleAfolabi for the Plaintiffs/Applicants. The lead Counsel is already here.

D.D Dodo SAN:- With me are N.A Dangiri SAN, AuduAonduga, GinikaEzeoke, NkechiUdeze and Jean Emunike for the 1st and 2nd Defendants/Applicants.

Afolabi:- I thank the Court for the ruling.

Dodo SAN:- I thank the Court for the ruling and I apply for abridgement of time to file our pleadings in view of the National interest in this case.

Afolabi:- I have no objection and I will require two weeks (14days) to file our pleading.

Dodo SAN:- Two weeks is unreasonable. I require only 3 days to file after service on us by the Plaintiffs. I also apply for accelerated hearing of this matter.

Afolabi:- I have no objection for an order of accelerated hearing of the substantive suit.

Court:- It would be recalled that on Monday the 2nd March, 2020 after considering the notice of preliminary objection of the 1st and 2nd Defendants and indeed the 4th Defendant, this Honourable Court made an order transferring this suit to the general cause list and pleadings was ordered. Thus, based on the agreement of parties on abridgement of time to file pleadings, the Plaintiffs have 10 days to file their pleading and on service on the Defendants the Defendants have 5 days to file their defence and two days for the Plaintiff to file a reply if they so desire. Further, an order of accelerated hearing is hereby granted in this case. Hearing notices be issued and served on the 3rd and 4th Defendants. Case adjourned to the 7th of April, 2020 for the Plaintiff to open and conclude their case and thereafter the Defendants to open and conclude their defence on 8th April, 2020.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
4/03/2020