



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDING AT MAITAMA  
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF



SUIT NO:FCT/HC/CV/1380/2020.

**BETWEEN:**

1. HON. (ENGR.) FRIDAY FRED OSAGIE OKAH )
2. OLA HENRY EKUNDAYO )
3. SYLVANUS – PETERS ERUAGA GALLANT C. )
4. JEFFREY IKHINE UKHUREIGBE )CLAIMANTS/RESPONDENTS

**AND**

1. PEOPLE DEMOCRATIC PARTY (PDP) )
2. INDEPENDENT NATIONAL ELECTORAL).....DEFENDANTS/RESPONDENTS  
COMMISSION (INEC) )

**RULING**

On the 11/03/2020, the Claimants in this case instituted an action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, namely Peoples Democratic Party (PDP) and Independent National Electoral Commission (INEC) by way of an Originating Summons seeking the resolution of six questions.

The Claimants also sought ten reliefs upon the resolution of those questions. When **HON. TONY AZIEGBEMI** got wind of the action he got his Counsel to file a Motion on Notice pursuant to Sections 6 and 36 of the 1999 Constitution and the Civil Procedure Rules of this

Court 2018 to seek for an Order of this Court joining him as a party to defend this case as he is according to him a necessary party whose joinder to the action is necessary for a complete/effectual determination of this suit and that he would be adversely affected by the reliefs sought in the Originating Summons.

He also sought consequential relief for an Order directing the Claimants to amend the Originating Summons and other relevant processes for the purpose of reflecting the name of the Applicant as a Defendant to this action.

Five grounds were listed for bringing the application.

1. The Applicant is a card carrying member of the 1<sup>st</sup> Defendant in Edo State.
2. That the Applicant seeking to be joined was elected on 14/03/2020 as State Chairman during the State congress for the PDP Edo State Executive alongside his colleagues who equally emerged victorious in different capacity and for different positions.
3. The questions for determination in the instant suit are issue touching on the Ward, Local Government and State congress relating to the 1<sup>st</sup> Defendant in Edo State.
4. Joinder of the Applicant is imperative not only because he would be affected by the reliefs sought in this case but because

he is necessary for an effective and effectual determination of the suit, and;

5. This Hon. Court has powers to grant this application.

The Motion is supported by a 15 - paragraphs Affidavit which was deposed to by one Oluwafemi Davies Awe, a Learned Counsel in the Chambers of A.B. Mahmud & Co. of Counsel to the Applicant. Two documents were annexed to the Affidavit and marked as Exhibits "A" and "B". Exhibit "A" is the summary of results for PDP State Congress and Exhibit "B" is the proposed Counter – Affidavit of the Applicant in opposition to the Originating Summons to be filed if the application for joinder is granted and a Written Address in support.

Learned Counsel to the Applicant also filed a written Address made up of five pages in support of the application.

The Learned Senior Counsel to the Claimants opposed the application with a Counter Affidavit of sixteen paragraphs duly sworn to by the 2<sup>nd</sup> Claimant/Respondent. He also filed a Written Address to the application.

In response to the Counter Affidavit the Learned Counsel to the Applicant seeking to be joined filed a Further and Better Affidavit of thirteen paragraphs and a reply on points of Law. The 1<sup>st</sup> and 2<sup>nd</sup>

Defendants/Respondents who were served with all processes relating to this application did not file any paper.

At the hearing of the application on 15/06/2020 the Learned Counsel for the Claimants and party seeking to be joined adopted their processes and made short adumbration in support of their respective positions.

The position of the party seeking to be joined is that this suit revolves round the Ward, Local and State Congress relating to the 1<sup>st</sup> Respondent in Edo State. That he is a card carrying member of the 1<sup>st</sup> Respondent who has also emerged as the Chairman of the 1<sup>st</sup> Defendant in Edo State in the State Congress conducted on the 14/03/2020 after the Ward Congress which the Claimants are seeking to void. It is also his position that the other members of the state executive which he seeks to represent emerged in the said Congress, and that his interest would be adversely and irreversibly prejudiced if he is not made a party to this suit as it would proximately affect him.

