

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 23
CASE NUMBER : SUIT NO: CV/855/19
DATE: : FRIDAY 17TH JULY, 2020

BETWEEN:

BARR. IKENNA IHEZUOJUDGMENT CREDITOR/RESPONDENT

AND

- 1. THE NATIONAL CHAIRMAN, JUDGMENT DEBTORS/APPLICANTS**
ALLPROGRESSIVE CONGRESS
2. ALL PROGRESSIVE CONGRESS

AND

- 1. FIDELITY BANK PLC.**
- 2. ACCESS BANK PLC.**
- 3. ECO BANK PLC.**
- 4. HERITAGE BANK PLC.**
- 5. FIRST BANK OF NIGERIA PLC.**
- 6. FIRST CITY MOUNMENT BANK PLC.**
- 7. GUARANTY TRUST BANK PLC.**
- 8. KEYSTONE BANK PLC.**
- 9. POLARIS BANK PLC.**
- 10. STANBIC IBTC BANK LTD.**
- 11. STANDARD CHARTERED BANK NIGERIA LTD**
- 12. STERLING BANK PLC.**
- 13. UNION BANK OF NIGERIA PLC.**
- 14. UNITED BANK FOR AFRICAN PLC.**
- 15. UNITY BANK PLC.**
- 16. ZENITH BANK PLC.**

GARNISHEES

RULING

The Applicant approached this Honourable Court vide a Notice of Preliminary Objection and sought for the following:-

1. An Order setting aside the judgment of this Honourable court given in suit **No. CV/855/19** between Barr. IkennaIhezuo and the National Chairman, All Progressive Congress &Anor. On the 18th of March, 2019 as being a nullity having been given without jurisdiction.
2. An Order setting aside the proceedings of this Honourable court conducted in suit **No. CV/855/19** between Barr. IkennaIhezuo and the National Chairman, All Progressives Congress &Anor. Being a nullity having been conducted without jurisdiction.
3. An Order setting aside the Garnishee Order Nisi granted on the 14th of January, 2020 having been

given pursuant to a judgment of this Honourable court which itself is a nullity.

The grounds upon which the application was brought are;

- i. The Motion Exparte dated May 13th, 2019 which is the originating process herein is incurably defective and renders his garnishee proceeding a nullity in its entirety as the judgment Debtor is a non – juristic person who can neither sue nor be sued.
- ii. This Honourable Court can set aside its own judgment if such judgment is a nullity (***SKEN CONSULT LTD VS UKEY (1981) 1 SC 6***) and the judgment was given in the absence of jurisdiction; ***MADUKOLU VS NKEMDILIM & ORS (1962) 2 SCNLR 341. SKEN CONSULT VS. UKEY (1981) 1 SC. 6.***
- iii. It is trite that when there is dispute between two party members or a party member and the political party,

the said dispute must be resolved internally within the party and in line with the Party's guidelines. In the case of *PAM VS ANPP (2008) 4 NWLR (Pt. 1077) 219 at page 242, paras. C – H*, where his Lordship, per Peter – Odili JCA (as he then was) explained the trite legal position, thus;

Intra-party governance is entirely within the province of the relevant party. In other words, the internal affairs of political parties are exclusive to the parties and therefore not within the competence of the Court. Consequently, the Court does not have jurisdiction to make appointments of persons to hold party offices, represent a party in elections or to determine a dispute arising from the internal affairs of a political party. In the instant case the subject of the complaints and claims of the 1st to 3rd Respondents were related to the internal affairs of a political party viz the party officers in issue. In the

circumstances the trial court had no jurisdiction to determine same and ought to have struck out the suit.”

iv. Article 21 (A) (x) and 21 (B) of the All Progressive Congress Constitution expressly provides for conditions precedent before approaching a court of law and filing an action which is to exhaust all the avenues for redress provided for by the Party Constitution, none of which the Plaintiff has followed.

In support of the application is a 5 paragraph affidavit duly deposed to by one Iyoha Christopher a Legal Assistant in the Legal Department of the 2nd Judgment Debtor/Applicant

It is the deposition of the Applicant that the judgment against the 1st Judgment Debtor is neither a natural nor Juristic person. And that the motion ex parte and originating processes are incurably contaminated.

