

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRA U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 32
CASE NUMBER: SUIT NO: FCT/HC/CV/2770/2019
DATE: 1/7/2021

BETWEEN:

1. COMRADE PHILIP OSHIOKHUE.....CLAIMANT

AND

1. DR. LEONARD NZENWA
2. INDEPENDENT NATIONAL ELECTORAL COMISSION
3. AFRICAN ACTION CONGRESS

}.....DEFENDANTS

JUDGEMENT

The Claimant herein has filed an originating summons dated 17th day June 2020 and filed same day, he further filed an amended originating summons pursuant to Order 25 Rule 3 of the High Court (CIVIL PROCEDURE) RULES, 2018 dated and filed the 8th day of October 2020, the processes where filed to set aside the appointment of the 2nd defendant as the National Chairman of the African Action Congress (AAC). The questions for which this Honorable Court’s determination are sought are as follows:

- “1. Whether the decision of the National Executive Committee (NEC) of the African Action Congress (AAC) made pursuant to its authority as expressly provided for in the Constitution of the African Action Congress (AAC) is binding on all its members.**
- 2. Whether the decision of the National Executive Committee of the African Congress (AAC) held on the 27th day of July 2019 made pursuant to its authority expressly provided for in the constitution of the African Action Congress (AAC) is binding on all its members.**
- 3. Whether the decision of the National Executive Committee of the African Action Congress (AAC) held on the 27th day of July 2019 expelling the 1st defendant from the African Action Congress (AAC) can be countermanded by the African Action Congress or Members or an expelled National Officer or Organ of the African Action Congress (AAC) to hold or continue to hold himself /themselves out as the claimant’s Secretary or national officers or member of the National Executive Committee of the African Action Congress (AAC).**
- 4. Whether the purported election and/or appointment of the 1st defendant as the National Chairman of the African Action Congress (AAC) without the authority and ratification by the National Executive Committee of the African Action Congress (AAC) is not illegal, unlawful, unconstitutional, null, void and of no effect whatsoever and liable to be set aside.**
- 5. Whether the actions of the 1st defendant taking arbitrarily and unilaterally without recourse to the National Executive Committee or other Organs of the African Action Congress (AAC) and which are detrimental to the interest and goals of**

the African Action Congress (AAC) and its members ought not be set aside for being illegal, null and void.

6. Whether the 2nd defendant can in its role as a monitoring agency for registered political parties interfere with or negate the decision/resolution of the National Executive Committee of the African Action Congress (AAC) reached in accordance with the Constitution of the AAC.”

The Claimants seeks the following reliefs:

1. *A declaration that the decisions of the National Executive Committee of the African Action Congress (AAC) made pursuant to its authority as provided for in Article 52(N) of the Constitution of the AAC is binding on all its members.*
2. *A declaration that the decision of the National Executive Committee of the African Action Congress (AAC) held on the 27th day of July 2019 made pursuant to its powers in Article 52(N) of the Constitution of the AAC is binding on all its members.*
3. *A declaration that the resolution passed by the National Executive Committee of the African Action Congress (AAC) made on the 27th day of July 2019 expelling the 1st defendant from the African Action Congress AAC cannot be countermanded by the African Action Congress or members or an expelled National Officer or Organ of the African Action Congress (AAC) to hold or continue to hold himself/themselves out as AAC’S secretary or national officers or members of the National Executive Committee of the African Acton Congress.*
4. *A declaration that the purported election and/or appointment of the 1st defendant as the national chairman of the African*

Action Congress (AAC) without the authority and ratification by the National Executive Committee of the AAC is illegal, unlawful, unconstitutional, null, void and of no effect whatsoever and liable to be set aside.

- 5. A declaration that the actions of the 1st defendant taking arbitrarily and unilaterally without recourse to the National Executive Committee or other organs of the African action congress and which are detrimental to the interest and goals of the AAC and it ought to be set aside for being illegal, ultra vires null and void.***
- 6. A declaration that the 2nd defendant cannot in its role as a monitoring agency for registered political parties interfere with or negate the decision /resolution of the national executive committee of the AAC reached in accordance with the constitution of the African Action Congress AAC.***
- 7. An order directing the 2nd defendant to recognize and give effect to the decision of the National Executive Committee of the African Action Congress held at its National Secretariat, Abuja on the 27th July 2019 as the executive authority of the AAC and immediately withdraw recognition to the 1st defendant and his purported led EXCO.***
- 8. A declaration that by the combined provisions of sections 223(2)A of the Constitution of the Federal Republic of Nigeria , 1999 (As Amended) and Article 85 (1) of the Electoral Act, 2010 (As Amended) the four years tenure of office of the current National chairman of AAC Omoyele Sowore, is still subsisting.***

9. An order of perpetual injunction restraining the 1st defendant whether by himself, agents, privies, servants or otherwise howsoever from parading himself as the National Chairman of the African Action Congress (AAC)

10. An order of perpetual injunction restraining the 2nd defendant from recognizing the 1st defendant as the National Chairman of the African action congress (AAC).

