

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE BWARI JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 11 BWARI, ABUJA.  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA**  
SUIT NO: FCT/HC/BW/CV/347/20

**BETWEEN:**

ENGR. PATRICK AJUDUA --- APPLICANT

**AND**

1. SECURITIES AND EXCHANGE COMMISSION

2. OANDO PLC --- RESPONDENTS

**JUDGMENT**

**DELIVERED ON THE 23<sup>RD</sup> FEBRUARY, 2021**

The reliefs sought by the Applicant, per his Originating Motion dated and filed on the 26<sup>th</sup> day of November, 2020 are as follows:

1. A declaration that the applicant as a member and/or shareholder of the 2nd Respondent (Oando Plc) has a right and freedom of association and assembly with other shareholders and right to receive information at the Annual General Meeting (AGM) of Oando Plc.
2. An order of this honourable court declaring as unconstitutional, null and void and a violation of the applicant's right to freedom of Association, Assembly and right to receive information, the directive of the 1st Respondent, Securities and Exchange Commission (i.e. SEC) suspending/postponing indefinitely the Annual General Meeting (AGM) of Oando Plc, which is the gathering of the 2<sup>nd</sup> Respondent (Oando Plc) members and shareholders to

which the applicant belong for the purpose of association, assembly and receiving information.

3. An order of this honourable court declaring as unconstitutional, null and void and a violation of the applicant's right to freedom of association, assembly and right to receive information, the refusal and/or failure of the 2<sup>nd</sup> Respondent (Oando Plc) to hold and or convene its 2019 Annual General Meeting (AGM) which is the gathering of the 2<sup>nd</sup> Respondent's (Oando Plc) shareholders and members to which the applicant belong for the purpose of association, assembly and receiving information on the affairs of Oando Plc, his interest and shares in the 2<sup>nd</sup> Respondent company (Oando Plc)

4. An order of this honourable court declaring the 31<sup>st</sup> May 2019 letter of the 1<sup>st</sup> Respondent (SEC) to the 2<sup>nd</sup> respondent (Oando Plc) as unconstitutional, null and void, and a violation of the applicant's fundamental right to receive information on the affairs of the 2<sup>nd</sup> Respondent (Oando Plc), his interest and shares in the 2<sup>nd</sup> Respondent (Oando Plc)

5. An injunction restraining the 1<sup>st</sup> Respondent (SEC) from acting and/or taking any steps pursuant to its letter of 31<sup>st</sup> May, 2019 or interfering in any manner whatsoever with Directors lawfully appointed by the Applicant and shareholder.

6. An order of this honourable court restraining the 1<sup>st</sup> Respondent (Securities and Exchange Commission) and the 2<sup>nd</sup> Respondent (Oando Plc) from interfering with, disrupting

and/or disturbing the applicant's constitutional right of Association, Assembly and right to receive information from other shareholders and members of Oando Plc at their 2019 Annual General Meeting AGM).

7. An order directing the 2<sup>nd</sup> Respondent to convene and hold the Annual General Meeting of the 2<sup>nd</sup> Respondent (Oando Plc) within 90 days of the order of the court in compliance with the provisions of the Companies and Allied Matters Act.

8. An order of this honourable court setting aside the directive of the 1<sup>st</sup> Respondent i.e. Securities and Exchange Commission (SEC) suspending/postponing indefinitely the Annual General Meeting (AGM) of the 2<sup>nd</sup> Respondent (Oando Plc) in violation, breach and contravention of the Applicant's right to freedom of association and assembly with other shareholder and right to information from other shareholders and Oando Plc.

9. Any such further other orders(s) that this honourable court may deem fit to make in the circumstances of his case.

The five grounds upon which the Applicant's reliefs are pillared as reproduced below:

1. The Applicant's right of association, assembly and to receive information are constitutionally and statutorily guaranteed.

2. The Applicant exercises his right of association, assembly and to receive information at the Annual General Meeting of Oando Plc as a member and shareholder.

3. The directive of the Securities and Exchange Commission suspending /postponing indefinitely the 2019 Annual General Meeting (AGM) of (Oando Plc) is a violation of the Applicant's right to associate with, assemble with and receive information from other shareholders of Oando Plc.

4. The refusal and failure of Oando Plc to convene, hold or organize its 2019 Annual General Meeting where shareholders associate, assemble and get information is a breach of the applicant's constitutional right of association, assembly and right to information.

