

**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: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/2079/2020

BETWEEN:

- 1. AGADA MICHAEL AGBO**
- 2. EGAHSONSHEHUSALIFA**

(Suing as the Representatives of the
Retired NNPC Staff.....

CLAIMANTS

VS

- 1. NNPC STAFF MULTIPURPOSE CO-OPERATIVE
SOCIETY, ABUJA**
- 2. INNOCENT .C. AJAEFOBI**
- 3. ABUBAKARSADIQ SULEIMAN**
- 4. DANBOYI JOEL**
- 5. AHOEMWENAIBANGBEE**
- 6. ADEJOH MICHAEL**
- 7. OSONDUIBEJI**
- 8. SULEIMAN DANLADIISIYAKA**
- 9. OGUNBAYOOLALEKAN**
- 10. GARBASA'AD**
- 11. BASSEYUMO**
- 12. ISAHJIBRIN**
- 13. EMMANUEL ABENU**
- 14. FAROUK ACHIMUGU**
- 15. NASIR .M. IBRAHIM**
- 16. MURTALA UMAR**
- 17. EBENEZER .D. OYELEYE**
- 18. ROSELINE A. EKAMA**

**19. THE REGISTERED TRUSTEES OF THE
NIGERIAN NATIONAL PETROLEUM CORPORATION
/DEPARTMENT OF PETROLEUM RESOURCES
RETIRED STAFF ASSOCIATION NNPC/DPRRSA.....DEFENDANTS**

RULING/JUDGMENT

By a Amended Originating Summons dated 9/10/2020 and filed on 13/10/2020, the Claimant is seeking for the determination of the following questions:-

QUESTIONS FOR DETERMINATION

1. Whether in view of **Section 20 (d) & 48 of the Bye law** of the 1st Defendant, election into the Management Committee of the 1st Defendant can be done in any other manner outside the balloting or electronic voting method and provided in the Bye Law without any prior amendment to the Constitution/Bye Law.
2. Whether in view of **Section 20 (d) of the Constitution/Bye Law** of the 1st Defendant, an online voting which did not give members of the cooperative the opportunity to converge in one place and be accredited, qualifies as a balloting or electronic voting method as provided in the Constitution/Bye Law.
3. Whether in view of **Section 20 (d) of the 1st Defendant's Constitution/Bye Law** and the Letter of the counsel to the Claimants dated 1st June, 2020 and the response of the 2nd Defendant dated 5th June, 2020; the Election of 30th June, 2020 conducted by the Electoral Committee of the 1st Defendant

supervised by the 12th and 13th Defendants is not insensitive, unconstitutional, invalid and liable to be set aside.

4. Whether in view of Section 20 (d) of the 1st Defendant Constitution, a Registrar who did supervise the Election other than the 12th and 13th Defendants can swear in new Management Committee on the instructions of the 2nd Defendant.
5. Whether in view of Section 20 (d) of the 1st Defendant and the report of the Electoral Committee dated 2nd July, 2020, the 7th, 14th, 15th, 16th, 17th and 18th Defendants can be sworn in as the new Management Committee of the 1st Defendant without a certificate of return issued to that effect.
6. Whether by virtue of the report of the 1st Defendant's Electoral Committee dated 2nd July, 2020 declaring the election held on the 30th June, 2020 inconclusive and the Claimant letter dated 2nd July, 2020, the swearing of the 7th, 14th, 15th, 16th, 17th, and 18th Defendants as the purportedly elected new Management Committee of the 1st Defendant on the 3rd July, 2020 by another person other than the 12th and 13th Defendants acting on the instruction of the 2nd Defendant is not illegal, void and liable to be set aside.