11. And for such further or other reliefs as the honorable court may deem just and expedient in the circumstances”.

The originating summons is supported by a 27 paragraphed affidavit deposed to by Comrade Philip Oshiokhue and annexures marked as Exhibit A- E3. In the affidavit, the claimant averred that he is the current national organizing secretary of the party. He also averred in paragraphs 1 and 2 of the affidavit that, Mr. Omoyele Sowore is the National Chairman of the African Action Congress and that the 1st defendant was a member of the African Action congress until 27th July 2019 when he ceased to be a member of the party. The claimant further averred in paragraph 17 that at a meeting convened by the National Executive Committee of the African Action Congress on the 27th day of July 2019, the NEC passed a resolution, among others, to affirm Mr. Sowore as the National Chairman and Dr. Malcom Fabiyi as the deputy national chairman, the expulsion of the 1st defendant Dr, Leonard Nzenwa from the party, the setting up of the Constitution review committee; among others. The copy of the resolution, notification of expulsion of the 1st defendant from the party and publication same are marked as **Exhibits C, D1 & D2** respectively. The copy of attendance sheet for elected members of the NEC meeting held on 27th July 2019 is also attached and marked as **Exhibits E1, E2, & E3.**

He further averred in paragraph 23 that the purported election of Dr Leonard Nzenwa without recourse to the constitution of the party and due ratification by the NEC of the party is illegal and unconstitutional.

Also filed in support of the originating summons is a written address dated the 7th day of October 2020. In the said written address, the claimant's counsel raised five issues for determination, to wit:

1. Whether having regards to Article 52(N) of the Constitution of the African Action Congress AAC, the decision of the National Executive Committee NEC of the AAC is not binding on all its members.
2. Whether the 1st defendant is entitled to unilaterally assume office as the national chairman having been expelled from the party by the national executive committee for anti-party activities.
3. Whether the 1st defendant is entitled to hold the office of the national chairman of the African Action Congress Having hailed from different zone with the current chairman.
4. Whether having regard to the provision of Section 85 (1) and (3) of the electoral Act, 2010 (As Amended), Article 87 (1) of the constitution of the African Action Congress (AAC) vis a vis the Order of the Federal High Court was the 1st defendant duly elected and/or appointed to be the national chairman of the party and whether his action is not null and void.
5. Whether the purported national convention held on the 13th day of August, 2019 at the Rockview Hotel, Owerri, Imo State was valid.

In arguing issue one, counsel submitted that, sections 222(c) and section 223(1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) makes it mandatory for political parties to have a constitution. And section 233 states that, a constitution of the political party must possess provision for periodic election for its principal officers and ensure members of the organs of the party reflect federal character.

Counsel also submitted that, the constitution of a political party is supreme and members are bound to comply with same. Reliance was placed on the cases of **PDP V SYLVA (2012) 13 NWLR (PT 1316) 85 @ 154 PARAS E-G, LAU V. PDP (2018) 4 NWLR (PT 1608) 60 @123, PARAS E-F and PDP V. SHERRIF(2017) 15 NWLR (PT 1588) 219 @ 287 PARAS A-B**. In conclusion, on issue one, counsel submitted that, the NEC of AAC has powers to make binding decisions on members of the parties and so, the resolutions arrived at by the NEC of the AAC are binding on the party and her members. Counsel urged the court to resolve this issue in favor of the claimant and hold that the decision of the NEC of the AAC is binding on all members.

The learned counsel argued issues 2 and 3 together and submitted that, the 1st defendant and his purported presently constituted national executive officers is invalid because the NEC of AAC at a meeting held on 27th July 2019 have expelled the 1st defendant from the party. That the present action seeks to challenge the action of the 1st defendant and stop him from parading himself as the national chairman of the AAC and the 2nd defendant from giving undue recognition to the 1st defendant and his cohorts in the purported national executive officers.