5. The applicant's constitutional right of association, assembly and right to information is sacrosanct and should be protected by the honourable court from any form of violation and/or breach

In support of this application are; a whopping 31 paragraphed affidavit deposed to by the Applicant himself to which Exhibits A, B and C are attached, Statement in support and a terse written address of 3 pages.

The 31 paragraphed affidavit of the Applicant, earlier referred to, encapsulates the totality of the grievances of the Applicant by reason of which I shall be having recourse to same in an attempt to have a firm grip of the factual nuances which have aggregated in forming the background/springboard to the institution of the instant forensic contest. The salient portions of the said affidavit read thus:

2. That I am a shareholder in Oando Plc and by virtue of which / am also a member of Oando Plc company. Copy of

my account with Central Securities Clearing System Limited in evidence of my shares is attached as exhibit A.

3. That by virtue of my position, documents within my knowledge and information reaching me, I am familiar and conversant with the facts of this case.

4. That the 2nd Respondent (Onado Plc) is a duly incorporated and registered Public Limited Company (PLC) with shareholders of which I am a major one.

5. That the 1st Respondent, Securities and Exchange Commission (SEC) is a statutory regulatory body established by the provisions of the Investment and Securities Act, 2007 (ISA) for regulation of Nigeria Capital Market.

6. That as a shareholder in the 2nd Respondent's company (Oando Plc) and member of the company i.e. Oando Plc, I have a right and freedom of association with other shareholders and members, and right and freedom to receive information from other shareholders, members and the 2nd Respondent company (Oando Plc) on the affairs of the company i.e. Oando Plc and my shares.

7. That my right and freedom of association and assembly with other shareholders/members, and my right and freedom to receive information from other shareholders/members, and the 2nd Respondent company (Oando Plc) on the affairs of the company and my shares are exercisable at the Annual General Meeting (AGM) of Oando Plc.

8. To ensure that my right and freedom of association and assembly with other shareholders/members and my right

and freedom to receive information from other shareholders/members and the 2<sup>nd</sup> Respondent company (Oando Plc) on the affairs of the company (i.e. Oando Plc) are exercised, the Company (i.e. Oando Plc) on the 10th May 2019 with due notice to the 1st Respondent (SEC) issued a notice of the Annual General Meeting of Oando Plc to be held on Tuesday, June 11th 2019 by 10am, at Zinnia Hall, Eko Hotel and Suites. Lagos. Copy of the 2019 Notice of Oando Plc AGM is attached and marked as exhibit B.

9. That pursuant to the above said Notice of Annual General Meeting of the 2nd Respondent company (Oando Plc) to me as a shareholder and member of the company (i.e. Oando Plc), I travelled for the scheduled 2019 Annual General Meeting of the Company (Oando Plc) to exercise my right and freedom of association and assembly with other shareholders and members of the company and to exercise my right and freedom to receive information from the 2<sup>nd</sup> Respondent company (i.e. Oando Plc) and other shareholders of the company on the affairs of the company and my interest as a shareholder and member of the company.

10. That I arrived EKO Hotels and Suites on Tuesday 11<sup>th</sup> June, 2019 for the 2nd Respondent company's (Oando Plc) Annual General Meeting to exercise my right and freedom of association and assembly with other shareholders and members of the company and to exercise my right and freedom to receive information from the company (i.e. Oando Plc) and other shareholders of the company on the affairs of

the company and my interest as a shareholder and member of the company, only to discover that the 1st Respondent (SEC) had directed that the 2<sup>nd</sup> Respondent company's 2019 Annual General Meeting (AGM) scheduled for 10am on that day (i.e. 11th June 2019) at the venue be suspended/postponed indefinitely.

11. That prior to the 1st Respondent's (SEC) directive that the 2nd Respondent company's (Oando Plc) 2019 Annual General Meeting (AGM) be suspended/postponed indefinitely, on or about the 31<sup>st</sup> May 2019, the 2<sup>nd</sup> Respondent company received a letter from the 1<sup>st</sup> Respondent informing her of a Deloitte audit and investigation, the conclusion of the Deloitte audit aforesaid and the 1<sup>st</sup> Respondent's findings from the said Deloitte's investigations. Copy of the 1st Respondent 31st May letter is attached as Exhibit C.

