

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/2079/2019

BETWEEN:

- 1. LADY ANGELA JOHNSON**
- 2. ALLIANCE FOR UNITED NIGERIA (AUN).....CLAIMANTS/APPLICANTS**

VS

- 1. BARRISTER MICHAEL NDU**
- 2. INDEPENDENT NATIONAL ELECTORAL COMMISSION
(INEC)..... DEFENDANTS/RESPONDENTS**

RULING

By a Motion on Notice dated 15/1/2020 with No. M/4297/2020 and filed on 10/1/2020, brought pursuant to Order 43 of FCT High Court (Civil Procedure) Rules (hereinafter called the Rules) and under the inherent jurisdiction of this Hon. Court, the Claimants/Applicants prays for the following reliefs:-

- (1) **AN ORDER** of Interlocutory Injunction, restraining the 1st Defendant/Respondent, whether by himself, agents, privies or howsoever described, from parading himself as the National Chairman (Headquarters) of the AUN or exercising any power

and /or function relating to such office pending the hearing and determination of the Suit.

- (2) **AN ORDER** of Interlocutory Injunction, restraining the 2nd Defendant/Respondent (INEC) whether by itself, Staff, agents, Privies or howsoever described, from further recognizing the 1st Defendant as National Chairman (Headquarters) of the Alliance for a United Nigeria (AUN) pending the hearing determination of the Suit.
- (3) **AN ORDER** directing the 1st Defendant/Respondent to deliver up every document belonging to AUN including the certificate to the newly appointed acting National Chairman of the party pending the hearing and determination of the Suit of the Applicant.
- (4) **AN ORDER** directing the 2nd Defendant/Respondent (INEC) whether by itself, Staff, Agents, Privies or howsoever described in recognizing the newly appointed acting Chairman of AUN pending the hearing determination of the Suit.
- (5) AN FOR SUCH FURTHER or other Orders as this Honourable Court may deem necessary to make in the circumstances.

In support of the application is an affidavit of 26 Paragraphs deposed to by the 1st Claimant/Applicant. Also filed is a Written Address. Upon receipt of the 1st Defendant counter-affidavit, filed a Reply on points of law, along with a Reply affidavit dated 3/2/2020 with 5 (Five) Exhibits attached.

Adopts the Written Addresses in urging the court to grant all the reliefs sought.

Responding, the Respondent Counsel submits that the 1st Defendant filed a 22 Paragraphs counter-affidavit in opposition sworn to by the 1st Defendant, attached is one (1) Exhibit and a Written Address, adopts same in urging the court to refuse the application. Also filed a further affidavit dated 6/3/2020 of 11 Paragraphs deposed to by the 1st Defendant Counsel; attached with three (3) Exhibits, and in compliance with Section 84 of Evidence Act, 2011, filed a Certificate of Compliance and urged the court to note that the Claimant has by Para 5 of their reply to their counter-affidavit attested to the fact that the documents of 1st Defendant as filed is proper. Further submits by way of adumbration, that the 2nd Claimant has been de-registered, though matter is in court, that there is no urgency in this instance Motion, rather at best for the Originating Summons. In all urged the court to dismiss this application.

The processes, including Hearing Notice was served on the 2nd Defendant, who put up appearance, but did not file any process. The implication of this is that, the application as against the 2nd Defendant is unchallenged and uncontroverted and court can act on it against the 2nd Defendant. See Gana Vs FRN (2012) ALL FWLR (PT.617) 793 @ 800 Para D – E. Court held;

“Where an affidavit does not attract a counter-affidavit, the facts deposed to therein have been admitted and must be taken as true”.

In the Written Address of the Applicant, settled by Bofede Okporu Esq, only one issue was formulated by determination, that is;

“Whether this Honourable Court can exercise its unfettered discretion in favour of the Applicants by granting same as prayed”.

And relying on Order 43 of the Rules of Court, and several judicial authorities cited, submits that the Claimants has satisfied the conditions set out in consideration of an application of this nature, in urging the court to grant the reliefs sought. Commended the court to the following judicial authorities, Ideozu Vs Ochima (2006) 4 NWLR (PT.970) SC 364; Kotoye Vs CBN (1989) 1 NWLR PT 98; SC 419; UTB Ltd Vs Dolmetsch Pharm Nig Ltd (2007) 16 NWLR (PT. 1061) SC 520; Akinpelu Vs Adegboire & Ors (2008) LPELR – 354 (SC).