That the judgment arose out of a subject matter which constitutes the internal affairs of a political parties.

Applicant avers that the 2nd Judgment Debtor/Applicant is a registered Political Party in Nigeria with a valid constitution that guides the conducts of the party and its members. The said constitution is hereby attached as APC 1.

Applicant avers that the Plaintiff is yet to exhaust the party's internal mechanism for Dispute Resolution and the 2nd Judgment Debtor/Applicant has received no petition by Plaintiff expressing his grievances for the 1st Defendant to resolve internally.

A written address was filed wherein learned counsel argued on the grounds formulated in the preceeding part of this Ruling.

On ground one, counsel submit that joinder of a person unknown to law renders the originating process incurably

defective and any proceedings granted upon same a nullity. ***SKEN CONSULT LTD VS UKEY (1981) 1 SC 6.***

Counsel submit that if the elementary point of law is taken, it goes without saying that the 1st Judgment Debtor cannot be sued or Garnishee proceeding maintained against him. ***ABUBAKAR VS YRADUA (1986) 4 NWLR (Pt. 37) 621.***

On grounds two, counsel submit that, issue of jurisdiction can be raised at any time ***ARJAY LTD &ORS VS A.M.S LTD (2003) 7 NWLR (Pt. 820) page 577.***

Counsel maintained that where an objection is taken that a court has no jurisdiction to hear or to continue the hearing of a suit, only the averments in the statement of claim of the Plaintiff are relevant for the determination of the question. ***ADEYEMI VS OPEYORI (1976) 9 – 10 SC 31.***

On grounds three, counsel submit that the court lacked jurisdiction to give the judgment as same is a nullity

because the Plaintiff in the suit is yet to exhaust the party internal mechanism for dispute Resolution.

Counsel submit that, where a person subscribes to a membership of an association to which he has agreed that its code of conduct should regulate his behaviour both in public and private, he will be held bound by the agreement so long as the membership and activities of the association are not contrary to public policy, or an existing law.

AFFODILE VS ONEJEME (2012) ALL FWLR (Pt. 608) 946 at 974.

Upon service, the Judgment Creditor/Respondent filed a counter affidavit in opposition, duly deposed to by Queendaline Ezinne Nuankwo a Legal Secretary in the Law Firm of the Respondent.

It is the deposition of the Respondent that what gave rise to this suit was the refusal of the 2nd Judgment Debtor to

conduct party's primary election for Orlu, Orsu and Oru East Federal Constituency for which the Judgment Creditor/Respondent purchased a nomination and expression of interest form.

That the Judgment Debtor/Applicant handpicked a candidate of their choice instead of conducting the said primary election.

That the Respondent approached this Honourable Court vide a writ and judgment was duly entered in his favour and that the Judgment Debtor is a Juristic person who can sue and be sued, and is a necessary party who was joined as a party in this suit.

Respondent further avers that he is now a card carrying member of Action Alliance (A.A) vide Exhibit "A" and "B" which were annexed.

It is also the averment of Respondent that while he was still a member of the 2nd Judgment Debtor, he wrote a

petition to them but it was ignored vide Exhibit “C1” and “27” and that it will be in the interest of justice to dismiss this application.

In line with law and procedure, written address was filed wherein 3 issues were formulated for determination to wit;

- a. Whether the mis – joinder or non – joinder of a party can defeat or render an entire process a nullity.
- b. Whether a court can interfere in the internal affairs of a political party.
- c. Whether this Honourable Court has jurisdiction to entertain this suit.

On issue one, whether the mis – joinder or non – joinder of a party can defeat or render an entire process a nullity.

