

IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY
ELECTION PETITION TRIBUNAL
ABIA STATE
HOLDEN AT UMUAHIA

THIS WEDNESDAY, THE 21ST DAY OF JUNE, 2023

BEFORE THEIR LORDSHIPS

HON. JUSTICE ABUBAKAR IDRIS KUTIGI	-	CHAIRMAN
HON. KHADI AHMAD MUHAMMAD GIDADO	-	MEMBER I
HON. JUSTICE MOMSISURI ODO BEMARE	-	MEMBER II

EPT/AB/SHA/19/2023

BETWEEN:

1. CHIEF EMENIKE EMERSON AZUBUIKE	}	PETITIONERS
2. ALL PROGRESSIVES CONGRES (APC)		

AND:

1. NWEKE JOHNSON LUCKY UDOKA	}	RESPONDENTS
2. PEOPLES DEMOCRATIC PARTY (PDP)		
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)		

RULING

By a motion on notice dated 30/4/2023, the Petitioner/Applicants pray for the following Reliefs:

1. **LEAVE** of Tribunal allowing the Applicants to amend their Petition and statement on Oath of the 1st Petitioner in terms of the Proposed Petition etc as herein underlined in the annexed copy marked as Exhibit A.

2. Order deeming as properly filed and served the Amended Petition and the Deposition of 1st Petitioner the appropriate filing fees having been paid.

And for such further orders as the Tribunal shall deem fit.

The application is supported by a 7 paragraphs affidavit with one annexure, the proposed Amended petition and deposition which was annexed as Exhibit A.

A very brief one page written address was filed which simply relied on the supporting affidavit and the tribunal was urged to grant the application.

In opposition, only the 1st Respondent filed an 11 paragraphs counter affidavit. A written address was filed in which one issue was raised as arising for determination:

“Whether an election petition is unamendable after the 21 days of statutory period of filing the petition elapsed”.

Submissions were then made on the issue which forms part of the Record of the tribunal. The summary of the submissions is that the application to amend the petition which is substantial relating to the contents of the petition as envisaged by paragraph 4 of the First Schedule can only be done within 21 days of filing an election petition. That in the present case, the petition was filed on 8/4/2023 and the application to amend filed on 2/5/2023 which clearly exceeds the 21 days' time frame that would have allowed for a grant of the application it was submitted that the application has no merit and must fail.

The case of **Mustapha V Gamawa (2011) LPELR – 9226** was cited.

The Petitioner in response then filed a Reply on points of law. The submission therein equally form part of the Record of the tribunal. It was contended that the amendments sought does not relate to the grounds of the petition and as such, that the court can grant the application

At the hearing, learned counsel for both Petitioners and 1st Respondent relied on the Processes they filed and adopted the submission in their addresses in urging the court to grant the application and on the other side of the aisle to refuse the application.

We have carefully considered the processes filed, including the written addresses and the oral submissions made in addition and the narrow issue is whether the Tribunal can grant the application to amend the extant petition and the deposition attached to the proposed amended petition?

Generally, amendments of pleadings in civil proceeding is allowed for the purpose of determining the real question(s) in controversy. An amendment therefore ought to be allowed at any stage of the proceedings unless such amendment will entail injustice or surprise or embarrassment to the other party or the applicant is acting mala fide or by his blunder, the applicant has done some injury to the other party which cannot be compensated by cost or otherwise. In other words, the discretion ought to be exercised so as to do what justice and fair play may require in the particular case. See **Bank of Barode V Iyalabani (2002) 13 N.W.L.R. 551 at 593 B-D.**

In election petitions however, the dynamics changes. Considering the peculiarities and sui generis nature of Election Petitions, time is of the

essence and the Electoral Act has situated clearly a time frame and the type of amendments to the petition that can be granted.

By section 137 (7) of the Electoral Act, an election petition shall be filed within 21 days after the date of the declaration of the result of the election. Paragraph 14 of the First schedule of the Electoral Act then provides for amendment of an election petition. In particular paragraph 14 (2) (a) of the Act provides that after the expiration of the time limited by –

“Section 132 (7) of this Act for presenting of the election petition, no amendment shall be made.

- (i) Introducing any of the requirements of paragraph 4 (1) not contained in the original petition filed; or**
- (ii) Effecting a substantial alteration of the ground for, or the prayer in the election petition or”**

The above provisions are clear. Amendment to an election petition is subjected to restriction as to time limitation and within the confines or purview of the above provisions.

Now what is the nature of the amendment the Petitioners seek here?

It is clear that the amendments sought are as situated in paragraph 5 (iii) and (v) of the reliefs contained in the proposed Amended petition as follows:

“(iii) that by the reason that all the candidates and their sponsors were involved in vote buying,

corrupt practices except the Petitioners in Isuikwuato Constituency, Abia State Election held on the 18th March, 2023 and as such the Petitioners ought to be returned as duly elected having obtained authentic votes. (In)

(v) AN ORDER for a rerun of House of Assembly election for Isuikwuato Constituency, Abia State Election held. (off) An ORDER directing the 3rd Respondent to issue Certificate of Return to the 1st Petitioner as the duly elected member of House of Assembly Isuikwuato Constituency, Abia State Nigeria."

The above amendments are clearly substantial alterations or amendments of the prayers or reliefs sought which falls foul of the clear provisions of Section 137(7) of the Act and paragraph 14(a) (i) and (ii) of the 1st schedule of the Act.

The point to underscore is that by section 137(7) of the Electoral Act, 2022, the Petitioners have 21 days after the date of declaration of results within which to file their petition. It logically follows that any substantial amendment as sought here relating to the contents of a petition as envisaged by paragraph 4 of the first schedule of the Electoral Act must be done within the 21 days limited for filing an election petition.

In this case, the petition was filed on 8/4/2023 while the extant application for amendment was filed on 2/5/2023 clearly outside the time sensitive criteria of 21 days statutorily provided.

The nature of the amendments as highlighted above are aimed at introducing the statutory requirements of the contents of a petition and bringing in prayers or reliefs which were not part of the original petition. The attempt to amend the petition at this late stage is clearly not only an infraction of the time frame allowed for such applications but also contravenes the provision on substantial alterations and will therefore be unavailing.

To allow the present application would mean allowing the presentation of the election petition outside the time allowed by law for its presentation. See **Mustapha V Gamawa (Supra); Odu V Duke (No. 2)(2005) 10 NWLR (Pt. 932) 142.**

On the whole, the application to amend the petition and the amendment to the witness deposition predicated on the flawed amendment wholly lacks merit and it is dismissed.

**HON. JUSTICE ABUBAKAR IDRIS KUTIGI
CHAIRMAN**

I concur.

**HON. KHADI AHMAD MUHAMMAD GIDADO
MEMBER I**

I concur.

**HON. JUSTICE MOMSISURI ODO BEMARE
MEMBER II**