12. In its letter to the 2nd Respondent, the 1<sup>st</sup> Respondent (SEC) inter alia decided and directed that the 2<sup>nd</sup> Respondent company (Oando Plc) shall pay a total sum of N89, 675, 000; that five Board Directors (duly appointed by me and other shareholders) should resign from the 2<sup>nd</sup> Respondent Company and also barred the Company Group Managing Director and Deputy Group Managing Directors (responsible for the management of the company) from being directors of the 2<sup>nd</sup> Respondent company.

13. The 1<sup>st</sup> Respondent's (SEC) letter of 31<sup>st</sup> May 2019 had no information, material or particular which would provide shareholders with information, reasons and grounds for the

benefit of the shareholders of specific allegations against the 2<sup>nd</sup> Respondent company Directors which constitutes wrongdoing under the law.

14. That at all material times to this action, the 1<sup>st</sup> Respondent (SEC) has not provided the 2<sup>nd</sup> Respondent company and its shareholders, with a copy of Deloitte's audit report upon which the decision of the 1<sup>st</sup> Respondent (SEC) to effectively sack the Board (elected by the shareholders) was made nor were we made aware of the allegations or findings therein.

15. That the said Deloitte's audit and investigation report on the affairs of the 2<sup>nd</sup> Respondent company (Oando Plc) of which I am a member and shareholder, and which founded the 1<sup>st</sup> Respondent's (SEC) 31<sup>st</sup> May 2019 letter and its findings and directive(s) was not furnished or made available to me as a shareholder neither was it tabled or discussed at any meeting of the shareholders thereby denying and depriving me my right and freedom to receive information as well as my right to be heard on the affairs of the 2<sup>nd</sup> respondent company (Oando Plc), before the sanctions and directives thereby in the 31<sup>st</sup> May 2019 letter of the 1<sup>st</sup> Respondent which affects my fundamental and human rights.

16. That as a shareholder with vested interest and civic rights in the 2<sup>nd</sup> Respondent company (Oando Plc), I ought to have been given due audience and fair hearing in any decision, directive and sanction whatsoever, made in relation to my right of association and assembly, and right



to receive information at the Annual General Meeting by the Respondents.

17. That by virtue of the above directive and action of the 1st Respondent, Securities and Exchange Commission (i.e. SEC), suspending/postponing indefinitely the 2019 Annual General Meeting (AGM) of the company (i.e. Oando Plc), and the company (i.e. Oando Plc) consequently not holding its 2019 AGM till date, my right and freedom of association and assembly with other shareholders and members as well as my right and freedom to receive information from the other shareholders, members of the company, on the affairs of the company have been denied me and abated indefinitely.

18. That the Annual General Meeting of the 2nd Respondent company (i.e. Oando Plc) is the only statutory forum and platform for my right of association and assembly with other shareholders/members and to obtain information from other shareholders/members, make decisions on the affairs of the company and my interest as a shareholder and member of the company.

22. That the action or directive of the 1<sup>st</sup> Respondent (SEC) with the objective of removing the Directors duly appointed by me and other shareholders of the 2<sup>nd</sup> Respondent company from office without prior reference to the shareholders in General meeting or giving shareholders an opportunity to be heard is a violation of the Applicant's right to fair hearing in the determination of his civil rights and as such unconstitutional.

30. That it is in the interest of justice to grant my application thus enforcing my constitutional right of association and assembly with my other co-shareholders as the Annual General Meeting and my right to receive information from my other co-shareholders and the 2nd Respondent company (i.e. Oando Plc) at the Annual General Meeting.

At page 2, paragraph 3.1 of the Applicant's written address, the sole issue distilled for the resolution of the Court is couched thus: Whether the Applicant is entitled to the grant of his reliefs in enforcement of his fundamental right of association and assembly, and his human right to receive information?

On the 9<sup>th</sup> day of December, 2020, this matter came up for hearing. Appearing for the Applicant, Bola Olotu (who appeared with Emmanuel Idoko) informed the Court that neither the 1st Respondent nor the 2nd Respondent was in court despite hearing notice being served on them and none of their representatives appeared either.

Asserting that the fundamental rights of association and assembly as well as human right to receive information are sacrosanct, the Learned Counsel for the Applicant drew the attention of this Court to Section 40 of the 1999 amended Constitution of the Federal Republic of Nigeria, Articles 9(1), 10(1) and 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act wherein the said rights have been cherishingly provided for and generously preserved. Drawing a nexus between the Applicant's fundamental and human rights

earlier referenced and provisions of Sections 81; 114 (2) (b) CAMA 1990 (now Sections 107; 138(1) (b) CAMA 2020), Counsel submitted that the exercise of the Applicant's constitutionally guaranteed rights is inextricably tied to his attendance of the 2nd Respondent's Annual General Meeting being the only legal platform (within the orbit of the corporate laws of this country) donated for the exercise of the said constitutionally inured rights.