Learned counsel submit that the non – joinder or mis – joinder of a party does not defeat or render the proceedings of a court a nullity. See Order 13 Rules 18 of

the Rules of this court. ***BELLO VS INEC & ORS (2010) LPELR, Page 35 paragraph D-F.***

Learned counsel submit further that, the fact that a necessary party to the action has not been joined will not render the action a nullity. The proceedings of a court of law will not be a nullity on the ground of lack of competence of the court or jurisdiction merely because a Plaintiff fails to join a party who ought to have been joined ***OSUN STATE GOVT. VS DALAMI NIG. LTD (2003) 7 NWLR (Pt. 818) 72.***

On issue two, whether a court can interfere in the internal affairs of a political party.

Learned counsel contended that he is no longer a member of the 2nd Judgment Debtor and that upon failure to conduct primaries for which he purchased his form, he went to Action Alliance (A.A) through which he pursued his ambition of becoming an honourable member of the House of Representatives.

Learned counsel argued further that any party primaries which runs contrary to section 87(9) of the Electoral Act (2010) the High Court has jurisdiction to interfere in the internal affairs of the party. *EMENIKE VS PDP (2012) 12 NWLR (Pt. 1315) 556.*

On issue three, whether this Honourable Court has jurisdiction to entertain this suit.

Learned counsel submit that, the law is well settled that it is the claim that determines whether a court has jurisdiction or not. *TUKUR VS GOVT. OF GONGOLA (1987) 4 NWLR (Pt. 117) 5175 SC at 549.*

Court:-I have gone through the arguments for and against the preliminary objection filed by the Defendants/Applicants to set aside the judgment of this Honourable Court.

I shall be brief but succinct in addressing the issues raised in the Notice of Preliminary Objection.

In the normal course of events this court is functus officio and has no jurisdiction to sit on a matter disposed of.

There are however exceptions to the general rule that a court of law has no jurisdiction to set aside its own judgment. Such cases where a court can set aside its judgment include;

- i. When the judgment is a nullity such as when the court itself was not competent, or
- ii. When the judgment is obtained by fraud or deceit.
- iii. When the court was misled into giving judgment under a mistaken belief that the parties consented to it or
- iv. Where judgment was given in absence of jurisdiction.
- v. Where the procedure adopted was such as to deprive the decision of judgment of the character of a

legitimate adjudication. ***WENDE VS LONGE & ORS (2011) LPELR 8899 (CA).***

Indeed an objection to the jurisdiction of court can be raised at any time, even when there are no pleadings filed and even on an appeal.

And when an objection is taken that a court has no competence to hear a suit, the averment in the statement of claim of the Plaintiff are relevant for the determination of the question. ***ADEYEMI VS OPEYORI (1976) 9 – 10 (SC. 3).***

It is instructive to state from the onset that the right to be a member of a political party is enshrined in the Constitution of the Federal Republic of Nigeria. This right is provided for in section 40 of the Constitution which provides:

“Every person shall be entitled to assemble freely and associate with other persons, and in particular,

he may form or belong to any political party, trade union or any other association for the protection of his interest.”

The right referred to above is one of the constitutionally guaranteed rights under Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria. Members of a voluntary organization who have freely opted to join a party or association are under an obligation to abide and obey the rules and code of conduct of any party they freely opted to belong to.

In other words, people who come together as members of an association or a political party usually have their conduct regulated by a code of conduct or constitution and once they have freely opted to belong to the same group or association, they cannot choose or pick the portions of the rules or code of conduct that binds them, particularly the dispute resolution mechanism set up by parties. This point was succinctly made in the

OFFODILE VS ONEJEME (2012) ALL FWLR (Pt. 608, 946 at 974 – 975) Paragraphs H – B where the court held:

“Where a person subscribes to a membership of an association to which he has agreed that its code of conduct should regulate his behaviour both in public and private, he will be held bound by the agreement so long as the membership and activities of the association are not contrary to public policy, or an existing law. As a member he is not only entitled to right and privileges conferred or acquired by the membership of the association but also to the consequences of mismanagement on the code of conduct of such society.”

Plaintiff is a member of the 1st Defendant and swore and agreed to uphold the constitution of the party. This can be seen in Article 2 of the Constitution of the Applicant which provides:-

“Subject to the provisions of the constitution of the Federal Republic of Nigeria 1999 (As Amended) and any other laws for the time being in force in the Federal Republic of Nigeria, the provisions of this Constitution shall be Supreme”

Plaintiff stated in his affidavit in support of his Writ of Summons that he is a member of the Applicant.

