IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA-ABUJA
ON THE 14TH DAY OF OCTOBER 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE
SUIT NO: FCT/HC/CV/1169/2021

BETWEEN:
RABIU ADAMU SABA ..... CLAIMANT/APPLICANT

AND

1. **PEOPLES DEMOCRATIC PARTY**
2. **KASIM MOHAMMED**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

DEFENDANTS/ RESPONDENTS

APPEARANCES:
SARAFA YUSUF ESQ WITH MONSURU LAWAL ESQ AND MUKA'ILA YAHAYA ESQ FOR THE CLAIMANT
OCHAI J. OTOKPA ESQ WITH G.I. OKOYE ESQ AND W.H. BAKO ESQ FOR THE 1ST DEFENDANT
UMARU YUNUSA ESQ WITH RABIU SAIDU ESQ FOR THE 2ND DEFENDANT
WENDY KUKU (MRS) WITH E.M. AKAFA ESQ FOR THE 3RD DEFENDANT

RULING

By a motion on notice no. M/5232/21 filed on 16th August 2021 the Claimant/Applicant seeks:-

> **Ordersof this Honourable Court granting leave to the Claimant/Applicant to amend questions 1 and 2 and the reliefs of his Originating Summons filed on the 18th June 2021, by amending the year of Gwagwalada Area Council Election to 2022 instead of 2021.**

The ground for the application is that the originating summons filed by the Claimant/Applicant on the 18th June 2021 inadvertently reads

2021 as the date slated for the Gwagwalada Area Council Election, instead of 2022.

The application is supported by a 12 paragraph affidavit deposed to by Muka'ilaYahayaMavo, a legal practitioner in the law firm of Ibrahim K. Bawa, SAN& Co, council to the Claimant, to which the proposed amended originating summons marked Exhibit A is attached.

Also filed was counsel's written address.

In response to the application, the 1st Defendant/Respondent on 23rd August 2021 filed a 14 paragraph counter affidavit deposed to by EmenikeEjikeAgbo, a Senior Staff of the 1st Defendant at its National Headquarters in Abuja, with counsel's written address.

The 2nd Defendant/Respondent on his part, on 24th August 2021 filed a 14 paragraph counter affidavit deposed to by A.R. Ajibade,a legal practitioner in YunusaUmaru& Co, counsel to the 2nd Defendant, accompanied by a counsel's written address.

The 3rd Defendant did not oppose the application but left it to the discretion of the court.

The Claimant/Applicant filed a reply on point of law to the 1st Defendant/Respondent's counter affidavit opposing the motion for amendment on 31st August 2021, and a reply on points of law to the 2nd Defendant/Respondent on 10th September 2021.

At the hearing of the application, the respective counsel adopted their written addresses.
The Claimant/Applicant formulated the following issue for the court's determination:-

> **"Whether the Claimant/Applicant is entitled to an order of this court amending the originating summons."**

For the 1st Defendant/Respondent the issue formulated was:-

> **"Whether having regard to the nature of this case which is a pre-election matter, the Claimant is entitled to amend the originating summons outside the time allowed by law."**

And for the 2nd Defendant/Respondent the issue submitted was:-

> **"Whether in the circumstance of this case, the Claimant's application seeking to amend all the reliefs and some questions contained in the originating summons, is not overreaching and prejudicial and should be dismissed by this Honourable Court."**

I shall adopt the issues raised by the Claimant.

For the Claimant/Applicant, it was submitted that the weight of judicial authorities is in favour of allowing a party to amend his pleadings whenever the need arises so as to ensure that the real matter in controversy between the parties is adequately brought to focus and determined, provided such will not entail injustice.

It was submitted that the court will not punish a party for his mistake but will see how the correction of the mistake can lead to a just determination of the issue in controversy.

The court was thus urged, in the interest of justice to grant the application. Reliance was placed inter alia on **LONG-JOHN V BLACK (1998) 6 NWLR (PT. 555) AT 524; ALSTHOM S.A. & ANOR V SARAKI (2000) LPELR-436 SC; N.D.D.C V PRECISION ASSOCIATES LTD (2006) 16 NWLR (PT. 1006) AT 527.**

For the 1st Defendant/Respondent it was argued that having regards to the sui generis nature of election petition cases and pre-election matters, particularly the provisions of the 1999 Constitution (as amended) the amendment sought cannot be granted.