In the Written Address of the 1st Respondent, settled by Chioma Onyenucheya-Uko; only one (1) issue was formulated for determination;

“Whether in view of the evidence adduced by the parties, this application is competent and meritorious”.

And submits that on a close perusal of the facts contained in their counter-affidavit in particular Paras 6 – 13 and Exhibit 1st Defendant/Respondent “A”, clearly shown that the 1st Claimant is not a member of the 2nd Claimant and in line with Section 62 (1) of the 2nd Claimant’s constitution, provides that the party’s power can only be exercise through its National Officers; that consequent upon this, the 1st Claimant not being one, failed

to show her legal right to this action. Therefore, urge the court to refuse the application.

In response to the 1st Defendant/Respondent counter-affidavit, the Claimant filed a Reply affidavit and Written Address; in the said address, counsel formulated two (2) issues for determination;

- (1) Whether or not on the face of the 1st Defendant/Respondent process the document is properly signed or filed as the seal is bearing Udochi C. Onyenucheya – Uko different from the person that signed it.
- (2) Whether this Honourable Court can grant the Interlocutory Injunction application of the Applicants.

In response, the 1st Respondent filed a further affidavit of 11 Paragraph with Exhibit “RFA1” – “RFA3” in rebuttal of the submission of Claimant against the proprietary or otherwise of the seal of the 1st Respondent Counsel.

Having carefully considered the affidavit evidence of both parties, the attached Exhibits, the submission of both counsel and the judicial authorities cited, I find that only one (1) issue calls for determination; which is;

“Whether or not the Claimants/Applicants have placed before this court sufficient facts to warrant the grant of the reliefs sought”.

The grant of an Order of Interlocutory Injunction is an equitable remedy granted by court before the substantive issue in the case is finally

determined. Its object is to preserve or keep the matter in status quo where the case is pending for the purpose of preventing injury to the Applicant prior to the time the court will be in position to either grant or refuse the application. In doing so, the court is invited to exercise its discretion which must be done judicially and judiciously. See *Anachebe Vs Ijeoma* (2014) 14 NWLR PT. 1426 168 at 184 Para D – F. This discretion is exercised in relation to the facts and circumstances of the case before the court, hence to be entitled to the reliefs; Applicant must disclose all the material facts.

On the nature of the grant of an injunctive, the court in the case of *Mohammed Vs Umar* (2009) All FWLR (PT 267) 1510 at 1523 – 1524 Para H – D stated:

“Interlocutory Injunction is not granted as a matter of grace, routine or course, on the contrary, the Order of Injunction is granted only in deserving cases based on hard law and facts”.

In the exercise of that discretion, the courts are guided by principles stated in a Plethora of judicial authorities. See *Akinpelu Vs Adegboro* (2008) ALL FWLR (PT 429) 413 at 420, *Kotoye Vs CBN* (Supra) @149.

In this instant application, and from the affidavit evidence, it is the contention of the one part by the Applicant that is bonafide member of the 2nd Defendant, therefore having legal right to this suit, this fact was supported by Exhibit “B”, “A1-A2”, and “C” of the Reply affidavit of the Applicant in opposition to counter-affidavit of the 1st Defendant/Respondent.

The 1st Defendant/Respondent on the other hand, contends that the 1st Claimant is not a member of the party therefore, does not possess the legal right to bring the application. In support of this assertion, relies on Exhibit "A" attached to their Para 11 of the counter-affidavit. Having carefully perused the affidavit in contention, this court finds that the Applicant has by the said averment satisfied this court that they have indeed legal right worthy of protection.

However, on a careful perusal of the affidavit evidence of both parties in this instant application, this court having considered it in line with the stated guidelines for considerations of an application of this nature, the court finds that rather than grant this application, should hear the matter vide an accelerated hearing. In the circumstance, this application is hereby refused. Case is hereby adjourned for hearing and determination of the substantive suit.

HON. JUSTICE O.C. AGBAZA

Judge

17/7/2020

APPEARANCE

BOFEDE OKPORU ESQ FOR THE CLAIMANTS/APPLICANTS

CHIOMA ONYENUCHEYA-UKO FOR THE 1ST RESPONDENT

NO APPEARANCE FOR THE 2ND RESPONDENT