To buttress his points, further reliance was placed on Sections 227(1), 228 CAMA 1990 (now Section 251(1), 252 CAMA 2020). Counsel espoused the view that the conduct of the 1st Respondent being complained of as captured by the 31 paragraphed affidavit of the Applicant is an invasion of these constitutionally protected rights of the Applicant for which this Court has a duty to uphold, protect and vindicate by quashing the 31st May 2019 letter of the 1st Respondent and reversing the effect of the said letter, which the Applicant herein persistently contends, has visited deleterious consequences on his constitutionally protected rights.

In resolution of the sole issue agitated by the Applicant, I would first observe that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were served with the Originating Motion of the Applicant, as evidence on record proves, they have lifted no finger in putting across their own side of the story so as to effectively square up with the Applicant and meet his agitations full length. There is abundance of authority in affirmation of the age-long postulation that once opportunity to be heard has been accorded a party by the Court, such a party who fails, refuses and or neglects to take advantage of the said opportunity of being heard must never subsequently be heard to

complain that his fair hearing right has been violated or breached by the Court and such a complaint cannot found any effort to disturb the outcome of such a proceeding. Orugbo & Anor. v. Una & Ors (2002) 9-10 S.C.61; (2002) LPELR - 2778 (SC) @ 36-37 is a handy case in exemplification of this hallowed proposition of law. HASSAN v. UNITY BANK (2018) LPELR-45261(CA); and EZEFOR v. HONEY KING MEDIA LTD (2018) LPELR-44558(CA) are also apposite. In Pam & Anor. Vs Mohammed (2008) 16 NWLR (Pt.1112) 1 @ 48 E-F His Lordship, Oguntade, JSC stated thus:

**"The question of fair hearing is not just an issue of dogma. Whether or not a party has been denied of his right to fair hearing is to be judged by the nature and circumstances surrounding a particular case; the crucial determinant is the necessity to afford the parties equal opportunity to put their case before the Court before the Court gives its judgment"**

With the above in view, I will come back later in this judgment to examine the legal implication of the refusal, wilful negligence and or failure of the Respondents to challenge the suit of the Applicant as constituted.

There is no difficulty is appreciating the case which the Applicant has brought to the Bar of this Court. His complaints are straightforward, simple and anchored on those popular fundamental and human rights legislations that are binding in this country specifically Sections 36(1), 40(1) of the Nigerian 1999 amended Constitution, Articles 9(1), 10(1) and 11 of the African Charter on Human and Peoples' Rights (Ratification and

Enforcement) Act among others providing, in the main, for the protection of fair-hearing, association, assembly and information rights.

In my view, while applications of this nature may not be entertained in administrative law or under company law, the fundamental rights enforcement procedures are not only sui generis, they provide that actions cannot be defeated by lack of standing. It even went beyond that, encouraging third party actions to enforce such universally proclaimed rights which are in a class of their own.

Under the wide domain of fundamental and human right laws, the rights bestowed on the Applicant whose breach he bitterly complains of in this matter are indeed treated by the law as sacrosanct as argued by Counsel both in Nigeria and Elsewhere. First, SEC, the 1<sup>st</sup> Respondent took a decision affecting the interests of the Applicant without giving him the opportunity of being heard prior to arriving at the said decision.

I have x-rayed the totality of the content of Exhibit C which is the May 31<sup>st</sup>, 2019 letter of the Securities and Exchange Commission addressed to the Chairman of the 2<sup>nd</sup> Respondent. There is no iota of evidence, at least on the face of the document, suggesting that prior to the arrival of the decision contained in the Exhibit C that the Applicant was provided with the opportunity of hearing. In this wise, paragraphs 14, 15 and 16 of the Applicant's affidavit becomes relevant and I am impelled to reproduce same again even though at the risk of prolixity:

14. That at all material times to this action, the 1st Respondent (SEC) has not provided the 2<sup>nd</sup> Respondent company and its shareholders, with a copy of Deloitte's audit report upon which the decision of the 1st Respondent (SEC) to effectively sack the Board (elected by the shareholders) was made nor were we made aware of the allegations or findings therein.