Similarly, counsel argued issues 4 and 5 together and submitted that, the appointment of the 1st defendant as the national chairman of the African Action Congress did not follow due process and as a result, same is illegal, null and void. Counsel cited section 223(1) (A) of the 1999 constitution as amended and Article 85(3) of the Electoral Act

2010 and submitted that, in compliance with the , aforementioned sections, the constitution of the AAC stipulates for period within which elections for principal officers shall be held and procedure for same, however, no elections were conducted to elect Mr. Leonard Nzenwa as the National Chairman of AAC.

In paragraph 4.32, the learned counsel argued further that, the Order of the Federal High Court, Abuja did not make any order directing the 1st Defendant to mount the saddle of the AAC and it is established principle of law that the court will not sanction an illegal act. Reliance was placed on the cases of **PAN BISBILDER (NIG) LTD V. F.B.N LTD (2000) 1 NWLR PT 642 PG 684 @697 PARAS G- H and MACFOY V. UAC LTD (1962) A.C 152.**Counsel urged this honorable court to hold that the entire act, undertaken by the 1st defendant was without due authority and as such, amounted to a nullity and declare same null and void. Lastly, counsel urged this honorable court to declare all actions of the 1st defendant without due process of law amounted to nothing and resolve these issues in favor of the claimant.

In opposition to the originating summons, 1st defendant filed a counter affidavit of 12 paragraphs dated 26th day of October 2020 and filed on the 30th day of October 2020, the affidavit is deposed to by the 1st defendant Mr. Leonard Nzenwa and was accompanied by a written address and annexures marked as **Exhibits EXH1 – 3.** In the said written address, the learned counsel to the 1st defendant raised a sole issue for determination to wit;

Whether having regard to the entire facts and circumstances of this suit, it is in interest of justice to dismiss this suit with cost against the claimant and make a consequential order in favor of the 1st defendant.

The learned counsel of the 1st Defendant submitted that the claimant is seeking declaratory and injunctive reliefs and the law is trite that the claimant must only succeed on the strength of his case and not any perceived weakness of the defense. Counsel cited the case of **CHUKWUMAH V SPDC (NIG) LTD (1993) LPELR -864 (SC)**. Moreso, counsel submitted that, to demonstrate the failure of the plaintiff's case, the 1st defendant has shown in exhibits 1 and 2 that, the administration of the AAC is vested on the National Chairman led by Dr Leonard Nzenwa who heads the NEC of the Party and takes decision on their behalf. Counsel further argued in paragraph 3.05 of the written address that, the claimant is not the member of the 3rd defendant and also not the national organizing secretary of the 3rd defendant as he has never been elected or appointed by the party.

That Omoyele Sowore was initially suspended as the national chairman of the 3rd defendant and was later expelled from the party for various anti party activities where the 1st defendant was appointed as the acting National Chairman of the party and by Exhibit 1, the High Court of the Federal Capital Territory, Abuja , in **Suit No; FCT/CV/1874/2019** affirmed the appointment of the 1st defendant as the acting National Chairman of the AAC, the court also in **SUIT NO: FHC/ABJ/512/2019** delivered judgment on 12th July 2019 affirming the suspension of the former National Chairman, Omoyele Sowore and validated the appointment of the 1st defendant as the acting national chairman of the AAC, the said judgment of the Federal High Court can be seen in exhibit 2. According to the claimant's counsel, **Exhibits 1 and 2** are legally binding and conclusive evidence of the suspension and appointment of the 1st defendant. Exhibit it 1 and 2 are judgment in rem and conclusively resolved the direct issue of

leadership of the party and also bind the claimant. It's also the contention of the 1st defendant's counsel that, this Honorable Court has a judicial duty to enforce and give effect to **exhibit 1 and 2**. Counsel relied on section 287 (3) of the 1999 constitution (as amended).

He further submitted that, on 9th August 2019, the 3rd defendant held a national convention wherein they formally suspended Omoyele Sowore was duly removed as the national chairman of AAC and also sacked from the party and the party duly proposed and elected the 1st defendant as the chairman of the AAC. That the 2nd defendant sent a duly nominated official who monitored the convention of the 3rd defendant and made an official report in that regard. The report is marked as Exhibit 3 series and in the same convention Mr. Sowore and Malcom Fabiyi were expelled. He finally submitted that the claims of the claimant are bereft of any legal basis and is bound to fail accordingly. Reliance was placed on the case of **AMOBI V. NZEGWU (2005) 12 NWLR (PT 938)120, 139 B- D**.