According to the Learned Counsel to the Applicant, the issue to be determined by this Hon. Court in the consideration of the application is whether in view of the reliefs sought in the Originating Summons and the interest/stake disclosed by the Applicant in the

Affidavit in support the party seeking to be joined is not a necessary party who ought to be joined as Defendant to this suit.

In support of this issue the Learned Counsel told the Court that from the clear facts of this case the party seeking to be joined would be adversely and directly affected by the outcome of this case and therefore he is a necessary party whose presence in the case is a must for an effectual and complete determination of this case. On this point

Counsel cited the case of ***AZUBUIKE Vs PDP (2014) 7 NWLR (PT. 1406) 292 at 313 - 314 paragraphs G - A*** where factors to be considered in an application for joinder where set out thus;

- a. Is the cause or matter liable to be defeated by non joinder?
- b. Is it possible to adjudicate on the cause or matter unless the 3<sup>rd</sup> party is added as a Defendant?
- c. Is the 3<sup>rd</sup> party a person who should have been joined in the first instance and;
- d. Is the 3<sup>rd</sup> party a person whose presence before the Court to effectually and completely adjudicate or settle all the questions involved in the cause or matter?

Learned Counsel also cited the following cases:

***Green Vs Green (1997) 3 NWLR (PT. 61) 480; BELLO Vs INEC (2008) 8 NWLR (PT. 1196) 403; & OKONTA Vs PHILLIPS (2010) 18 NWLR (PT. 1225) 326.***

Counsel submitted that Order 13 of the Rules of this Court empowers this Court to grant this type of application and that from facts narrated by the Applicant in paragraphs 6, 7, 8, 9, 10, 11 and 12 of the Affidavit in support thereof the party seeking to be joined has satisfied the condition for joinder so that the matter could be effectually determined.

Counsel argued that from the questions numbers 2, 3, 5 and 6 submitted for determination in the Originating Summons and the reliefs 2, 3, 5, 6, 8 and 10 there is no way the suit could be determined behind him as his interest as the current State Chairman of the party would be adversely affected.

The case of ***UGORJI Vs ONWU (1999) 3 NWLR (PT. 178) 177 at 184*** decided by OGUNTADE JCA (as he then was) while citing Patrick Delvin L. J. in ***AMON Vs RAPHAEL TUCK AND SONS LTD (1956) 1 All ER 273*** was also cited in aid. In the case the Learned Jurist held thus;

***“The only reason which makes it necessary to make a person a party to an action is that he should be bound***

***by the result and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party.”***

The Learned Counsel also cited the case of ***IMEGWU Vs ISIBELU (2014) 4 NWLR (PT. 1289) 119 at 131 paragraphs E - G.***

In opposition to this application the Learned Senior Counsel to the Claimants has submitted that the Affidavit in support of the application for joinder was not deposed to personally by the Applicant and that the deponent has no interest whatsoever in the present suit and as such lacks the capacity, aptitude, acquaintance and knowledge to make depositions in support of an application that seeks to join an unknown person to this suit and that the party seeking to be joined has not demonstrated any serious intent or interest to be joined.

Based on this Counsel has submitted that the issue for consideration of this application should be thus;

Considering the facts and circumstances of this suit whether the party seeking to be joined has placed and/or demonstrated any credible, reliable and verifiable facts/materials before this Honourable Court to warrant the grant of the reliefs sought on the face of the Motion papers.

His own position is that the Applicant has not put credible facts before the Court to support the application. That the Affidavit in support of the application is hollow and empty and has not demonstrated any credible and verifiable facts to warrant a grant of the reliefs sought.

According to the Senior Counsel all the authorities cited by the Counsel to the Applicant are unhelpful as he has not disclosed the interest of the Applicant in the subject matter of litigation as someone whose absence in the proceedings would make it impossible for the issues raised in the matter to be fairly dealt with.

The Senior Counsel observed that the fact that the Applicant did not depose to the Affidavit himself is a pointer to absence of such interest.

I have read the facts put forward by the parties for and against the grant of this application and it appears to me that the parties are agreed on the purpose and principle upon which the application for joinder of party is considered. What remains in dispute between them is whether or not the facts disclosed by the Applicant are sufficient to grant the application.