15. That the said Deloitte 's audit and investigation report on the affairs of the 2nd Respondent company (Oando Plc) of which I am a member and shareholder, and which founded the 1<sup>st</sup> Respondent's (SEC) 31<sup>st</sup> May 2019 letter and its findings and directive(s) was not furnished or made available to me as a shareholder neither was it tabled or discussed at any meeting of the shareholders thereby denying and depriving me my right and freedom to receive information as well as my right to be heard on the affairs of the 2<sup>nd</sup> respondent company (Oando Plc), before the sanctions and directives thereby in the 31<sup>st</sup> May 2019 letter of the 1<sup>st</sup> Respondent which affects my fundamental and human rights.

16. That as a shareholder with vested interest and civic rights in the 2<sup>nd</sup> Respondent company (Oando Plc), I ought to have been given due audience and fair hearing in any decision, directive and sanction whatsoever, made in relation to my right of association and assembly, and right to receive information at the Annual General Meeting by the Respondents.

18. That the Annual General Meeting of the 2<sup>nd</sup> Respondent company (i.e. Oando Plc) is the only statutory forum and platform for my right of association and assembly with other shareholders/members and to obtain information from other shareholders/members, make decisions on the affairs of the company and my interest as a shareholder and member of the company.

22. That the action of directive of the 1<sup>st</sup> Respondent (SEC) with the objective of removing the Directors duly appointed by me and other shareholders of the 2<sup>nd</sup> Respondent company from office without prior reference to the shareholders in General meeting or giving shareholders an opportunity to be heard is a violation of the Applicant's right to fair hearing in the determination of his civil rights and as such unconstitutional.

It is my finding that the above depositions are correct and in their aggregate provides a solid foundation for accepting their purport which is that the 1<sup>st</sup> Respondent (SEC) breached the Applicant's fundamental right to fair hearing amply guaranteed under Section 36(1) of the amended 1999 Constitution. *Akinfe v. The State* (1988) 3 NWLR (pt. 85) 729 presents us with a textbook example of the consequences that attend to the violation of fair hearing principle enshrined in the constitution which all those exercising judicial or quasi-judicial functions are bound to adhere to. There is no doubt that Section 36(1) encapsulates the twin pillars of natural justice which, in the Latin heydays of the law, are expressed as: *nemo iudex in causa sua* (no man should be a Judge in his own cause) and *audi alteram partem* (please hear

the other party], Audu v FRN (2013) LPELR -19897 (SC) 13. More importantly, the wisdom of our courts has insisted that this particular provision must be expansively interpreted, Bamgboye v. University of Ilorin [1999] 10 NWLR (Pt. 622) 290, 333; Adebisi v State (2014) LPELR -22694 (SC) 40; A-C. Per Nweze, J.S.C. (P. 24, Paras. A-C). Under no circumstance shall this right be denied a party for when the inviolate principles ingrained therein are departed from, 'justice is but a hoax', Emeka vs. Okoroafor [2017] 11 N.W.L.R. (Pt. 1577) S.C. 410, per Eko, J.S.C. Emphasizing the ubiquity of this fair hearing right the ebullient Nweze, J.S.C., in Kanu v. State (2017) LPELR-42101(SC) made this charming revelation:

Instructively, this Court in cases too numerous to be cited here, has endeavoured to "give to individuals the full measure of the fundamental rights and freedoms referred to." In particular, its altitude to the fair hearing provisions has been to seek after the highest possible ideal of justice and fairness.

Little wonder then that the law has long taken the undisturbed view that once there is a breach of the right of fair hearing, the whole proceedings in the course of which the breach occurred and the decision arrived at by the Court become a nullity. Yusuf v State (2011) 18 NWLR (Pt. 1279) 853 at 870; Effiom v State (1995) 1 NWLR (pt 373) 507; Madu v State (1997) 1 NWLR (Pt. 482) 386. In ONUWA KALU v. THE STATE (2017) LPELR-42101(SC), Nweze J.S.C. gave a far-reaching insight into the entire purport of Section 36(1). For its beneficial impact on the fortune of our discussion, we take the liberty of this exercise to quote his leading judgment in extensor;