Upon the determination of these questions, the Claimant seek the following reliefs:-

1. **A DECLARATION** that by the Provision of Section 20 (d) and 48 of the Bye Laws of 1st Defendant, no election can be conducted other than by balloting or electronic voting as provided in the Bye Law without an amendment of the Bye Law to that effect.
2. **A DECLARATION** that by Section 20 (d) of the Bye Law of the 1st Defendant, an election conducted online without affording all the members of the co-operative to converge in one place for the purpose of accreditation and voting does not qualify as an election conducted by balloting or electronic voting as provided in the Bye Law of the 1st Defendant.
3. **A DECLARATION** that by the Provision of Section 20 (d) of the Bye Law of the 1st Defendant and the Claimant's letter dated 1st June, 2020 and that of the 2nd Defendant dated 5th June, 2020 respectively, the election conducted by the electoral committee of the 1st Defendant on the 30th of June, 2020 supervised by the 12th and 13th Defendants is insensitive, void, unconstitutional and of no effect whatsoever.
4. **A DECLARATION** that by virtue of the report of the electoral committee of the 1st Defendant dated 2nd July, 2020 declaring the election held on the 30th June, 2020 inconclusive as well as the Letter of the Claimants dated 2nd July, 2020, the swearing in of the 7th, 14th, 15th, 16th, 17th and 18th Defendants as the purported elected new Management Committee of the 1st Defendant by a

person other than the 12th and 13th Defendants on the instruction of the 2nd Defendant is null and void and of no effect whatsoever.

5. **A DECLARATION** that by the report of the Electoral Committee of the 1st Defendant dated 2nd July, 2020 declaring the election of 30th June, 2020 inconclusive as well as the letter of the Claimant to the 2nd Defendant dated 2nd July, 2020, the 1st and 2nd Defendants ought to have cancelled the entire election and organize a fresh one.
6. **A DECLARATION** that by the Provision of Section 20 of the Bye Law of the 1st Defendant and the report of the Electoral Committee dated 2nd July, 2020 in conjunction with the 12th and 13th Defendants declaring the election inconclusive, the swearing in of the 7th, 14th, 15th, 16th, 17th and 18th Defendants as the purported new Management Committee of the 1st Defendant is fraudulent, unconstitutional, null and void.
7. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Electoral Committee of the 1st Defendant, the 12th and 13th Defendants and their representative's agents or privies and employees by whatever name called from parading any person or group of persons as the Members Management Committee of the 1st Defendant until another election is organized in line with the Bye Law of the 1st Defendant.
8. **AN ORDER OF INJUNCTION** restraining 7th, 14th, 15th, 16th, 17th

and 18th Defendants and their agents servants, employees or privies from parading themselves as the newly elected Management Committee of the 1st Defendant.

9. **AN ORDER OF INJUNCTION** restraining 3rd, 4th, 5th, 6th, 7th, 8th, 9th 10th and 11th Defendants from recognizing or handing over to any person or group of persons as the new Management Committee of the 1st Defendant until a new election is conducted.
10. **AN ORDER** nullifying the purported swearing in of the 7th, 14th 15th, 16th, 17th and 18th Defendants on the instructions of the 2nd Defendants as the new Management Committee of the 1st Defendant.
11. **AN ORDER** directing the 1st, 2nd, 12th and 13th Defendants to organize a fresh election for all candidates to form the new Management Committee of the 1st Defendant.
12. **Damages** in the sum of N100,000,000.00 against the 1st, 2nd, 7th, 14th, 15th, 16th, 17th and 18th Defendants for disregarding the Bye Laws of the 1st Defendant and thereby creating untold hardship to the Claimants by preventing them from exercising their franchise.

In support of the Amended Originating Summons is a 30 Paragraphs affidavit sworn to by Agada Michael Agbo on 13/10/2020, annexed to the affidavit are 9 (Nine) Exhibits marked as "A" – "I". Also filed is a further affidavit of 8 (Eight) Paragraphs in support of the Originating Summons filed on

15/9/2020, sworn to by Samson Musa, with two (2) Exhibits marked as "AA" and "AB". Also filed is a Further and Better affidavit dated 29/9/2020 in reaction to the counter-affidavit of the Defendants of 6 (Six) Paragraphs sworn to by Samson Musa with three (3) annexures marked "SA", "SB" and "SC", with Written Address. Also filed a Further and Better affidavit dated 24/11/2020, filed same day of 5 Paragraph, sworn to by Samson Musa in Answer to the 19th Defendant counter-affidavit with one (1) Exhibit and a Written Address. In support of the Originating Summons is a Written Address, adopts all the Written Addresses, in urging the court to grant the reliefs sought.