Counsel also contended that, the executive meeting said to have been held on the 27th July 2019 is frivolous as the conveners of same and the attendees do not have the capacity to do so, that on the 27th day of July 2019 when they purportedly held the NEC meeting, the 1st defendant had already been appointed as the national chairman of the party and affirmed by the court as seen in exhibit 1 and 2. Counsel finally submitted that the claimant does not have the locus standi to institute this action having been expelled from the party since 9th August 2019 as shown in **Exhibit 3** series.

Lastly, relying on the case of **UFOMBA V. INEC (2017)13 NWLR (PT1582)175, 215-216 and PDP V. SYLVA (2012) 13 NWLR (PT**

1316)85, 125, the counsel submitted that the National Chairmanship of the party is an internal affair of the party over which this honorable court does not have the jurisdiction to interfere with, he also urged the court to strike out paragraphs 17,21,22 of the affidavit as the present suit is based on claims in favor of persons who are not joined as parties since the claimant made assertions about rights and interest of non-parties.

Consequently, counsel urged this honorable court to make consequential orders upon the dismissal of this suit affirming the election of the 1st defendant. Counsel cited the case of **CHIESE V. NICON HOTELS LTD (2007) ALL FWLR (PT 388) 1152, 1164**. On the whole, counsel urged the court to dismiss this suit in limine, in the interest of justice as this suit is frivolous.

In further opposition to the originating summons, the 2nd defendant filed a counter affidavit of 13 paragraphs dated the 28th day October 2020 and filed same day. The counter affidavit is deposed to by one Ibrahim Sani, a chief clerical officer at the service of the 2nd defendant herein. Attached to the counter affidavit are annexures marked as exhibit J1 & J2 respectively. Equally filed in opposition is a written address dated 31st January 2020. In the said written address, the 2nd defendant's counsel raised two issues for determination, viz;

“(1). Whether Court Orders/Judgment are not meant to be obeyed as ordered.

(2). Whether the 2nd defendant has not performed its statutory /constitutional duty by the recognition of the action alleged to be recognized by it.”

The 2nd defendant's learned counsel in arguing issue one submitted that, Court Orders and Judgments must be obeyed and the 2nd defendant sequel to the receipt of judgment of the High Court of the Federal Capital Territory acted upon it by recognizing the 1st defendant as the National Chairman of the African Action Congress as ordered.

On issue two, counsel submitted that, upon receipt of the court Order/Judgment of the court that was forwarded by the 1st defendant's faction, the 2nd defendant complied by recognizing the faction, counsel cited Section 85 (1) and (2) of the Electoral Act 2010 and lastly submitted that the commission was under obligation to attend the convention of the 1st Defendant as well as accept the result and report of the convention that was held. Counsel urged the court to dismiss this suit in its entirety because the 2nd defendant has acted upon the court orders and has only performed its statutory obligations.

On his part, the 3rd defendant filed in opposition a counter affidavit and further counter affidavit of 5 paragraphs. The counter affidavit and the further counter affidavit were deposed to by one Justice Afolabi, a staff of Messrs Toki legal, counsel to the 3rd Defendant herein. Equally filed in opposition is a written address dated the 27th day of November 2020. In the said written address, 3rd Defendant's Counsel raised a lone issue for determination to wit;

- 1. Whether the claimant's suit ought to be dismissed for being an abuse of court process having being caught up by the doctrine of issue estoppel/res judicata, non-joinder of necessary parties, lack of locus standi and with no reasonable cause of action against the 3rd Defendant.**

In arguing the issue for determination, counsel to the 3rd defendant argued that, it is trite law that once a dispute has been finally and judicially pronounced upon by a court of competent jurisdiction,

neither the parties nor their privies can subsequently be allowed to relitigate the matter because a conclusive determination properly handed down is conclusive until reversed by an appellate court. Counsel submitted that the judgment of the High Court of the Federal Capital Territory, Abuja in **SUIT NO: FCT/CV/1874/419** on the 19th June 2019 and Order of the court in **SUIT NO: FHC/ABJ/CS/512/2019** which were attached to the processes filed by the 1st defendant are very clear that final judgments have already been delivered by courts in respect of the issues raised in this suit and so, the claimant is estopped from re-litigating the same matter having been caught up by legal principle of res judicata and the doctrine of estoppel. Counsel relied on the case of **AJISEGIRI V. SALAMI (2016) ALL FWLR (PT. 852) 1485 @ PG 1504, SECTIONS 169 & 173 OF THE EVIDENCE ACT 2011, AZEEZ V. ADUKE (2019) ALL FWLR (PT 997) 125 @ PG 153, APC V. PDP (2015) ALL FWLR (PT 791)1493 @ PG 1579 PARAS F-G.**