This, unarguably was the context that yielded this Court's opinion in *Kim v State* (1992) LPELR -1691 (SC) 11-12; F-E that: Human rights in our written Constitution mark a standard of behavior which we share with all civilized countries of the world. Since the United Nations Universal Declaration of Human Rights in 1948, though it is still left for various member nations to determine which rights from the plethora of rights then declared they would wish to incorporate into their domestic laws, once incorporated, their application lose the character of insular isolationism. Rather they assume a universal character in their standard of interpretation and application. One of those universal characters of their breach is that, in case of a right to fair hearing, once it is duly established that it has been breached in a judicial proceeding, it vitiates the proceeding. If therefore, I find that it was breached in this case, I shall have no alternative but to allow the appeal. See *Michael Uda Udo v. The State* (1988) 3 NWLR (Pt. 82) 316; *Galas Hired v. The King* (1944) A. C. 149; *Dixon Gokpa v. IGP* (1961) All NLR 423; *R v. Mary Kingston* 32 C. App. R. 83; and *Godwin Josiah v. The State* (1985) 1 NWLR (pt 1) (sic). And fair hearing in this respect compendiates not only compliance with the two rules of natural justice - *audi alteram partem* and *nemo iudex in Causa sua*.

It entails complying with all the provisions of that section of the Constitution. It also entails doing, during the course of the trial, all things which will make an impartial observer leaving the Court room to believe that the trial has been

balanced and fair to both sides to the trial. From its tenor, therefore, the Court is required to conduct the trial or hearing of a case with all fairness to both parties to the suit and without bias or partiality in favour of, or against either party. That is the rationale for the prescription that a complaint of breach of fair hearing is usually against the Court or Tribunal, whether the parties before the Court were afforded equal opportunity to fully ventilate their grievance.

Okanlawon v State (2015) LPELR-24838 (SC) 52-53; E-B; Peters Pam and Anor v Mohammed and Anor (2008) 5-6 SC (pt.1) 83; Deduwa v Okcrodudu (1976) NMLR 236, 246; 9-10 SC 329. Such is its primacy in our administration of justice that no decision can be regarded as valid unless the trial Judge or Court has heard both sides in the conflict. State v. Onagoruwa (1992) LPELR -3228 (SC) 33; D-E; Deduwa v. Okorodudu (supra). This test of fair hearing applies once a trial has commenced, after issue has been joined, State v Onagoruwa (supra); nay more, it applies from the beginning to the end of the trial. Oyewole v Akande and Anor (2009) LPELR- 2879 (SC) 36-37; Deduwa v. Okorodudu (1976) 9 - 10 SC 329; News Watch Comm. Ltd. v. Attah (2006) 12 NWLR (pt.993) 144; A. G Rivers State v. Ude (2006) 17 NWLR (pt 1008) 436.

It is this logic that yielded the reasoning in the decisions of this Court: decisions which are remarkable for their unanimity on the point that it [that is, fair hearing] imposes an ambidextrous standard of justice in which the Court must be fair to both sides of the forensic conflict. Ndu v. The

State [1990] 7 NWLR (pt. 164) 550, 578; Ekpeto v Wanogho [2005] All FW LR (pt 245) 1191, 1203; Amamchukwu v. FRN [2009] All FWLR (pt.465) 1672, 1679. It therefore does not anticipate a standard of justice which is biased in favour of one party but prejudices the other. Ekpeto v Wanogho (supra). Above all, it is not a technical doctrine, but one of substance, Ogundoyin v. Adeyemi [2001] 33 WRN1, 14 -15; Kotoye v C.B.A (1989) 1 NWLR (Pt. 89) 418, 448. The touchstone for determining the observance of fair hearing in trials is not the question whether any injustice has been occasioned on a party due to want of hearing.

It is rather the question whether an opportunity of hearing was afforded to parties entitled to be heard. J.C.C. Inter Ltd. v. N.G.I. Ltd. (2002) 4 WRN91, 104; Amamchukwu v. FRN (2009) LPELR -455 (SC) 11-12. It is thus outrageous to deny a party an opportunity of hearing, Onyeneh v. Egbuchula (1996) 5 NWL1 (pt. 448) 255, 265, Gyang and Anor v COP, Lagos State and Ors (2013) LPELR -21893 (SC) 12- 13; A.R v. Electricity Joint Commission (1968) NMLR 102; Adeyemi v. A.G Federation [1984] 1 SCNLR 525. ”

The above apart, the allegation of violation of Applicant’s right to freedom of association, right to assemble freely and to receive information by the 1<sup>st</sup> Respondent is believed by me.