The Defendants except 2nd/12th and 13th in opposition, filed a 56 Paragraph counter-affidavit with 5 (Five) Exhibits dated 16/9/2020 and sworn to by OsonduUbeji, the 7th Defendant. Also filed is a Written Address, adopts same and urge the court to dismiss the Originating Summons.

By way of adumbration, submits that the Amended Originating Summons is unsigned, therefore of no value, being a fundamental error renders the Amended Originating Summons useless. Referred to Order 6 Rule 2 of the Rules of Court and urge the court to discountenance the Amended Originating Summon.

On the part of the 19th Defendant in opposition, filed a 36 Paragraph counter-affidavit to the Claimants' Amended Originating Summons, sworn to by Fredrick Ozoemena on 17/11/2020, with one Exhibit and also filed is a Written Address and adopts same in urging the court to strike out or dismiss the Suit.

In response to the submission of Defendant Counsel in respect of the unsigned Amended Originating Summons, Learned Silk for the Claimant, submits and refers to case of AnyanwokoVsOkoye (2010) 5 NWLR (PT.1188) Pg 497 @ pg. 519 @ Para 8E and urge the court to resolve in favor of the Claimant.

Sequel to this application, that is the Originating Summons of the Claimant, the Defendants except 2nd,12th and 13th, filed a Notice of Preliminary Objection (NPO) to this application challenging the jurisdiction of this court to determine this Suit. It is therefore necessary in line with the law to determine this issue of jurisdiction first before proceeding to determine the Originating Summons, if it succeeds; it terminates the Suit without the need to go to the merit.

Jurisdiction overtime has been described as the live wire of any judicial proceedings and once raised, the court must determine it once and for all, the failure to do so would amount to waste of the judicial time of court, and it is found that indeed it has no jurisdiction to hear. See case of DaewoodNig Ltd Vs Project Masters (Nig) Ltd (2010) LPELR – 4010 (CA) per Thomas JCA stated thus;

“It is no more in dispute that an issue on jurisdiction of the court must first of all, be determined because jurisdiction of all court or even to the parties, is the live wire on which the matter is hinged, more so the issue is premised on the Notice of Preliminary Objection.....” See also InakojuVsAdeleke (2007) 4 NWLR (PT.1025) 423 SC,NtuksVsN.P.A.

(2007) 12 NWLR (PT.1051) 392 SC; ChukwudiNnalimmo&OrsVs Sunday Etodumo&Ors (2018).

To determine this issue, resort must be made to the Writ of Summons and Statement of Claim, as in this instant Suit, the Originating Summons, the questions set out for determination and the reliefs sought. SeeOsigweVsPSPLS Management Consortium Ltd (2009) 3 NWLR (PT.1128) 387 @ 399 Para E.

In the Defendants except the 2nd, 12th and 13th Notice of Preliminary Objection (hereinafter referred to Objectors) dated 16/9/2020, are praying for the following orders:-

- 1. The Claimant's failed to explore the internal or domestic mechanism for dispute resolution as provided under **Section 45 (a)** of the **1st Defendant's 2017 Bye-Law Review and under Section 44 of the Co-operative Societies Act, CAP, 488, Laws of the Federation, 1990 or Section 44 Co-operatives Societies Act, CAP. 488, Laws of the Federal Capital Territory, Nigeria 2004.****
- 2. The Originating Summons is grossly incompetent for failure to comply with **Order 2 Rule 3 (1) (d)** of the **High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018.****

In the alternative;

3. From the state of affidavit evidence deposed to by parties in this Suit, with specific reference to **Paragraphs 15, 16, 17, 18, 19, 22, 24, 25 and 26** of the Claimants' affidavit, and **Paragraphs 3 (c)& 4 (n)** of the **Claimants' Further Affidavit** in support of the Originating Summons and **Paragraphs 18,26,27,31,33,34,35,36,38,40,45,47,51,52** and **53** of the Defendants/ Objectors counter-affidavit to the Claimants' Originating Summons, this case cannot be fought vide Originating Summons procedure as proof beyond reasonable doubt will be required to resolve the knotty and disputed criminal allegations.
4. The proper and necessary parties are not before this Honourable Court.

In support of the application, is a 13 Paragraphs affidavit, sworn to by OsonduUbeji – 7th Defendant. Also filed is a Written Address, adopts same in urging the court to grant the order sought.

