

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 5, MAITAMA ON THE 6TH OCTOBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO FCT/HC/CV/2052/18

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

CHRISTOPHER AREGHAN EICHIE ESQCLAIMANT

AND

- 1. INCORPORATED TRUSTEES OF
THE NIGERIAN BAR ASSOCIATION**
- 2. THE NIGERIAN BAR ASSOCIATION,
ABUJA BRANCH**
- 3. THE ELECTORAL COMMITTEE OF
THE NIGERIAN BAR ASSOCIATION
(ABUJA BRANCH)**
- 4. MR. IBRAHIM EDDY MARK
(CHAIRMAN ELECTORAL COMMITTEE
NBA, ABUJA BRANCH)**
- 5. MRS. CHIBUZOR NWOSU
(SECRETARY, ELECTORAL COMMITTEE NBA,
ABUJA BRANCH)**

DEFENDANTS

JUDGMENT

The Claimant's Originating Summons dated the 7th day of June 2018 which was subsequently amended vide an Order of Court dated 15/10/18.

The Amended Originating Summons is dated 19th October 2018.

The Claimant abandoned reliefs 6, 7, 8 and 9 contained in page 3 of the Summons.

He prays the Court thus:

1. A declaration that the provisions of the Constitution of the Nigerian Bar Association 2015 and the bye laws made thereunder are binding on the 2nd, 3rd, 4th and 5th Defendants.
2. A declaration that the Claimant has not held or occupied office twice in the 2nd Defendant, under the extant Constitution of the Nigerian Bar Association as contained in paragraph 6(3) of the bye laws made thereunder and in Part 1 of the 3rd Schedule.
3. A declaration that since the extant Constitution of the Nigerian Bar Association 2015 contains no retroactive or retrospective provisions the provisions thereof particularly the provisions of paragraph 6(3) of the bye law made thereunder and contained in Part 1 of the 3rd schedule thereto cannot be given or ought not to be given a retroactive/retrospective effect.
4. A declaration that the decision of the 2nd, 3rd, 4th and 5th Defendants dated 30/05/18 disqualifying the Claimant from contesting or standing for

election into the office of chairman of the 2nd Defendant in the election which held on the 11th day of June 2018 is illegal unjust, unlawful and in gross contravention of the provisions of the NBA Constitution 2015.

5. An order setting aside, nullifying and or quashing the decision of the 2nd, 3rd, 4th and 5th Defendants contained or embodied in a Notice dated 30th May 2018 signed by the 4th and 5th Defendants disqualifying the Claimant from contesting or standing for election into the office of Chairman of the 2nd Defendant in the election which held on the 11th of June 2018.

Learned Counsel rely on the 26 paragraph Affidavit filed in support of the application.

Succinctly the Claimant Mr. Christopher Areghan Eichie, a Legal Practitioner called to Bar in 2003 and a registered member of the 2nd Defendant deposes that he is an active member of the 1st and 2nd Defendants.

That in 2010 he was elected and sworn in Provost of the 2nd Defendant. That in 2014 he was again elected and

sworn in as Treasurer of the 2nd Defendant a position he held till 2016.

That the Constitution in force was NBA Bye Laws 2006.

That the Constitution was amended and adopted on 27/08/15 during the Annual General Meeting held in Abuja.

That it does not have a retrospective effect.

That on 9/03/18, the 2nd Defendant set up its branch Electoral Committee to conduct and organise elections into the various offices in the branch for the 2018 to 2020 duration.

That on 5/05/18, the Electoral Committee headed by the 4th Defendant released the Guidelines and Time-Table for the NBA Unity Bar elections. He obtained nomination form from the 3rd Defendant for the position of Chairman which was duly completed and returned.

That on 30/05/18, the 2nd Defendant through the 3rd released a Notice which disqualified the Claimant citing the provision of paragraph 6(3) of the NBA Bye Laws Part 1 of the 3rd Schedule of 2015 Constitution as their reasons.

That he was not called upon to attend any screening exercise before his purported disqualification.

That on 6/06/18, he submitted and lodged an appeal against the decision on 30/05/18 disqualifying him from participating in the election billed for 11/06/18.

He received a letter on 7/06/18 stating that he was unable to convince them against the disqualification.

He therefore proceeded to court. He served the 3rd Defendant with the originating process of the suit. He also submitted a Petition against his purported disqualification. That despite this suit, 3rd Defendant went ahead to hold the election.

The Claimant therefore seeks the determination of the following questions.

