

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT 10, GARKI, ABUJA

BEFORE THEIR LORDSHIPS:

HON. JUSTICE S. B. BELGORE (PRESIDING JUDGE)

HON. JUSTICE M. B. IDRIS (HON. JUDGE)

CLERKS:

(1) GBENGA FATADE

(2) PRECIOUS DIKE

SUIT NO: CR/94/2022

CRA/02/2023

DATE: 25/5/2023

BETWEEN:

MR. EDET GODWIN ETIM.....APPELLANT

AND

PASTOR UMO BASSEY ENO.....RESPONDENT

RULING

It would be recalled that yesterday the 24/5/2023 in this same Court room we were faced with two affidavits i.e. One impugning the supplementary Record produced for the purposes of this appeal. The deponent is Chinyere Aputazie, a Counsel appearing in the matter for the appellant, it is dated and filed on 22/5/2022.

The 2nd affidavit is the counter-affidavits at the instance of the Respondent denying almost every paragraph of the 1st affidavit that challenged the supplementary Record. That 2nd affidavit is dated and filed on 23/5/2023.

On that same yesterday, without wasting time, learned Counsel to the Respondent – Paul Usoro SAN, made an oral application urging

us to order that Chinyere Aputazie who may be called to give oral evidence be disqualified for further representation of the appellant in this appeal. Learned SAN cited **NWIKE VS. PDP** and provisions of **Rule 20 of the Rules of Professional Conduct**.

In a short but impressive reply, learned Silk for the appellant replied that by virtue of Constitutional provision vide **Section 36(6)**, the **Rules of Professional Conduct** cannot override the provisions of the Constitution especially in this instance as regard legal representation. We adjourned that yesterday till today for Ruling.

A few minutes ago, we delivered our Ruling and in substance upheld the oral application of Mr. Paul Usoro SAN and disqualified learned Counsel Chinyere Aputazie and the law firm where she comes from for further participation in this appeal proceedings.

We further peeped by a hard look at the contents of both affidavits in focus and concluded that they were contradictory. Meaning that we require oral evidence to resolve the contradictions in the absence of any documents to resolve the contradictions therein.

It was at that stage of calling oral evidence if any is available in Court or we taking an adjournment that the learned Silk appearing for the appellant – Ibrahim Idris SAN – informed us that they were served with an affidavit of FACTS a day before today. The learned SAN exhibited the said affidavits of FACT. We checked and Mr. Gbenga, a Registrar from the Appeal then draw our attention to the same affidavit of facts already filed in Court.

Mr. Idris SAN urged us to proceed with the appeal on the basis of the said affidavits of facts already served on them.

But Mr. Paul Usoro SAN quickly pointed out that they were not served with the process. According to him the contents of the said affidavits which he highlighted some of the paragraphs briefly having being avail a copy of same by us, support the ruling of this Court for oral evidence. That is the point where we are now.

We have gone on this historical excursion as started from yesterday's proceeding in order for us to appreciate the gist of this position we are now.

The question is, can we proceed straight away with the hearing of this appeal now? For short answer is No. our reasons are as follows:

- (1) We are faced since yesterday with two contradictory affidavits. We have just delivered a Ruling saying we need oral evidence to resolve them. That Ruling cannot be in vain.
- (2) We are now faced with another affidavit stated "affidavits of facts". What is the content of it, we are not prepared to say. The big point in respect of it is that the appellant have seen it. They seem comfortable with it. But the Respondent are seeing it for the 1st time now. May be they are not comfortable with it or may be not. It is not clear to us from the submission of the learned Silk. What concerns us from this moment is that they should be allowed to react one way or the other to it. May be upon a deep reflection. Mr. I. Idris SAN may wish to also react to it one way or the other.

Perhaps, we should mention that the position we have taken as espoused in our short Ruling just delivered has not changed. We need oral evidence to resolve the apparent inherent contradictions in both affidavits.

And who knows, the deponent of this affidavits of facts dated 23/5/2023 and filed same day have been veritable good witness for any of the parties at the opportuned time in this proceedings.

For all the foregone, this case would be adjourned to another convenient date for oral evidence to resolve the conflicts in the two affidavits of both appellant and Respondents relating to the supplementary Record of Appeal produced in this appeal.

HON. JUSTICE S. B. BELGORE
Presiding Judge 25/05/2023

HON. JUSTICE M. B. IDRIS
(Hon. Judge) 25/05/2023