By way of adumbration, Defendant Counsel submits that the Claimants in their processes, were waiving on their position on the reference of the matter for internal mechanism of resolving the issues. Refereed to case of FCDA Staff Multi-purposes Co-operatives & Ors Vs Samchi & Ors (2018) LPELR -44308 and urge the court on this point alone dismiss this Suit.

The 19th Defendant Counsel aligns with the submission of the Defendant Counsel to the Objectors and urge the court strike or dismiss the Suit.

In opposition to the Preliminary Objection, the Claimant filed a 5 paragraph counter-affidavit sworn to by one Samson Musa on 29/9/2020. Also filed is a

Written Address, and adopts same in urging the court to dismiss the NPO. Referred the court to Exhibit "E", "F", "G", and "SA" to the affidavit in support of the Originating Summons, urge the court to look at the Sections 45 of the NNPC Bye-Laws and Section 44 of the Law cited by Defendant Counsel Objector at Pg 6 – 8, there is conflict and where this occurs, it is the Act that takes precedence over the Bye-Law. Therefore, urge the court to discountenance the NPO.

The Defendant Counsel Objector, in further reaching, submits that the Claimant failed to react to the alternative Reliefs therefore deem as an admission.

In the Written Address of the Objector, settled by Ibrahim Idris Esq, made his submission based on the two grounds of the Objectors, and submits in summary, firstly, that the Claimant failed woefully to fulfill condition precedent, that is to explore the domestic internal dispute resolution mechanism within the 1st Defendants constitution and Bye-Laws, specifically; Section 45 (a) of the said Bye-Law. Submits that in line with the law, a careful perusal of the Originating Summons, the court will find that the Claimants have failed to comply with the said Provisions. Refer to Paras 7, 8, 9, 10 and 11 of the Objectors supporting affidavit to the NPO, also referred to Section 11 of Nigerian Co-operative Society Act, Cap N98, LFN, 2004, that it is a fact that this condition precedent be fulfilled before the court can assume jurisdiction. Further referred to Paras 4, 5 and 6 of the Claimants further affidavit of 15/9/2020 which they submit is an admission of the non-compliance with the condition precedent. Also Section 44 of Nigerian Co-operative Societies Act Cap, 488 LFN, 2004. That explanation given by the

Claimant for not complying is not tenable and referred the court to case of FCDA Staff Multi-purpose (Co-operative Society & Ors Vs Samchi & Ors (2018) LPELR – 44380. Further referred the court to several judicial authorities in persuading this court to hold that the Claimants having failed to comply with this extant Provisions rob this court of jurisdiction.

On the grounds 3, submits that on a cursory look at the Originating Summons, in line with Order 2 Rule 3 (5) (a- d) of the Rules of court, the court will find that the Claimant failed to comply with one of the requirement of the Rule that is filing a Certificate of Pre-action counseling and hold that the Originating Summons is incurable defective and be struck out.

On ground 4, submits that on further perusal of the Originating Summons, by the state of the pleadings, this is not a matter that can be fought under the Originating Summons Procedure, moreso where the facts are contestable or are in serious conflict and which cannot be resolved without calling of oral evidence. And referred to several judicial authorities in persuading the court to decline jurisdiction.

In the Written Address of the Claimants settled by Esther Ralph Esq, two (2) issues were formulated for determination, namely:-

- (a) Whether from the steps taken by the Claimants in this case they have not activated the mechanism for resolution of internal dispute and resort to arbitration to be manned by the 2nd Defendant in Provision of Section 45 (a) of the 1st Bye-Law Review and Section 44 of the Co-operative Societies Act, Cap 488, LFN

1990 or Section 44 of the Co-operative Societies Act, Cap 488 LFNFCT, Nig 2004.

- (b) Whether the Claimants have not complied with the Rules of this Hon. Court in instituting this Suit.