1. Whether or not the provisions of the Constitution of the Nigerian Bar Association 2015 and the bye laws made thereunder are not binding on the 2nd, 3rd, 4th and 5th Defendants considering the fact that:

- i. He held office as Provost to 2nd Defendant between the year 2010 to 2012 under the NBA Constitution 2011.
 - ii. He further held office as Treasurer to 2nd Defendant from 2014 to 2016 under the extant and current Constitution 2015.
 - iii. That the Constitution of the NBA 2015 came into effect on 27th of August 2015.
2. Whether the Constitution of the NBA 2015 can be accorded or interpreted retrospectively in view of Section 22 of the said Constitution.
3. Whether the Claimant can be said to have held or occupied office twice in the 2nd Defendant under the extant Constitution of the Nigerian Bar Association 2015 as it relates to paragraph 6(3) of the Bye Laws made thereunder and contained in Part 1 of the 3rd Schedule, having regard to the clear provisions of Section 22 of the Constitution of the Nigeria Bar Association 2015.
4. Whether having regard to the Constitution of the NBA which was amended and adopted on the 27th

of August 2015, if there can be deduced any retrospective/retroactive provision therein, particularly as contained in paragraph 6(3) of the bye laws made thereunder and contained in Part 1 of the 3rd Schedule of the NBA Constitution 2015.

5. If the answers to questions 3 and 4 are in the negative, whether the decision of the 2nd, 3rd, 4th and 5th Defendants disqualifying the Claimant from contesting or standing for election into the office of Chairman of the 2nd Defendant in the election which held on the 11th of June, 2018 as contained or embodied in a Notice dated the 6th day of June, 2011 is not arbitrary, highhanded, unjust, unlawful, illegal, unconscionable, unconstitutional, null and void and of no effect whatsoever.

IN ALTERNATIVE TO QUESTION 3:

6. If the answer to question 4 is in the alternative, whether the provisions of paragraph 6(3) of the Bye Laws made pursuant to and contained in Part 1, 3rd Schedule of the Constitution of the Nigerian Bar Association 2015 accorded, having or given a

retrospective or retroactive effect is not liable to be struck down and declared illegal or unconstitutional.

The 2nd Defendant relied upon its 14 paragraph Counter Affidavit. It deposes that the NBA Constitution 2015 was an amendment to the 2006 NBA Constitution as well as the NBA Abuja Bye Laws but did not displace or repeal same. That Claimant did not exhaust administrative and internal remedy of the Nigeria Bar Association.

That Claimant did not lodge a complaint before the Dispute Resolution Committee established to resolve disputes.

That Claimant had two elective offices in NBA before the Guidelines for 2018 NBA election came into force.

That the screening of candidates for elective offices of NBA is documentary and the bio data of all previously elected candidates is always handed over to the Electoral Committee of the Branch for election and upon which the status of the Claimant as a two terms elective office holder was discovered which fact the Claimant initially withheld.

That it is in the interest of justice to dismiss the application.

The 3rd Defendant 's Counsel also rely on the 7 paragraph Counter Affidavit deposed to by Olowoyo Oluwatimilehin Dolapo, a litigation Secretary of Flat 1, 19 Ebitu Ukiwe Street Jabi. He deposes essentially that the Claimant is barred from contesting for any elective position until after 5 years from the end of his last elective position.

That the Court lacks jurisdiction to entertain the Suit.

The 3rd Defendant's Counsel filed a Notice of Objection dated 20/01/20.

It prays this Court to strike out or dismiss the Suit for being incompetent or strike out the name of the 3rd Defendant/Applicant.

The grounds of the application are:

- i. That the 3rd Defendant is not a juristic person that can be sued.
- ii. The condition precedent to the exercise of jurisdiction were not met.

iii. The Court lacks jurisdiction to hear and determine the suit.

Learned Counsel canvasses and posited one issue for determination which is “Having regard to the state of the law and facts and circumstances of this suit, whether the Claimant/Respondent's Suit is competent to clothe this Court with requisite jurisdiction to entertain same.

Learned Counsel submits that where a statute or legislation prescribes a remedy or a step to be taken before instituting an action in Court, an aggrieved party must first exhaust the remedies before resorting to seeking redress in Court. Where he fails as in this case, his action becomes premature and speculative.

That the Claimant's Originating Summons failed to comply with the condition precedent before filing the action and consequently this Court is bereft of jurisdiction.

Learned Counsel further submits that the applicant is not a juristic person. It is not known to law.