Counsel also contended in paragraphs 3.10 to 3.13 of the written address that, the honorable court in the judgment of the High Court of the Federal Capital Territory, Abuja in **Suit No: FCT/CV/1874/19** on the 9th June, 2019, and Order of the court in **Suit No: FHC /ABJ/CS/512 /2019 delivered on 12th July ,2019** are judgments in rem and same have confirmed the legality of the 1st defendant to act in acting capacity as the national chairman of the 3rd defendant and also affirmed the suspension of Omoyele Sowore since 2019. Reliance was placed on the case of **COLE V. JIBUNOH (2016) ALL FWLR (PT 860) 112 (SC) @ PG 1161 PARAS C-G, ADENIRAN V. IBRAHIM (2019) ALL FWLR (PT 971) 142 (SC) @ PG 171**

In conclusion, the learned counsel for the 3rd defendant submitted that the claimant's suit is caught up by the doctrine of issue estoppel and res judicata and urged this honorable court to hold that the claimant's suit is an abuse of court process and dismiss same. That the claimant lacks the locus standi to file this suit and the suit is

defective for non-joinder of necessary parties as the claimant is fighting in the interest of Sowore who is not a party to this suit. Counsel urged the court to dismiss this suit with substantial cost.

In response, the claimant filed a composite reply affidavit to the 1st, 2nd and 3rd Defendants' counter affidavit dated 8th February 2021 and a reply on points of law to the 1st, 2nd and 3rd Defendants' written address dated 2nd February, 2021 both processes were filed on the 5th day of February 2021.

The Claimant averred in paragraph 4 of the reply affidavit that, the 1st defendant's Counter Affidavit are not true as the 1st Defendant has been expelled from the 3rd Defendant and cannot be the national chairman of the party, that he doesn't have the consent of the 3rd defendant to depose to the counter affidavit or any other issue regarding the party.

Counsel submitted that, assuming without conceding that the 1st defendant was elected, his action is in breach of the constitution of the African Action Congress in that the election and /or appointment to be the chairman as alleged by him was not ratified by the resolution of the national executive committee and that there was no notice of such meeting or convention of the party. That every member of the party and all its organs are bound by the provisions of the said constitution and the decision of the National Executive Committee, that the actions of the 1st Defendant are contrary to the party's constitution and such actions should be declared invalid by this honorable court. Counsel further contended in response to the 1st Defendant's Written Address that, where a party complains that the provisions of the constitution of a political party has been breached by an act performed by another party, the court has to examine the acts complained of against the provisions and resolve the issue. Counsel relied on the cases of **ANZAKU V EXECUTIVE GOVERNOR, NASSARAWA STATE (2006) VOL 17 WRN CA 140 @ PG 177 & BOKO V NUNGWA (2019) 1 NWLR (PT 1654) PG. 404.**

It's also the contention of the claimant's counsel in paragraph 1.04 of the Written Address that, that, the 1st defendant shot himself at the leg when he stated in paragraph 2 (iii) of his counter affidavit that he was appointed as the acting national chairman of the party, that there's nowhere in the party's constitution and the Electoral Act 2010 (as amended) where it provided for appointment of a national chairman. Counsel urged this court to hold that the 1st Defendant's appointment is illegal, null and void and determine the matter in favor of the claimant as the 1st Defendant never campaigned nor solicited for votes which is the normal practice in a democratic setting.

I have carefully perused the originating summons, the reliefs sought, the grounds upon which same was predicated, the supporting affidavit and the annexures attached therewith together with the written address. I have equally studied all the counter – affidavits in opposition, the exhibits attached and the written addresses of the defendants. I have also gone through the claimant's reply on points of law. Therefore, it is my humble view that the issue for determination is thus:

“(1). Whether the claimant's suit is caught up with the doctrine of resjudicata.”

Before I delve into the issue for determination, I will start by considering the averments of the 1st defendant in paragraph 4(v) – 4 (viii) and the 3rd defendant's arguments in the written address as it borders on the issue of the competency of this suit. For clarity, I will reproduce the paragraphs hereunder:

Paragraph 4 (v) reads thus;

“That the suit is based on claims in favor of persons who are not joined as parties”

Also, paragraph 4 (viii) reads thus:

“that the non- parties referred to at paragraphs 17,21&22of the affidavit are necessary parties in whose absence the issues cannot be resolved.”