Nigeria is a state party to the 1966 International Covenant on Civil and Political Rights (ICCPR). Article 21 governs the right of peaceful assembly, providing that:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other

than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Article 11 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act which was cited and relied on by the Applicant amply provides that:

“Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”

Also, Article 9 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act provides as follows:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

The Fundamental Rights Enforcement Procedure Rules, 2009 under which the Applicant commenced the instant application enjoins me to uphold and apply the above referenced regional human rights instrument. More importantly, Section 40 of the 1999 amended Constitution provides in term identical to the afore-stated regional statutes. In amplification and espousal of the said Sections 39 and 40, the Nigerian Court of Appeal, while setting aside the Public Order Act, in *IGP v. ANPP* [2007] 18 NWLR (Pt. 1066) 457 at 498-499 affirmed those rights which the

Applicant contends here have been breached, a contention which I have affirmed. It is clear from the affidavit evidence, particularly paragraph 22 that the 1<sup>st</sup> Respondent by its action in preventing the holding of the AGM also breached the Applicant's right to appoint and remove Directors of the Company at the postponed AGM. This was a right available to the Applicant and other shareholders at the AGM.

Unfortunately, the Respondents, particularly the 1<sup>st</sup> Respondent, failed to say a word in reaction to the Applicant's suit even the face of the mountainous allegations which the Applicant leveled against it that ordinarily ought to elicit a rebuttal or joining issue of a sort. This is more than baffling. Since my contract of hire is to apply the Nigerian law as it is, I will proceed to apply the consequences ordained by the laws of the land in circumstances I have seen myself, *Okonkwo Vs. Kpajie* 1992 NWLR (Pt. 226) 633. The case of *Oguejiofo v Oguejiofor* (2006) 1 SC (Part 1) 157 provides the guiding lamp in pointing at the position of the law where His Lordship, Mohammed, J.S.C. aptly stated thus:

“The respondent had failed to file any counter affidavit to challenge the facts averred in the Appellant's a affidavit in support of the preliminary objection to the competence of the respondent's action, the unchallenged facts remained uncontroverted and therefore deemed admitted ”

In *Yar'adua v. Yandoma* (2015) 4 NWLR (Pt. 1448) 123, Muhammad, J.S.C. contributed this extremely useful passage:

“One agrees with the Learned Senior Counsel to the Appellants that it is an age-old principle that averments in the affidavit of a party which are neither challenged nor

controverted by his adversary are deemed admitted and the Courts must act on those undisputed averments as being true.”

In *Owuru V. Adigwu* (2018) 1 NWLR (PT.1599) 1, the Supreme Court yet again confirmed that any deposition made in an affidavit which is not challenged or controverted is deemed admitted, **Tukur v. Uba (2013) 4 TWLR (Pt. 1343) 90.**

In the instant case, this Court finds from the respective proofs of service that the various processes in this matter were served on the 2nd Respondent at its given address at Plot 1386 Tigris Crescent, Maitama, Abuja through one Sarah Bako, the Office Administrator. In respect of the 1<sup>st</sup> Respondent, the bailiff of this Court issued a certificate of service and went further to swear to an affidavit of service showing that the processes of this Court were served on the Legal Department of the 1<sup>st</sup> Respondent at its address at Plot 272, Samuel Adesujo Ademulegun Street, Central Business District, Abuja on 27/11/2020.

It is a trite principle of law that an affidavit of service is prima facie evidence of service which the Court is entitled to rely on- See *OKOYE & ANOR v. CENTRE POINT MERCHANT BANK LTD* (2008) LPELR-2505(SC). I therefore find that the Respondents were duly served but wilfully and deliberately failed and/or refused to appear before this Court.

What then is the consequence of the Respondents’ failure to enter a defence to this suit? I think that it is now well-settled that where a party fails to deliver a defence to a suit, the Court must deem such a party to have admitted and conceded to the case against him. Where a defendant to an action fails to deliver his

defence, such a defendant must be adjudged to have conceded to the case of the Plaintiff. Indeed, it is not the duty of a Court to assist a party who fails to file a defence in a matter to marshal a defence. Reference is made to the dictum of the apex Court in *FUTMINA & ORS v. OLUTAYO* (2017) LPELR-43827 (SC) where Eko J.S.C. opined thus:

"In the proceedings at the Court of first instance, culminating in the appeal at the lower Court, the appt Hants filed no defence or counter affidavit The facts constituting the cause of action were deemed taken as admitted and therefore established against the appellants. The basic principle of our adversarial jurisprudence is that it is the duty of the defendant to raise his defence. The trial Court owes the defendant no duty to raise a defence to the claims against him. Doing that offends Section 36(1) of the Constitution and the principles of natural justice, particularly the rule that the Court or Tribunal established by law shall be "constituted in such a manner as to secure its independence and impartiality". See also Section 17(2)(e) of the Constitution. This injunction is what, in common law, is expressed as *nemo judex in causa sua*. The rule prohibits or restrains the Judge or Court of law from being a judge in his own cause in order to actualise his or its impartiality."