On issue 1, submitting, contend that in determining whether court has jurisdiction, the court has a burden duty to look at the processes before it, Originating Summons. In this instant, relying on the Paras 9 – 19 affidavit in support, further affidavit of 15/9/2020, and the Exhibits "E" attached to Originating Summons, Exhibit "G", Exhibit "MUA", showing forth the 2nd Defendant as a party interested and a Judge and Arbiter over his own case. That to stick with the Registrar in all of these complaint will run foul of the principle of Natural Justice. Referred to case of AbiguVsAdiche (2003) 2 NWLR (PT.805) 509. Also referred to Para 4 (b) of supporting affidavit of the fact that there is no known standing Committee. In all and relying on all the judicial authorities cited, urge this court to hold that the Claimant indeed took steps against the complaint of the objectors.

On issue II, submits that on careful perusal of the originating Summons and questions, the court will find that the court is invited to look at the documents with view to interpreting their contents and form. Submits that no dispute has arisen that would require calling of oral evidence. Referred to case of InakojuVsAdeleke (2007) 4 NWLR (PT. 1025) 423.

On the issue of the Objectors Claim of non-compliance with Order 2 Rule 3 (5) (a – d) of the Rules, submits that it is an irregularity which the Defendants have waived its rights having taken steps to file a counter-

affidavit, therefore, cannot at this stage, be seen to be raising this issue. Referred to case of AyanwokoVsOkoye (2010) 5 NWLR (PT. 1188 497 @ 519 Para A – E. Further on this issue, submits that by Order 5 Rule (1) & (2) of the Rules of court, the court have the discretionary power to treat as mere irregularity that will not vitiate the proceedings. Referred to case Odom & 2 OrsVsPDP& 2ors (2015) 6 NWLR (PT.1456) @ 570 Para A – C, and urge the court to hold that the Rules of Court have been complied with. In all urge the court to dismiss the NPO.

Having carefully giving an insightful consideration to the affidavit evidence, the written submission, oral adumbrations in replying of all counsel and the judicial authorities cited, in their arguments for and against the grant of the Reliefs sought in this instant NPO, sequel to the Originating Summons, the court finds that there is only one (1) issue that calls for determination, which is;

“Whether or not this Suit as presently constituted, in the face of the grounds of the objection is incompetent therefore robbing this court with the jurisdiction to hear and determine”.

This main issue, as formulated by this court encapsulates all the issues relied on by the parties as issues for determination.

In this instant application, the main issue in contention, grounding the facts that this court lacks jurisdiction, is the non-compliance with the Provisions as stated in the 1st Defendant’s constitution and relevant Bye-Laws as stated. I will speak on other grounds of the Objector’s later.

In this instant, the objector relies heavily on Section 45 (a) of the Bye-Laws, Paras 7, 8, 9, 10 and 11 of the supporting affidavit and the enabling laws of Sections 11 of Nigerian Co-operative Society Act, Cap 488, LFN, 2004 as the basis of the Objection.

By Section 45 (a) of the Bye-Laws, herein reproduced.

“In any dispute arising from the day to day running of the Society, its members, past or present or persons claiming through them shall be referred to a dispute resolution committee set up by the Management Committee for the amicable settlement of such issues, where the dispute resolution committee is unable to settle such issue(s) the matter shall be referred to the Registrar for settlement by Arbitration”

This Section draws its strength from the provisions of the extant laws cited above.

It is not in doubt by this Provisions that in matters of this nature, any dispute must be referred to a dispute resolution committee or where it facts to a Registrar by Arbitration.

The parties herein have copiously relied on the affidavit in support and against in assuaging this court to hold in their favour.

The question to be asked in the face of this glaring Provisions of the Section 45 (a) of the Bye-Law; Can it be ascertained that the Claimants have failed to comply?

Firstly, the Bye-Law refers to a dispute Resolution Committee, set up by the Management Committee. Query? There is nowhere stated in the affidavit of

the objector that a Dispute Resolution Committee was set up by Management Committee for any aggrieved party to approach where there is dispute. The Claimants in their affidavit in Para 4 (a) along with Exhibit "E", "F", and "G" and Para 4 (b) (c) (d) with Exhibit "MUA" stated facts of the steps they took upon the dispute arising and stated that no Dispute Resolution was in place at the time, also alleged the Partnership on the part of the 2nd & 3rd Defendants in carrying out this lawful duties with infringing on principle of Natural Justice. These facts were not contradicted by the Objectors in any form in this instant application. It is trite law that any facts which have not been categorically countered or denied by a party that facts are deemed admitted by that other party. See case of NjoemanaVsUgboma&Ors (2014) LPELR-22494 (CA)

