

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.**

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.

SUIT NO: CV/3265/2021

BETWEEN:

1. SIRAJO ABUBAKAR
2. USMAN ABDULLAHI AHMED
3. ZAYYANU SHEHU ----- CLAIMANTS
4. AUWAL ABUBAKAR
5. ABDULLAHI MUHAMMAD
6. ABDULKADIR MUHAMMAD

AND

1. HON. MAINASARA ABUBAKAR SANI

(ON BEHALF OF HIMSELF & MEMBERS OF THE STATE,
LOCAL GOVERNMENT & WARD EXECUTIVES APC,
SOKOTO STATE CHAPTER)

2. ALL PROGRESSIVE CONGRESS ----- DEFENDANTS

AND

1. SIRAJO ABUBAKAR
2. USMAN ABDULLAHI AHMED
3. ZAYYANU SHEHU
4. AUWAL ABUBAKAR
5. ABDULLAHI MUHAMMAD
6. ABDULKADIR MUHAMMAD
7. HON. MAINASARA ABUBAKAR SANI
(ON BEHALF OF HIMSELF & MEMBERS OF THE STATE,
LOCAL GOVERNMENT & WARD EXECUTIVES APC, SOKOTO STATE CHAPTER)
8. ALL PROGRESSIVE CONGRESS

RULING

DELIVERED ON THE 17TH FEBRUARY, 2022

The narrow point that calls for my determination today is; whether I can proceed to listen and determine the motion filed by some persons who filed same as interested party; in the light of the information that there is an existing appeal against the judgment delivered in this suit. The appeal having been entered has been dubbed: Appeal No: CA/ABJ/CV/147/2022: Between Sirajo Abubakar & 5 Ors Vs. Hon. Mainasara Abubakar Sani & Anor.

A lot of arguments have been proffered, by Learned Senior Counsel for the persons interested and other Counsel which is commendable. It is trite law that the jurisdiction of a competent court generally ends, upon delivery of judgment and only in very rare circumstances, can a court consider a suit which it has already delivered judgment. See: ERISI & ORS V IDIKA & ORS (1987) LPELR-1160 (SC) PAGE 25 PARA D AND FASHOYIN V ABAYOMI & ORS (2016) LPELR-41417 (CA) PAGE 18 PARA C.

It is also axiomatic, that once an appeal has been entered, all matters at the trial Court, based on the hierarchy of Courts must await the determination of the matter which is on appeal. As a matter of fact, the Court of Appeal in the celebrated case of

Mohammed v Olawunmi(1993) 4 NWLR (Pt. 287) 254 at 277 – 278, berated the decision of the trial Court, who wanted to proceed with trial, in spite of being informed *viva voce*, of the existence of an appeal before a superior court. The *ipsissima verba* of the decision is reproduced hereunder

“The Respondents’ counsel in their brief argued and this was not rebutted before us that the attention of the learned trial judge was drawn to the case of Vaswani Trading Co. v. Savalakh& Co. (1972) All NLR 922 or (1972) 12 S.C. 77. In that case, this court in a clear language frowned at the attitude of a lower court that will render the order being sought nugatory. The order said: -

“We think also that it is idle for the Respondents to argue, as learned counsel on their behalf has attempted to do, that they were not aware of the pending proceedings in this court.”

No argument was advanced before him that, that authority should not be followed. In this appeal, the judge from the passage quoted above from his ruling was aware of the application but deliberately chose to ignore the process. This unfortunate attitude in disregarding the process of the Court of

Appeal borders on judicial impertinence. It is an affront to the Court of Appeal. All the courts established under the Constitution derive their powers and authority from the Constitution. The hierarchy of courts show the limit and powers of each court. To defy the authority and powers of a higher court appears to me undesirable and distasteful. Even without the ratio of the Vaswani's case, the best and reasonable course of action was to have adjourned the matter before him pending the determination of the application before the Court of Appeal."