It was submitted that the Claimant has no right to file a motion to amend his originating summons in a pre-election matter outside the 14 days permitted by the Section 285(9) of the 1999 Constitution (as amended) to introduce new reliefs in place of incompetent reliefs.

See Section 285(9) ofthe Constitution read in conjunction with Paragraph 4(1) and (5) and 14(2)(a) of the 1st Schedule to the Electoral Act 2010 (as amended).

That the Claimant cannot hide under any guise to amend his originating summons which was filed on 18th June 2021, outside the 14 days period allowed by the Constitution to present a petition as time cannot be extended. It was submitted that the only process the Claimant can file is a reply on point of law by virtue of Order 18 Rule 1.

It was argued that the reason of inadvertence given for seeking the amendment has no place in the 1999 Constitution and to allow the amendment will be overreaching and prejudicial to the 1st Defendant who would have no opportunity to reply since the time for filing pleadings have closed.

It was contended that the authorities on election petition that prohibit amendment of originating processes outside the time allowed to file and amend an election petition apply with full force to filing and amendment of pre-election matters outside the 14 days allowed by Section 285(9) of the 1999 Constitution (as amended).

Finally, it was argued that the originating summons and reliefs filed are incompetent and cannot be cured by an amendment.
Reliance was placed, inter alia on **OKECHUKWU V INEC (2014) 17 NWLR (PT. 1436); PDP V INEC (2014) 17 NWLR (PT. 1437) 525**. Thus the court was urged to resolve the sole issue in favour of the 1st Defendant and dismiss the motion for amendment.

Learned counsel to the 2nd Defendant/Respondent aligned himself with the submissions of the 1st Defendant/Respondent. He argued strenuously that the application of the Claimant will overreach the 2nd Defendant/Respondent as it seeks to rubbish the platform upon which the Respondent's defence is anchored, the 1st Respondent having filed a notice of preliminary objection challenging the competence of the Claimant's reliefs.

It was contended that a change in the year in the reliefs sought changes the character of the case completely and is tantamount to filing a fresh case which cannot be sustained as the time within which to file the matter has expired.
That the reliefs sought for on a purported Gwagwalada Area Council Chairmanship Election 2021 is academic and incompetent and cannot be resuscitated by an amendment.
The court was urged to dismiss the application.

In his reply on point of law to the 1stDefendant/Respondent, learned counsel to the Claimant/Applicant urged that paragraphs 7,8,9,10,11 and 12 of the 1st Defendant/Respondent's counter affidavit be expunged as they offend Section 87? (sic), 115(2) of the Evidence Act 2011.

He submitted that the amendment sought does not seek to introduce new reliefs so cannot overreach the Respondents. Further that there is no legal requirement that same must be effected within 14 days prescribed in the Constitution. Thus the authorities cited by the 1st Respondent are not apposite as they only relate to election petitions.
See Order 25 Rule 1.

In reply to the 2ndDefendant/Respondent, it was submitted that the reliefs sought are grantable as it was not in dispute that the only Gwagwalada Area Council Election in respect of which the 1st Defendant/Respondent conducted primary elections to select its candidate on 22nd April 2021 is that to be conducted in 2022.

The court was urged to grant the application.

I have considered the application, the affidavits, the written and oral submissions of learned counsel on all sides.
Let me begin by agreeing with the Claimant/Applicant that paragraphs 7, 8, 9, 10, 12 (ii),(iv),(v) of the 1st Defendant's counter affidavit offend Section 115(2) of the Evidence Act as they are conclusions and legal arguments. They are hereby struck out.