Flowing from the above, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in this suit are deemed to have admitted all the depositions made in his affidavit founding his claims in the Originating Motion, Henry Stephens. **Engineering Limited Vs. S. A. Yakubu Nigeria Limited. [2009] 10 NWLR (Pt. 1149) 416.** I agree.

In view of the circumstances that have crystallized, the factual findings I have made and the applicable laws which I have examined, I am of the firm view that the suit of the Applicant is meritorious. It succeeds In consequence therefore, it is ordered as follows:

1. It is hereby declared that the Applicant as a member and/or shareholder of the 2<sup>nd</sup> Respondent (Oando Plc) has a right and freedom of association and assembly with other shareholders and right to receive information at the Annual General Meeting (AGM) of Oando Plc.
2. An order is hereby made declaring the 31<sup>st</sup> May 2019 letter of the 1<sup>st</sup> Respondent (SEC) to the 2<sup>nd</sup> Respondent (Oando Plc) as unlawful, and a violation of the Applicant's fundamental right to receive information on the affairs of the 2<sup>nd</sup> Respondent (Oando Plc), his interest and shares in the 2<sup>nd</sup> Respondent company (Oando Plc).
3. It is further declared that the letter from the 1<sup>st</sup> Respondent (Securities and Exchange Commission) to the 2<sup>nd</sup> Respondent (Exhibit C) dated May 31<sup>st</sup>, 2019 which breached the Applicant's right; to receive information as enshrined in Article 9 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act is illegal, null and void and of no effect whatsoever.
4. An order is hereby made declaring as unconstitutional, null and void and a violation of the applicant's right to freedom of Association, Assembly and right to receive information, the directive of the 1st respondent, Securities and Exchange Commission (i.e. SEC)



suspending/postponing indefinitely the Annual General Meeting (AGM) of Oando Plc, which is the gathering of the 2<sup>nd</sup> Respondent (Oando Plc) members and shareholders to which the applicant belongs for the purpose of association, assembly and receiving information.

5. An order is hereby made setting aside the directive of the 1<sup>st</sup> respondent i.e. Securities and Exchange Commission (SEC) suspending/postponing indefinitely the Annual General Meeting (AGM) of the 2<sup>nd</sup> Respondent (Oando Plc) in violation, breach and contravention of the Applicant's right to freedom of association and assembly with other shareholders and right to information from other shareholders and Oando Plc.

6. An order is hereby made declaring as unconstitutional, null and void and a violation of the applicant's right to freedom of association, assembly and right to receive information, the refusal and/or failure of the 2<sup>nd</sup> respondent (Oando Plc) to hold and or convene its 2019 Annual General Meeting (AGM) which is the gathering of the 2<sup>nd</sup> Respondent's (Oando Plc) shareholders and members to which the applicant belongs for the purpose of association, assembly and receiving information on the affairs of Oando Plc, his interest and shares in the 2<sup>nd</sup> Respondent company (Oando Plc).

7. That the 1<sup>st</sup> Respondent, either by itself, servants, assigns, privies or agents howsoever described are hereby restrained from interfering in any manner whatsoever with the Directors of the 2<sup>nd</sup> Respondent lawfully appointed by

the Applicant and shareholders in the 2<sup>nd</sup> Respondent's last Annual General Meeting.

8. The 2<sup>nd</sup> Respondent (Oando Plc) is ordered to convene and hold its Annual General Meeting within 90 days of the order of the court and in compliance with the provisions of the Companies and Allied Matters Act while the 1<sup>st</sup> Respondent is equally restrained by itself, its servants, assigns, privies or agents howsoever described, from interfering with, disrupting and/or disturbing the applicant's constitutional right of Association, Assembly and right to receive information from other shareholders and members of Oando Plc at their 2019 Annual General Meeting (AGM).

This shall be my judgment which on the 9<sup>th</sup> day of December, 2020 I reserved.

**APPEARANCES**

Bola Olotu, Esq. with Emmanuel Idoko, Esq. for the Applicant.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are absent in court.

Sign  
Hon. Judge  
23/02/2021