On the submission of the Objectors against the reasons for the non-compliance of the conditions precedent which they posit, is not tenable and relied heavily on the case of FCDA Staff Multi-purposes (Cooperative) Society &OrsVsSamchi&Ors (Supra). A clear understanding of this authority is clear that the court frowns at any attempt to subvert the Provisions of any Extant Law. I am, however, of the firm view that, that case is distinguishable from this present, in the sense, that in this instant, there is no dispute Resolution Committee set up, further the Claimant herein have taken steps regardless of this flaws, which the Objectors failed to give answer to. Granted that is position of the law, should the principles of Natural Justice be jettisoned when a party has partially done what is required even when the other party failed to do their part? The Claimant further buttress their efforts vide

Exhibits "SA", "SB" and "SC" showing steps taken to meet the conditions precedent, which again were not controverted by the Objector.

On the issue of non-compliance with Order 2 Rule 3 (5) (a – d) of the Rules, by not filing Certificate of Pre-action Counseling, which is alleged fatal, Against this the Claimant contend that the Objector by their action of filing a counter-affidavit to the Originating Summons, have waived their rights and relied on case of AyanwokoVsOkoye (Supra), also relied on Order 5 Rule (1) (2) of the Rules and the case of Odom & 2ors VsPDP& 2ors (Supra) in urging the court to treat as mere irregularity.

Having carefully considered the position of the Law and judicial authorities. It is trite that where a party by their conduct failed to challenge at the earliest opportunity any wrongs of that other party and proceed to take steps in furtherance of the case, he would be estopped reacting to it, having waived that right to do so. See the case of A.I.EVs Adebayo (2009) 19 NWLR (PT.959) P,.44 @ 122 Per Ogbuagu (JSC). Also NPAVsAminu Ibrahim &Or (2018)LPELR 44464 (SC). In this instant, I agree that the Objector by their conduct have waived their rights. In any events, by Order 5 Rule (1) (2) of the Rules of Court, the court is empowered to treat such error as mere irregularity.

On the issue raised by the Objector, that this Suit brought under the Originating Summons Procedure, is a wrong mode, on the grounds that there are disputation that would require the calling of all evidence.

This requires this court to look at the processes before it. On a careful perusal of the Originating Summons, question for determination and Reliefs,

the court finds that, it is invited to give interpretation to documents as it relates to this instant case. It is the firm view of this court that there are no issues that would necessitate the calling of oral evidence. I so hold.

From all of these, I hold that the Preliminary Objection of the Objectors lacks merit and should be dismissed. I so hold.

Now to the Originating Summons. From the affidavit evidence before this court, the parties are neck drawn, on the capacity of the Claimants to bring this action in that capacity, and other hand the Claimant contesting that the said Election was not conducted within the approved Provisions of the Extant Bye-Laws of the Association, hence this Suit which they have instituted.

Commencement of proceedings on our court, by way of Originating Summons have been stated to apply where the main issue is, or likely to be one of construction of a Written Law or instrument. This rule would apply where there is no substantial dispute of facts between the parties. See Case of PDPVs Abubakar (No.2) (2007) ALL FWLR (PT.386) 711 @ 729 – 730 Para F – A C-D, Toronto Hospital (Nig) Ltd Vs Ukpaka (2018) 5 NWLR (PT.1613) 422 Para C – D of the FCT high Court, (Civil Procedure Rules) 2018. In this instant, the Extant Laws that calls for interpretation and Construction are the Section 20 (d), 48 of the Bye-Laws of the 1st Defendant. In the interpretation of these Extant Provisions, this court will be guided by the laid down canon of interpretation, which simply is that where the ordinary plain meaning of the words used in a statute are clear and unambiguous, effect must be given to those words without resorting to intrinsic or external aid. See Okolie-Eboh Vs Manager & Ors (2004) 18 FWLR (PT.905) 242; also Coca-Cola Nig Ltd

VsAkinsanya (2018) ALL FWLR (PT.931) 614 SC (PT.905) 242; It must be noted in this Ruling, this court in considering the NPO, has held that this Suit is proper under the Originating Procedure, I consequently, proceed as I have earlier mentioned to deal with the issue under the Originating Summons.