The suit of the Claimant/Applicant is a pre-election matter. There is no doubt that time is of the essence in doing any act in a pre-election matter. Section 285(9) of the 1999 Constitution (as amended) provides:-

> **"Notwithstanding anything to the contrary in this Constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit."**

From the originating summons of the Claimant/Applicant, the complaint of the Claimant as contained in paragraph 14 and 18 of the originating summons is:**-**

> **"14. I was surprised when on the 6th day of June 2021 the 3rd Defendant displayed the name of the 2nd Defendant as candidate of the 1st Defendant for Gwagwalada Area Council Chairmanship Election 2021"**
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> **"18. I state that having won the primary election of the 1st Defendant, my name ought to be sent to the 1st Defendant as its candidate Gwagwalada Area Council Chairmanship Election, 2021."**

In other words, his complaint is that on the 6th June 2021, the 3rd Defendant displayed the name of the 2nd Defendant as the candidate of the 1st Defendant for the said election, rather than his own name as winner of the primary election.

The event, decision or action the Claimant/Applicant complains of occurred on the 6th June 2021.

The Claimant/Applicant filed his originating summons on 18th June 2021, well within the 14 days of the event, decision or action complained of in accordance with Section 285(9) of the Constitution.
The question is, can he seek to amend the originating summons and if so, is there a time limit for him to do so?

The Rules of court permit the amendment of originating processes and pleadings at any time before pre-trial conference and not more than twice during trial but before the close of the case. See Order 25 Rule 1.

Now, I have read the provisions of the 1999 Constitution (as amended) and the Electoral Act 2010 (as amended) and I do not find any provision therein that provides for a time limit within which an application to amend an originating summons in a pre-election matter may be brought.

It is trite law that where the words of a statute are clear and unambiguous, they should be given their plain and ordinary meaning. Extraneous words should not be imported into it. See **UWAOKOP V UBA PLC (2013) LPELR -22622 CA PAGE 31 PARA G per Abiru JCA; BUHARI V YUSUF (2003) 14 NWLR (PT. 841) 446; N.P.A PLC V LOTUS PLASTICS LTD (2005) LPELR-2028 (SC) PG 19 PARA B.**

As Section 285(9) of the 1999 Constitution did not impose any restriction on when an application for amendment of an originating summons in a pre-election matter may be brought, it will be wrong for the learned counsel to the Defedants/Respondents to import into the said Section that which cannot be found therein.
It will equally be improper to apply rules applicable to election petitions to pre-election matters where they clearly do not apply.

In **APC V PDP & ORS (2021) LPELR-53052 (CA)** the Court of Appeal per AyobodeOlujimiLukolu-Sodipe JCA at page 22-27 paragraphs F-C held that:-

> **"Indeed, I read many more regarding the proper disposition a Court should have in respect of an application for indulgence or indulgences in a pre-election matter as well as in an election petition. One out of the many more cases, I read and which I consider to be very germane to the issue at hand, is the case of PDP V. INEC (2014) LPELR - 23808 (SC) wherein the Supreme Court stated thus: -**
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> > **"It has been stated in quite a number of decisions in this Court that election matters are sui generis and as such must be conducted strictly in compliance with the rules guiding them. Thus by Section 285(7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), this Court shall hear appeals from the Court of Appeal arising from election matters within sixty (60) days from the date of the delivery of the judgment appealed against. In order to regulate and manage the 60 days allotted by the Constitution, the Practice Directions has prescribed time within which each party is to comply with the processes leading to the hearing of the appeal. It is thus my view that in circumstances such as this, no party is allowed to default and then turn around to plead the Interpretation Act. The combined effect of Section 285(7) of the 1999 Constitution (as amended) and Paragraph 6 of the Practice Directions is that they limit the doing of any act to the period prescribed therein. Any action done outside the period prescribed is, to say the least, a nullity. The use of the word "shall' in Paragraph 6 of the Practice Directions, makes it mandatory. No party or this Court has any discretion in the matter. The 26th respondent was served on 22nd August, 2014. Its time started to run from that same date irrespective of the fact that it was served at 4.00**

pm or thereabout. Accordingly it's (sic) time for filing its brief expired on 26th August, 2014. The subsequent filing of the brief on 27th August, 2014 was done outside the time allowed by the Practice Directions. ... On the whole, I hold that the brief of the 26th respondent filed on 27th August, 2014, having been filed in flagrant disobedience to Paragraph 6 of the Practice Directions is incompetent and is hereby struck out ..."