A non juristic person cannot sue and be sued. The Claimant on the other hand argued that the 3rd Defendant is a creation of the NBA Constitution and that it can sue and be sued.

That Article 10 of 3rd Schedule Part 1 of NBA 2015 Constitution provides for Standing Committees.

That its functions are such that are likely to breach the rights and privileges of any of the contestants who should have right to seeks legal redress against it.

On the second issue, Learned Counsel canvasses that Section 16 of the NBA Constitution is not an arbitration Clause. That it is at variance with the 1999 Constitution Section 6(6)(a) and (b). It negates fair hearing.

It is now trite that for a claim to establish a cause of action, there must be before the Court, a juristic or juridical person who can make a claim and against whom the Court can make an enforceable Order.

In **ODIFE & ANOR VS. ANIEMEKA & 2 ORS. (1992) 2 NSCC 623**, the Supreme Court held:

“Judicial personality is acquired when the law accepts and recognises the existence

of such a body or incorporated Association.

Even the capacity to sue and be sued is not thereby given by mere recognition and acceptance of its existence.”

Further in ***ATAGUBA & CO. VS. GURA NIG. LTD (2005) 2 SC PT.1 PAGE 101 AT 105***, the Supreme Court per Edozie held:

“As a general principle, only natural persons that is human beings and juristic or artificial persons such as body corporate are competent to sue and be sued...”

That no action can be brought by or against any party other than a natural person or persons unless such a party has been given by statute, expressly or impliedly or by the common law either.

1. A legal person under the name by which it sues or is sued e.g Corporate, sole and aggregate, bodies incorporated by foreign law quasi corporation constituted by Act of Parliament.

2. Partnerships, trade unions, friendly societies and foreign institutions authorised by their own law to sue and be sued.

The argument of Claimant's Counsel that the function of the 3rd Defendant is such that will affect the right of members do not hold water.

It is a Committee set up by the 2nd Defendant. The NBA Constitution governs the activities of the NBA as it affects its members. It cannot confer legal personality or member on its organs. It does not qualify as a juristic person that can sue and be sued.

On the 2nd issue whether the Claimant fulfilled the condition precedent to the institution of this action, it is now established that a Court is competent when the Court is properly constituted as regards numbers and qualifications for the members of the bench, the subject matter of the case is within jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction and the case comes before the Court initiated by due process of law and

upon the fulfilment of any condition precedent to the exercise of jurisdiction.

All the above requirements must co-exist conjunctively before jurisdiction can be exercised by the Court.

See **UMANNAH VS. ATTA (2006) 17 NWLR (Pt.1009) 503.**

MADUKOLU VS. NKEMDILIM (1962) 1 ANLR 587 SC

ARAKA VS. EJEAGWU (2000) 12 SC (PT.1) 99.

The Claimant/Respondent in its Affidavit deposes 5(b) that the NBA 2015 Constitution as amended does not qualify as a condition precedent to which he ought to have complied with before instituting this action.

Learned Claimant's Counsel further argued that Section 16 of the NBA Constitution negates the Principle of fair hearing, it is therefore, he argues, null and void.

Section 16 of the Nigerian Bar Association's Constitution states:

“No aggrieved member shall resort to the Court unless his or her complaint must have been considered and disposed off by the Dispute Resolution Committee provided that such

complaint of member shall be decided by the Committee within 60 days of receipt of the complaint.”

There is nothing to suggest that the Claimant complied with the said provision.

The Claimant did not lodge any complaint before the Dispute Resolution Committee.

The Claimant was elected twice under the NBA Constitution and bye laws but do not want to comply with this provision requiring him to first ventilate his grievance in the Dispute Resolution Committee before proceeding to Court.

The Claimant said he is a registered member of the 2nd Defendant. He is bound by the Constitution of the NBA.

A clause such as contained in Section 16 of the NBA Constitution and Bye Laws made thereunder do not limit rights or remedies but simply stipulates a procedure under which the parties may settle their disputes.

See ***MAGBAGBEOLA V. SAINI (2002) 4 NWLR (PT.756) 193.***

The Claimant in my humble view failed to fulfil a condition precedent to the exercise of this Court's jurisdiction.

Learned Counsel also argues that the 2nd and 3rd Defendants did not avail him fair hearing.