It is not the argument of any of the Counsel----that even when an appeal has been entered, a trial Court must proceed to share jurisdiction with the appellate Court, what I understand from the argument of the Learned Senior Counsel is that in pre-election matters, an exception, due to the time bound nature contained in the Constitution, is created.

Before determining whether I agree with the said line of submission or not, I first need to answer the question of whether this matter over which judgment has been delivered is a pre-election matter? I find an easy answer upon a foray into the provisions of Section 285(14)(a)-(c) of the Constitution of the Federal Republic of Nigeria, 1999 as amended for the answer. The Section which is friendly to comprehension provides thus:

“14) For the purpose of this section, “pre-election matter” means any suit by-

- a. An aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for the conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election.
- b. An aspirant challenging the decisions or activities of the independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election; and
- c. a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the

Independent National Electoral commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election.”(Underlining ours)

I have also gone through the processes filed in this suit with the finery of a toothcomb, it was the said processes that birth the judgment of this Court delivered on 16th December, 2021. I cannot find how the said suit qualifies as a pre-election matter. It cannot be accommodated under any of the lucid instances provided for in the afore-stated section. The suit from my understanding at best is with respect to swearing in of members who are alleged to have emerged from party congresses; party congresses cannot be elevated to a pre-election matter and I so hold.

I am fortified in my position by the recent decision of the Supreme Court in **APC V DELE MOSES (2021) 14 NWLR (PT. 1796) PAGE 351 at 319 para E-G** where the apex Court in refusing to christen a matter bordering on party congresses as pre-election; interestingly from the same All Progressives Congress, it held thus:

Section 285(14)(a)-(c) of the 1999 Constitution (as amended), which defines what a pre-election matter is, speaks of aspirants, who complain about party primaries in respect of the *selection or nomination of candidates for an election*; aspirants who challenge "*actions, decisions or activities*" of INEC in respect of their participation in an election; and political parties that challenge "*actions, decisions or activities*" of INEC "in respect of nominations of candidates for an election; timetable for an election, registration of voters and other activities in respect of preparation for an election". As the appellant put in its brief, this definition "does not admit of congresses that may or may not" 'one day one day' lead to an election". ,

At page 325, the Apex Court, per Agim, J.S.C. held further:

Section 285(14)(a)-(c) by expressly listing the three types of matters that constitute or mean pre-election matter clearly excluded the matters not mentioned therein. The law is settled by unending line of judicial decisions that where a statute expressly list items to which it applies, it excludes those not listed therein...

So if section 285(14) had intended that actions concerning the future conduct of party congresses for any purpose

should constitute pre-election matters, it would have stated so. Since such actions are not listed in section 285(14) as pre-election matters, they are not. The suit leading to this appeal is not pre-election matter.

What is more, assuming the suit before this Court was even pre-election; I have not been furnished with any authority that allows a Court, upon delivery of judgment and upon an appeal being entered in respect of the delivered judgment, is expected to share jurisdiction with an appellate court and proceed to still entertaining other applications, on the ground that the number of days to exhaust the suit is still extant. Be it pre-election or even post-election. I have studied deeply the case of **GUNDIRI V NYAKO (2014) 2 NWLR (PT. 1391) 211** cited by the Learned Senior Counsel, I am unable to find any decision to that effect. It would indeed be new learning to me to find otherwise.

In the circumstance, an appeal having already been entered in respect of this suit, and based on the constitutional hierarchy of Courts and settled authorities of superior Court, I must kowtow to the Court of Appeal and refrain from doing anything that will set me on a collision course with the Appellate Court. The matter is adjourned sine die. Parties are advised to approach the appellate Court which is now fully siesed of the matter.

APPEARANCE

Dr. B. M. Jodi Esq. with me

Umar Mustapha Galadima Esq.

Sadiq El-Yakub Ibrahim Esq.

Ogonna Rita Nwakila Esq. all for the Applicant.

Musa Etubi Esq. for the 1st to 6th Respondent.

Oluwole Adeja Esq. for the 7th Respondent.

S.E Aruwa SAN with A. I Idris Esq. for the 8th Respondent.

Sign

Hon. Judge

17/02/2022