The 1st Defendant’s Counsel contended that the claims in the affidavit are assertions about non-parties, the said nonparties being necessary parties in whose absence the issue cannot be resolved. The 3rd defendant also averred in the affidavit that; the suit is defective for non-joinder of necessary parties. In this respect, it is expedient to consider what a necessary party means and the effect of non- joinder of same in an action. It is trite law that a necessary party is one whose presence is necessary for the effectual and complete determination of the suit. To put it in different words a, a necessary party is a person whose absence the issue in the suit cannot be decided or determined. In support of this, see the case of **LAGOS STATE BULK PURCHASE CORPORATION V PURIFICATION TECHNIQUES (NIG) LTD (2012) LPELR-20617(SC) (PP 36 – 36 PARAS C-D)** where a necessary party was defined as follows:

“...A necessary party is someone whose presence is essential for the effectual and complete determination of the issue before the court. it is a party in the absence of whom the claim cannot be effectually and completely determined...”

See also the case of **OLAWUYI V ADEYEMI (1990) 4 NWLR (PT 147) 746 @ 772, PARAS A-B**

On the effect of non- joinder of a necessary party, I refer to the case of **ASONIBARE V MAMODU & ANOR (2013) LPELR – 22192 (CA)** where the Court held thus;

“.. Failure to join a necessary party is only an irregularity which does not affect the competence of the court to adjudicate on the matter before it...”

I also refer to **ANAGOR& ORS V ILOKA 2019 LPELR-47985 (CA) (PP. 22-23) PARAS C-F** where it was held that;

“The proceedings of a court of law will not be a nullity on the ground of lack of jurisdiction simply because a plaintiff fails to join a party who ought to have been joined. I do not think that the present suit of the plaintiff is defeated by non-joinder of a necessary party to the proceeding...”

Consequently, in view of the above, it is my humble opinion that this suit is not incompetent. I so hold.

I will now turn to consider the issue for determination which is:

WHETHER THE CLAIMANT’S SUIT IS CAUGHT UP WITH THE DOCTRINE OF RESJUDICATA.

It is germane to state at the onset that the claimant herein is seeking mainly for declaratory reliefs. Therefore, the law is trite that the claimant who is seeking for declaratory reliefs must succeed on the strength of its own case by adducing credible evidence. This position of the law was re-echoed in the case of **MR UMOH EBENEZER THOMPSON V. MR Chyrss Essien (2019) LPELR – 18120 (CA) PER J.S ABIRIYI JCA**, held thus:

“...It is the law that declaratory reliefs are only granted when credible evidence has been led by the person seeking the declaratory relief. The person seeking the declaratory relief must prove his claim for declaratory relief without relying on the evidence called by the defendant. A declaratory relief will not be granted even on admission by the defendant...”

At this juncture, it should be noted that it is the case of the claimant as can be distilled from the affidavit evidence before the court that the national executive committee of the 3rd defendant held a meeting on the 27th day of July 2019 at the Party Secretariat situate at house 1 (Q) Road, Lugbe Abuja as and passed a resolution inter

alia, the affirmation of Mr. Omoyele Sowore as the national executive chairman, the affirmation of Mr. Malcom Fabiyi as the deputy national chairman, the expulsion of the first respondent (Mr. Leonard Ezenwa) from the party, the passing of vote of confidence on Mr. Omoyele Sowore and the Dr. Malcom Fabiyi as the National and Deputy National Chairman of the Party. In other words, the gamut of the claimant's suit is entered on the leadership of the 3rd defendant.

However, in putting up a defense on this matter, the Defendant particularly 1st and 3rd Defendants from their affidavit evidence averred among other things that the subject matter of this suit has already been settled by a court of competent jurisdiction. The 1st defendant annexed exhibits 1 and 2 respectively. Moreso, the 3rd defendant's counsel submitted in paragraph 3.5 of their written address that the claimant is estopped from re-litigating the same matter having been caught up by the legal principle of res judicata and the doctrine of issue estoppel.

First and foremost, it is pertinent at this point to consider what the term, res judicata means. It is defined by Black's Law Dictionary, ninth edition at page 1425 to mean thus:

“An issue that has been definitively settled by judicial decision. An affirmative defence barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction and that could have been but was not raised in the first suit...”