In **MR. JOEL ETIPETIP UKWUYOK & 6 ORS. VS. HRN FESTUS SILAS OGBULU & 4 ORS. (2010) 5 NWLR (PT.1187) 316** at 334, the Court of Appeal held per Abdullai J.C.A thus:

“Where a party to a suit has been evidently accorded every reasonable opportunity of being heard and for no just cause whatsoever refuses or neglects to attend the sittings of the Court, he is deemed to have voluntarily abandoned his case or defence and cannot thus complain of breach or denial of fair hearing.”

The Claimant was given all the opportunities under the Constitution but he refused to take advantage of it.

It is apparent and there is no dispute on the fact that the Claimant occupied office as Provost and Treasurer

in the 2nd Defendant. There are uncontroverted facts. It is my view and I so hold that the Claimant was not denied fair hearing.

For the totality of reasons the 3rd Defendant's Notice of Preliminary Objection succeeds.

This Court has no jurisdiction to entertain this matter. The case is accordingly struck out.

However, in case I am wrong, I wish to consider the Originating Summons on the merit.

The 1st issue for determination as formulated by Claimant's Counsel is whether or not the provisions of the Constitution of the Nigeria Bar Association 2015 and the by laws made thereunder are not binding on the 2nd, 3rd, 4th and 5th Defendants.

Learned Counsel to the Claimant submits that the above principle of law is solid to the extent that the Court often shy away from interfering in matter involving the internal affairs of an Association except there is a violation of the Association's Constitution as in the case at hand. That the Court has a duty to protect the supremacy of the Constitution.

The 3rd Defendant in his final argument also canvasses that the provisions of the Constitution of the Nigerian Bar Association 2015 and the bye law made thereunder is binding on the Claimant and Defendant. That paragraph 6(3) of the bye laws made thereunder and contained in Part 1 of the 3rd Schedule which pertains to term and tenure of elective office holders is also binding on the parties.

I agree with the above submission and further reiterate the fact contained in the processes before me that the Constitution of the Nigerian Bar Association 2015 was amended and adopted on 27th day of August 2015 during the Annual General Meeting of the NBA in Abuja. It is a continuation of former adopted in 2009 and 2014.

The Guidelines and Time Table for the 2nd Defendant's election 2018 which was produced pursuant to the NBA Constitution 2015 made it clear in paragraph 2 that NO member of the branch shall occupy the same office for more than 2 years (one term) and any member who has held elective office as a branch

Officer for two terms shall not be eligible to contest for a branch office until at least five years after his last term of office in accordance with Article 6(3) of the Bye Law of the NBA Constitution 2015. It is upon this Guidelines that the Claimant obtained his Nomination form to contest the election.

It is therefore my view that all parties in this matter particularly the Claimant, 2nd, 3rd, 4th and 5th Defendants are bound by the above provisions and I so hold.

Learned Counsel further contends arguing questions 2, 3, 4 and 5 together that he has led cogent and credible evidence that he was unjustly and illegally disqualified contending that he held office only once after 2015 NBA Constitution as amended.

That a law does not apply retroactively. The Claimant did not avail the Court the previous Constitutions of the NBA to buttress his point that the other Constitutions do not contain the provision complained about.

In the absence of the said Constitution, it is difficult to hold whether the provision complained about is retroactive or retrospective.

The Claimant has a duty to place all materials that are germane to the determination of his case.

It is therefore my view and I so hold that the Claimant has not led credible and convincing evidence to enable me hold that the Section 6(3) of the NBA Constitution 2015 is retroactive or retrospective having not been in the previous NBA Constitution.

Aside the above, the provision is clear.

Has the Claimant held elective office twice in the 2nd Defendant whether under the earlier Constitution on the extant law. If yes, the Claimant is bound.

The NBA and its members should learn to settle their differences within the Association.

The internal affairs of the NBA should seldom be litigated upon. Indiscipline, inordinate ambition and lawlessness should be eschewed by the NBA and members. They are cankerworms that need to be exterminated by a surgical operation.

Elective office in the NBA should be for service and not for personal aggrandisement. It should not be used as a platform for being conferred with some privileges at the Bar or some other high calling.

The motive for wanting to be an officer should be service. The passion to service and nothing more.

‘Seek ye first the betterment of the NBA and the welfare of its members, all other things shall be added unto you.’

Few words are enough for the wise.

For the totality of reasons, the Suit fails and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

6/10/21

Parties absent Rex Erameh for Claimant
L.O. Fagbemi Esq for the 3rd Defendant.
P.T. Iorbee holding the brief of John Ogu
for the 1st Defendant/Applicant.