I am of the considered view that the above decision though laying down the principle to the effect that time within which a step is to be taken in an election petition or election related matter (such as a pre-election matter is pursuant to Section 258 (sic)(9) and (10) of the 1999 Constitution), the said decision still makes it clear that there must be specific provisions in the applicable rules denying parties the granting of the indulgence that they seek. The decision of the Supreme Court in the case of KUSAMOTU V. APC (2019) LPELR-46802(SC) which dwelled principally on time limit within which a Court should hear and dispose of an appeal in a pre-election matter and effect of failure thereof, never overruled the case of PDP V. INEC (supra); neither did it decide anything to the effect that no indulgence should be granted in a pre-election matter.

The instant pre-election case in which the Appellant brought its application for enlargement of time within which it was to regularise the positions as it were, of its processes already before the lower Court and which it wants to rely on in the defence of the action, is governed by the rules of practice or procedure of the lower Court. I must again state that I read the briefs of argument of the Appellant and the 1st Respondent diligently, and I did not see therein where it was stated expressly or remotely suggested that the said rules do not provide for parties to seek for extension of time to regularise the filing out of time process or processes filed in any matter before the lower Court. Indeed, the position of the lower Court in its ruling appealed against eloquently

admits that parties can under its rules of practice and or procedure, seek for an indulgence to regularise their processes filed out of time in a competent action. The lower Court only felt constrained because the instant action is a pre-election matter and that the Appellant's motion was brought about 80 days after the Appellant was served with the originating processes in the case and that this cannot be accommodated in the instant per-election matter which has only 180 days to commence and conclude. It is obvious that the lower Court in its reasoning did not appreciate the position that its rules of practice and procedure are not on the same pedestal with the First Schedule to the Electoral Act, 2010 (as amended) and or the Election Tribunal and Court Practice Directions, 2011. The lower Court by its reasoning applied relevant principles of law enunciated in respect of election petitions, without averting its mind to the fact that it was not handling an application brought in an election petition and or a proceeding brought under the Election Tribunal and Court Practice Directions, 2011, which are the only set of rules that have specifically provided for timelines in respect of election matters and or election related matters. I hold that the lower Court was very wrong in relying on the principle that applications such as the one it entertained, cannot be granted because the matter before it is a pre-election matter."(Emphasis mine)

In other words the Court of Appealheld that the lower court cannot import the rules that apply to election petitionsto pre-election matters.

Applying the same principle here, going by the rules of this court the Claimant/Applicant's motion for amendment filed on 16th August 2021 before the close of the case is competent.

The amendment sought by the motion therein is to amend the year '2021' in questions 1 and 2 and the reliefs to '2022'.

The Defendants/Respondents have argued that the amendment cannot be granted because the reliefs themselves are incompetent.

I cannot agree with them. The essence of an amendment is to bring to the fore the real issues in controversy between the parties. The primaryelection in contention here is for the Gwagwalada Area Council Chairmanship Election 2022 not 2021.

The amendment sought is due to the inadvertence of the counsel. There is nothing before the court to suggest the mistake is not that of the counsel who deposed to the Claimant/Applicant's affidavit. The mistake of counsel should not be visited on the litigant.

Since the originating summons has not been argued, I do not see how granting the amendment will be prejudicial or overreaching the Defendants/Respondents who still have the opportunity to file their counter affidavits in response to the amended originating summons.

Having stated the above, I find merit in the application. I answer the issue raised by the Claimant/Applicant in the affirmative in his favour.

I hereby grant leave to the Claimant/Applicant to amend questions 1 and 2 and the reliefs 1 to 7 of his originating summons filed on 18th June 2021 by amending the year of Gwagwalada Area Council Chairmanship Election to 2022 instead of 2021.

I further order that the same amendment be effected in the affidavit to be filed with the amended originating summons.

The Claimant/Applicant has 3 working days to file and serve his amended originating summons with accompanying processes on the Defendants/Respondents.

Defendants/Respondents have 3 working days to file and serve their processes in response thereof.

Hon. Judge