See the case of **KAMBAZA V. HAKIM AND ANOR (2019) LPELR 48139 (CA)**

Furthermore, for a plea of res judicata to be successful, there must be presence of some elements. These elements were summarized by the court of appeal in the case of ASUQOU & ANOR V. NKI & ORS

(2017) LPELR – 43456 (CA) per Stephen Jonah Adah , JCA at pp 7-9, paras E-B where it was held thus:

“...It is settled and customary that for a plea of res judicata to succeed, the following five essential elements are met: 1. The parties or their privies are the same in both the previous and the present proceeding in which plea is raised. 2. The claim or issues in dispute in both actions are the same. 3. The res or the subject matter of the litigation in the two cases are the same. 4. The decision relied upon to support the plea of res judicata is a valid, subsisting and final decision. 5. That the Court gave the previous decision relied upon to sustain the plea is a Court of competent jurisdiction...”

Let me pause here and apply the position of the law above to the instant case. The 1st Defendant in the instant case annexed his Counter Affidavit and Exhibits 1 and 2, I shall take my time examine the said Exhibits

Exhibit 1 is a judgement delivered on the 19th June 2019 by my learned brother, Hon. Justice Binta Muhammed between Hon. Abugu Bako as complainant and Mr. Leonard Nzenwa as defendant. Similarly, Exhibit 2 is a Judgement Order by my learned brother Hon. Justice I.E EKWO on 12th day of July 2019 between Dr. Leonard Ezenwa as the Plaintiff and Sowore Omoyele , Malcom Fabiyi, INEC as the Defendants.

Therefore, a careful perusal of exhibits 1 and 2 vis -a vis the reliefs sought in the instant originating summons by the claimant will show that the present suit borders on the same subject matter already adjudicated upon in the exhibits referred.

In other words, the subject matter of the instant case borders on the leadership of the 3rd defendant which has already been settled in the exhibits referred above. Consequently, parties are estopped from re litigating it except going on appeal or to have same set aside. To put

it clearly, Exhibits 1 and 2 are from Courts of competent jurisdiction and still subsisting. I so hold. See the case of **OBEYA V. FBN (2010) LPELR -4666 (CA) page 8-9 paras A-C** where it was held thus;

“...The Order of a Court of competent jurisdiction remains inviolate until set aside and so any one who an order is made against must obey it until the Order is set aside or discharged. Once an order exists it must be obeyed...”

Before I conclude, let me quickly say that the contention of the Claimant that a meeting was convened by the national executive committee of the 3rd defendant (AAC) on the 27th day of July 2019 wherein the NEC of AAC passed a resolution and vote of confidence affirming Mr. Omoyele Sowore and Dr Malcom Fabiyi as the chairman and deputy chairman of the party and the expulsion of the 1st defendant (Mr. Leonard Nzenwa) from the party , among other resolutions. The said meeting was convened while the two judgements as contained in exhibit 1 and 2 had already been delivered and subsisting. Nothing was placed before this honourable court to show that the said judgements were either set aside or appealed against. Therefore, I agree with the averments of the 1st defendant in his counter affidavit particularly at paras 3 (x) (xi) and (xii). For ease of reference, I shall reproduce the said paragraphs hereunder;

Paragraph 3 (x) reads thus:

“ That the national executive committee of the 3rd defendant did not convene any meeting on 27th July 2019 and no resolution or decision could have been taken.”

Paragraph 3 (xi) reads thus:

“That exhibit C attached by the claimant is utterly frivolous as both the convener and attendees of the purported meeting do not have the authority or capacity to do so.”

Paragraph 3(xiii) reads thus:

“ That any meeting of the national executive committee of the 3rd defendant can only be convened by myself as the acting national chairman of the party at the material time because as at the 27th July 2019 when they gathered themselves in the name of any meeting of NEC, I was already appointed as the Acting National Chairman of the party and affirmed by the Court in Exhibits 1 and 2.”

In this regard, I refer to the exhibit B (Constitution of AAC) attached to the supporting affidavit to the originating summon. Article 51 (i) and (ii) of the said Exhibit B provides thus:

“(ii). The national executive committee shall meet quarterly at the instances of the national chairman”

(iii). “the meeting of the national executive committee shall be held at other time by a resolution of two third of its members notifying the national chairman at least seven days to the date of the meeting and the national chairman may summon the meeting”

It is settled law that where the words of a document or statute are clear and unambiguous, they must be given effect. This was reinstated in the case of **OKOTIE EBOH V MANAGER (2005) 2 MJSC**, where the Supreme Court held thus;

“...Where the ordinary plain meaning of words used in a statute are very clear and unambiguous, effect must be given to those words without resorting to any intrinsic or external aid...”