Before I embark on this exercise, I need to restate the trite position of the Law that the person to be joined to an action must be



someone whose presence as a party is necessary for the Court to effectively and completely adjudicate upon and settle all questions brought before it. The rationale for the rule is to prevent multiplicity of actions arising from the same transactions.

See ***CHIEF EMMANUEL BELLO Vs INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & 2 ORS. (2010) 2 – 3 SC (PT. 11) 123 & AWONIYI Vs REGISTERED TRUSTEES OF THE ROSICRUCIAN ORDER AMORC NIGERIA (2000) 6 SCNJ 141.***

By reason of the Rule in Audi Alterem Partem a Court of Law is not clothed with power to give judgment against a person who would be directly affected by its decision if not made a party to the action and had no opportunity of defending. See ***MUHAMMED BUHARI Vs CHIEF OLUSEGUN OBASANJO & ORS. (2003) 11 SCM 89 & UGORJI Vs ONWU 1999 3 NWLR (PT. 178)177 at 184.***

In paragraphs 7 – 11 of the Affidavit in support of this application the Applicant has averred as followed:

7. I know that the cause of action in this suit touches on the Wards, Local Government, State Congresses relating to the 1<sup>st</sup> Respondent in Edo State.

8. I know that the Applicant is a necessary party for an effectual determination of this suit, particularly because

he will be affected by the Reliefs sought therein, having emerged victorious as PDP Edo State Chairman, during the Congress of 14<sup>th</sup> March 2020.

9. This suit was filed by the Claimants in bad faith, in order to secure an undue advantage over the Applicant who was not made party to it.

10. I know further, as a fact, that the resolution of the dispute presented in this matter will be defeated by the non-joinder of the person seeking to be joined/Applicant, who will be affected by the judgment of Court.

11. Joinder of the person seeking to be joined/Applicant is necessary, for an effectual and complete adjudication of the issues presented for determination by this Honourable Court.

It is pertinent to observe that the foregoing weighty averments were not denied by the Claimants in the Counter – Affidavit.

I am bound as a matter of Law to believe the deposition contained therein.

In this suit the questions which were set down for determination by the Claimants relate to the legality of the Ward Congress conducted in Edo State on the 07/03/2020 and competency of the 1<sup>st</sup> Defendant to conduct State Congress which was held on the 14<sup>th</sup> of

March, 2020. That being the case it is my respectful view that the Applicant who was elected as State Chairman of the 1<sup>st</sup> Defendant in the State Congress on 14/03/2020 is a necessary and desirable party to this suit. The reason is simply that having acquired interest in the subject matter of this action by virtue of his position as State Chairman is entitled to be heard and be able to defend his interest.

The rationale is that an Order declaring the process which saw his emergence as Chairman irregular and which must be set aside cannot be made to bind him if he is not a party to the action. See ***PANALPINA WORLD TRANSPORT NIG. LTD Vs J.B. OLANDEEN INTERNATIONAL & 4 ORS. (2010) 12 SC (PT. 111) 30; AND DIKKO YUSUF & ANOR. Vs OLUSEGUN OBASANJO & 2 ORS. (2004) 5 SCM 152.***

I have no doubt in my mind that from the facts presented by the Applicant and those he seeks to represent in this case, it has been established that he is a necessary and desirable party to this action in whose absence the questions presented for determination cannot be effectually and completely resolved.

The contention of the learned Senior Counsel to the Claimants that the Applicant has not disclosed his interest in the litigation does not impress me as correct. It is also not true that failure of the Applicant to personally depose to the Affidavit in support has invalidated or

robbed on the credibility of the application. The deponent to the affidavit clearly stated in the Affidavit that the facts to which he deposed were derived from the information given to him by the Applicant.

That being the case, it is my view that the Affidavit in support has complied with the prescription of the Evidence Act 2011.

From all that I have stated, it is my view and I agree with Learned Counsel to the Applicant that this application has disclosed a lot of merit and it is hereby granted. The Applicant is hereby joined as 3<sup>rd</sup> Defendant to this action and I hereby direct the Claimants to amend the Originating Process to reflect the order of joinder just made.

**Signed**  
**Hon. Justice H. B. Yusuf**  
**(Presiding Judge)**  
**19/06/2020.**