I must state here that Article 21 (A) (x) and 21 (B) of the All Progressives Congress Constitution expressly provides for conditions precedent before approaching a court of law and filing an action which is to exhaust the all avenues for redress provided for by the party Constitution.

For ease of reference, Article 21 (A) (x) provides thus:-

“Offences against the party shall include the following:

x. Filing an action in a court of law against the party or any of its Officers on any matters relating

to the discharge of the duties of the Party without first exhausting all avenues for redress provided for in this Constitution.”

Article 21 (B) further provides for the procedure for the hearing and determination of complaints or allegations thus:

- a. A complaint by any member of the party against a Public Officer holder, elected or appointed, or another member or against a Party organ or Officer of the Party shall be submitted to the Executive Committee of that Party at all levels concerned which shall NOT LATER THAN 7 days of the receipt of the complaint, appoint a fact – finding or Disciplinary Committee to examine the matter.

Plaintiff has stated in paragraph V of the counter affidavit to his motion that he complied with above section of the Defendants/Judgment Debtors/Applicants’ constitution.

For avoidance of doubt, the said paragraph is hereby reproduced;

“That while he was still a member of the 2nd Judgment Debtor, he wrote a petition to them complaining of none conduct of primary election and selection of candidate but they chose to ignore his complaint till date. The said petition dated 10th October, 2019 and letter of demand are hereby attached and marked as Exhibit “C1” and “C2”.”

Plaintiff/JudgmentCreditor/Respondent also stated as follows in the following paragraphs;

Paragraph K(i)

“That the Judgment creditor/Respondent is no longer a member of the 2nd Judgment Debtor. Therefore, he is not bound by their constitution and any intra – party mechanisms (s).”

- ii. *“That immediately they failed and refused to conduct the party primary election for which he purchased the party’s form, he left the party and joined another political party.”*
- iii. *“That he is now a card carrying member of Action Alliance (A.A) his membership card of the said party is hereby attached and marked as Exhibit “A”.*
- iv. *“That he pursued his ambition of becoming an honourable member of the house of representative in 2019 general election under the platform of Action Alliance (A.A) as his political party, his campaign flier/poster under the said party (A.A) is hereby attached and marked as Exhibit “B”.”*

These are fact that are fresh and not a part of what Plaintiff filed and or claimed which brought about the judgment in contention.

From above, could it be said that Plaintiff placed all facts before this Honourable Court in its statement of claim and evidence which was the bedrock for the judgment and the subsequent Order Nisi?

Plaintiff/Judgment Creditor/Respondent clearly concealed the fact that he left the party immediately to join another political party when the alleged primary election was not conducted.

It is the law that a court can set aside the decision reached in the judgment or order under its inherent jurisdiction where it is shown that it was made without jurisdiction or is a nullity due to absence of fact i.e hearing or was reached as a result of concealment of facts. ***KHALID VS AL-NASIM TRAVELS AND TOURS LTD& ANOR (2014) LPELR 22331.***

This is clearly a case of concealment of material facts which clearly would have changed the mind of the court had the facts been placed before the court. Having not

placed the said fact, the court is empowered to so reverse itself..

Misrepresentation,deceit and or concealment of facts are good grounds for a court of law to set aside its judgment or ruling.

Judgment Creditor/Respondent was most economical with the truth when he approached the court and had judgment entered in his favour.

Preliminary objection succeeds.

The following Orders are hereby made:-

- a. The Judgment of this Honourable Court delivered on the 18th March, 2019 in suit No. CV/855/19 between Barr. IkennaIhezuo is hereby set aside.

- b. Garnishee Order Nisi granted on the 14th of January, 2020 having been given pursuant to the above judgment is equally set aside.

Justice Y. Halilu
Hon. Judge
17th July, 2020

APPEARANCE

W.C OKWARA – for Judgment Creditor/Respondent.

S.T AYODELE –for the Judgment Debtor/Applicant.