The law is equally settled that members of a political party are bound by their constitution this was restated in the case of **MATO V HEMBER & ORS (2017) LPELR – 42765 (SC), (PP. 47, Paras A-C)** Where the Court held thus;

“...The Court has decided in quite a number of cases that political parties must obey their own constitutions as the court will not allow them to act arbitrarily or as they like...”

See also the case of **PDP V. SYLVA (2012)13 NWLR PT 1316 PARAS F-G PG 145.**

Consequently, from the above wordings of Exhibit B, it is clear that in the first instance, the meeting of the national executive committee can only be summoned at the instance of the national chairman but where he fails to do so, Article 51 (ii) (supra) vested two-third (2/3) of the members of the national executive committee the power to commence such meeting after the issuance of 7 days' notice to the national chairman.

It is apparent from the affidavit evidence before the court that the time in which the said meeting of NEC of ACC was convened i.e., 27th day of July 2019, the 1st defendant was the acting chairman of the party, the meeting was not at his instance and there is no evidence to show that the requisite 7 days notice was given to him.

In light of the above, it is my considered opinion that the convener of the said meeting of 27th day of July 2019 did not comply with the provisions of the Constitution i.e. Exhibit B. I so hold.

In the circumstances therefore, it is my considered opinion that the said meeting of the National Executive Council of African Action Congress of 27th day of July 2019, the convener having not followed due procedure for calling same, is null and void and the resolution reached is of no effect. I so hold

Having held above that this case is caught up with the principle of res judicata, it is my view that the claimant is not entitled to the reliefs sought. I so hold

To this end, I hereby resolve the issue for determination in favor of the defendants against the claimant and hold strongly.

On the issue of consequential orders at the instance of the 1st defendant, the law is settled that courts have powers to make consequential orders. This was stated in the case of **ADEOSUN V ADEOSUN & ORS (2014) LPELR – 22654 (CA) (PP 25 – 26 PARAS G- B)** where it was held that;

“... The power of the court to make consequential orders as the justice of a case demands on its own motion though to be exercised with circumspection also exist. One of the inherent powers of the court is to make consequential orders. Now a consequential order is one which flows directly and naturally from the decision or order of court made on the issues in litigation and inevitably consequent upon it...”

It is equally the law that consequential orders need not be specifically prayed but can be made by the court on its own upon due evaluation of the evidence and circumstances of the case. I refer the case of **PLATEAU STATE BOARD OF INTERNAL REVENUE V MAKAH (2020) LPELR -50324 (CA) PER HABEEB ADEWALE OLUMUYIWA ABIRU) CA (PP. 35-42) Paras D – A** where it was held thus:

“There is no doubt that one of the inherent powers of the Court is to make consequential Orders in the interest of justice even though the Order was not specifically asked for by either party to the case...”

See also the case of **BL LIZARD SHIPPING COMPANY LIMITED V. MU “WESTERN STAR” & ORS (2014) LPELR – 24085.**

A careful perusal of the exhibits placed before the court by the 1st defendant particularly exhibit 3 series will show clearly that the 1st defendant is entitled to the consequential order. I so hold

Finally, I refer to the case of **OLUWOLE V. MARGARET (2011) LPELR – 4970 (CA) @ PP. 15, PARAS D-F** PER Haruna Muhammed Tsammani; JCA held thus:

“...It is trite law that when a plea of estoppel per res judicatam is pleaded it has the offset of ousting jurisdiction of the court as the plea entails that the matter had been litigated upon and finally determined as between the parties or their privies by a court of competent jurisdiction. It therefore means that the matter cannot be litigated again. In that sense, the jurisdiction of the court is effectively ousted from re litigating the matter. Having pleaded and raised re judicata therefore the matter was sought to be dismissed in limine based on res judicata pleading...”

Consequently, and without further ado, I hereby dismiss the Claimant’s suit in its entirety and make consequential order in favor of the 1st defendant affirming his chairmanship of the 3rd defendant (AAC). I make no order as to cost. Parties shall bear their respective cost.

Signed:

***Hon. Justice Samirah Umar Bature.
1/7/2021***