In this instant, 6 (Six) questions calls for determination. In my view, it is clear that questions 1 – 5 can be taken together, whilst the question 6, stands alone.

In the questions 1 – 5, the issues or questions borders on the validity or otherwise of the Election into the Management Committee of the 1st Defendant through the use of voting system not permitted by the Bye-Laws and against all the complaint and reaction of both the Claimant and some of the Defendants in their capacity to supervise the conduct of the Election, all contrary to the Provisions of Section 20 (d) and 48 of the Bye-Laws of the 1st Defendant.

Before proceedings, it would be most appropriate at this stage, to deal with the contention of the 19th Defendant against the proprietary or otherwise of the Claimants taken out this Suit in the representative capacity on behalf of the Retired Staff of NNPC, against the 19th Defendant, the duly registered group who is alleged be the proper party to sue. This contention is premised on the fact stated in Para 10 of their counter-affidavit in opposition to the Amended Originating Summons and Exhibit "I", which is the Certificate of Incorporation.

On the other hand the Claimant, contend that their right to bring this Suit is borne out of their eligibility to vote and with the mandate of the 2nd Claimant

and other Retired NNPC, whose consent appears in Exhibits "A", attached to Para 3 of their supporting affidavit. Further the Claimant contends vide their Further/Better affidavit in reaction to the 19th Defendant counter-affidavit in Paras 3 (d – j) that they are separate bodies from the 19th Defendant representing the signatories of Exhibit "A" who are not the member of the 19th Defendant. That in any event no of the members whose names have challenged their authority as stated.

In this instant, the 19th Defendant are challenging the right of the Claimant to sue in a representative capacity on behalf of the Retired NNPC Staff. To maintain an action in a Representative capacity, the court in case of *Ayade&OrsVs Mobil Producing (Nig) Ltd (2016) PLELR- 41599 (CA)*, the court set out what to consider instituting a civil action in a representative capacity thus;

- (a) There must be a common interest.
- (b) A common grievance
- (c) And the relief claimed must be beneficial to all.

See also *Adediran&OrsVs Interland Transport Ltd (1991) 9 NWLR(PT.214) P. 155 @ 182 Per Karibi Whyte*; and *BamisileVsOsansanya (2007) 9 NWLR (PT. 1042) P. 225 @ 279*.

In this instance, the Claimants have common interest, further the Claimant relied on Exhibit "A" in support of the Originating Summons and Exhibit "BA" in support of their further/better affidavit against the 19th Defendant counter-affidavit, to the effect that they have consent of those listed to bring this action in representative capacity. There is no contrary evidence from either

the 19th Defendant or other Defendants showing lack of consent from those who signed in Exhibit "A" and neither is there any disclaimer from those persons. What the court is faced with is the facts stated that the Claimant have no authority without more. In the light of the judicial authority and failure of the 19th Defendant or the other departments to attach proprietary or otherwise of the Claimant to bring this Suit, I find that this argument enures in favour of the Claimants.

Now to the contending issues, that is Section 20 (d) and 48 of the Bye-Law that calls for interpretation and construction. I shall reproduce the said Sections as follows:-

Section 20 (d) of the Bye-laws of the 1st Defendant reads;

VOTING FOR ELECTION OF MANAGEMENT COMMITTEE MEMBERS

"For the purpose of electing members into the Management Committee of the society, balloting or electronic voting may be adopted".

"SECTION 48 reads;

AMENDMENT OF BYE-LAWS:

These Bye-Laws shall not be amended excepts by a resolution of at least two third of the registered members of the society present at the Annual General Meeting or any meeting specifically called for this purpose".

This in the courts view, is the crux of this whole suit and once determined all the answers will fall in place.

The Claimant in their supporting affidavit, Paras 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27 and 28 and Exhibit "A" – "I" stated facts leading to the process sought for non-compliance with the Section 20 (d) and Section 48 not complied with to accommodate the voting procedure used.

The Defendant except 2nd, 12th, 13th and 19th in Paras 7 – 55 of their counter-affidavit, including Exhibit "A", "MP1", "MP2", "MP3", "MP4", "MP5", "MP6", "MP7", "MP8" and "MP9, contend that all due processes was complied with.

The 19th Defendants on the other hand in their supporting affidavit, contend that the Claimant are not proper persons to bring this action. This court in course of this Ruling have dealt with this issue and will not labour itself to proceed on these point.

By a clear reading of the Section 20 (d) of the Bye-Law, states that voting for election into the Management Committee shall be by balloting or electronic voting. These words are clear and unambiguous while, the Defendants contend that the words including electronic voting through internet, it is contends by the Claimant that, that is not the position, rather run contrary to the Provisions, which have not been amended pursuant to Section 48 of this said Bye-Law.

The Rules of interpretation is clear, where the words are clear and unambiguous, should be given its ordinary and plain meaning. See *Chukwu & Ors Vs MTN (NigComm Ltd & Or (2016) LPELR – 41053 (CA)*, *Coca-Cola (Nig) Ltd Vs Akinsanya (Supra)*.

Further it is noted that the Claimant made complaint to the respective authority about this anomalies vide Exhibits "D", "E", "F: and reaction of the said authorities vide Exhibits "G", "H", and "I".

The Defendants except 2nd , 12th and 13th by Exhibit "H" Clause 1, 11 and 111 relied and contend that the relevant body, electoral committee did make recommendation which led to the directive to swear in the newly elected members where no allegation was found to exist. Query; was there any further report relied on by the Defendant showing that the said committee indeed found that there exist no allegation in causing them to give that directive to swear in the Newly Management Executive. Unfortunately, there is no such report before this court to the contrary.

It is also further contended by the Defendants that internet voting is permitted by the said Section 20 (d) of the Bye-Law. This court has carefully perused the said process and found in giving its ordinary and plain meaning cannot find any such wording as claimed. There is also no facts showing that there has been an amendment to accommodate this position of the Defendants contention.

It is not for this court to find or hold that because of the Covid-19, the Defendants or the relevant authorities were right to sub-convent the processes outside the Provision of their Bye-Law. It is the firm view of this court that parties are bound to follow their laws guiding their association, in this case the Bye-Law.

In the absence of any amendment to the procedure of voting in Section 20 (d) of the Bye-Law and consequent upon the non-compliance with the

Provisions of Section 20 (d), I hold that the voting exercise leading to the election of the New Management Committee that is, the 7th, 14th, 15th, 16th, 17th, and 18th Defendants as the New Management Committee is null and void.

Having determined questions 1 – 5 as set out, this court find the question 6, as set is answered in the affirmative in favour of the Claimant.

Having carefully considered and proffered answers to the questions set out in the Amended Originating Summons before this court, it is now for the court to determine whether or not the Claimants are entitled to the reliefs sought.

In respect of the 1st – 6th Reliefs premised on the determination of Questions 1 – 6, which this court have answered in positive, the Claimants are entitled to these reliefs.

On the Relief 7, 8,9, consequent upon the determination of Question 1 – 6 and the grant of relief 1 – 6 above, the said reliefs 7, 8,9 are hereby granted as prayed to avoid a situation of chaos.

And consequent upon the grant of relief 7,8, 9; in respect of, it is hereby ordered that the purported swearing of the 7th, 14th, 15th, 16, 17th and 18th Defendants as the New Management Committee of the 1st Defendant is hereby nullified

And consequently, Order the 1st, 2nd, 12th, and 13th Defendants should set up an Electoral Committee to organize fresh election into the Management Committee of the 1st Defendant within a period of 90 days from the date of this Judgment.

On the issue of Damages, Damages is granted at the discretion of the court and based on credible evidence placed before it by the party seeking that relief. This court is unable to find any good reason to exercise that discretion in favour of the Claimant. Accordingly, this relief is hereby refused.

This is the Ruling/Judgment of this court.

HON. JUSTICE O.C. AGBAZA

Judge

3/2/2021

APPEARANCE

SIR STEVE ADEHI (SAN) WITH MARTINS EKPAH FOR THE CLAIMANTS

IBRAHIM IDRIS FOR THE DEFENDANTS, EXCEPT 2ND, 12TH AND 13TH
DEFENDANTS

REMIGUSANI FOR THE 19TH DEFENDANT.

