

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/CV/3265/2021

BETWEEN:

1. SIRAJO ABUBAKAR
2. USMAN ABDULLAHI AHMED
3. ZAYYANU SHEHU
4. AUWAL ABUBAKAR
5. ABDULLAHI MUHAMMAD
6. ABDULKADIR MUHAMMAD CLAIMANTS

AND

1. HON. MAINASARA ABUBAKAR SANI
*(ON BEHALF OF HIMSELF & MEMBERS OF THE
STATE, LOCAL GOVERNMENT &
WARD EXECUTIVES APC, SOKOTO STATE CHAPTER*
2. ALL PROGRESSIVES CONGRESS DEFENDANTS

JUDGMENT

DELIVERED ON THE 16TH DECEMBER, 2021

This case was instituted by the Claimants via an originating summons dated the 25th of November 2021. The Claimants, being registered and card carrying members of the 2nd Defendant, the All Progressives Congress. The facts of the case as presented by the Claimants in the affidavit filed in support of the originating

summons can be summarized as follows: The Claimants are registered members of the All Progressives Congress. That pursuant to the decision of the 2nd Defendant to conduct congresses across the country and the release of guidelines to that effect, the Claimants indicated their readiness to vie for various positions on the platform of the 2nd Defendant in Sokoto State Chapter. That they purchased and filled the expression of interest forms. That there were several complaints arising from the conduct of the congresses which instigated the Claimants to petition the 2nd Defendant to arrest the situation. That though appeal committees were constituted to entertain complaint arising from the conduct of the congresses, the 2nd Defendant has failed to consider the petition submitted by the Claimants. According to the Claimants, news making the rounds suggests that the 1st Defendant emerged the 2nd Defendant's Chairman in Sokoto State and he is about to be sworn in at the party's headquarters at the Federal Capital Territory, Abuja. The Claimants averred that the provision of the party's constitution was not adhered to by the 2nd Defendant. The Claimants further asserted that the appeal committee mandated to entertain complaint of this sort has not completed its work and was yet to submit report of its findings. That it was highly undemocratic to fail to consider their petitions submitted to the 2nd Defendant's headquarters and proceed to swear in the 1st Defendant.

The Claimants thus posed the following questions for determination of the Court:

- 1. Whether upon the combined interpretation of Section 222(c), 223(1)(a) and (2)(a) of the Constitution of the Federal Republic of Nigeria, 1999 as alteredz, Section 85(3) of the Electoral Act, 2010 (as amended) and Article 7(viii) of the Constitution of the All Progressives Congress, 2014 (as amended), the 2nd Defendant through its National Executive Committee, or any other Committee at its National Headquarters, can direct, supervise, sanction, approve or carryout the swearing in of the 1st Defendant and/or members of his Executives at the State, local Government and Ward Levels, of the All Progressives Congress, Sokoto State Chapter, at its National Headquarters in the Federal Capital Territory Abuja, when a petition has been forwarded to the 2nd Defendant's National Headquarters in respect of the State, Local Government and Wards Congresses held on 16th October, 2021, 4th September, 2021 and 31st July, 2021 respectively particularly when same has not been resolved**
- 2. Whether upon the combined interpretation of the provisions of Section 222, 223 (1)(a)and(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as**

altered) Section 85(3) of the Electoral Act, 2010 (as amended) and Articles 2 and 7(viii), of the Constitution of the All Progressives Congress, 2014 (as amended), the 2nd Defendant can proceed to swear in the 1st Defendant and/or members of his Executives at the State, Local Government and Ward Levels, of the All Progressives Congress, Sokoto State Chapter, at its National Headquarters in the Federal Capital Territory, Abuja when the 2nd Defendant at its National Level has not accepted any report of the State, Local Government and Wards Congresses held on 16th October, 2021, 4th September, 2021 and 31st July, 2021 respectively.

And upon the consideration of the above questions, the Claimants sought the Court to grant the following reliefs:

- 1. A DECLARATION that upon the combined interpretation of Section 222 (c), 223(1)(a) and (2)(a) of the Constitution of the Federal Republic of Nigeria, 1999 as altered, Section 85(3) of the Electoral Act, 2010 (as amended) and Article 7(viii) of the Constitution of the All Progressives Congress, 2014 (as amended), which mandate the practice of internal democracy at all levels of the Party's strata, the 2nd Defendant, through its National Executive Committee, or any other Committee at its National Headquarters, cannot direct, supervise,**

sanction, approve or carryout the swearing in of the 1st Defendant and or members of his executives at the State, Local Government and Ward Levels, of the All Progressives Congress, Sokoto State Chapter at its National Headquarters in the Federal Capital Territory, Abuja when a subsisting petition has been submitted to the 2nd Defendant's National Headquarters in respect of the Sokoto State State, Local Government and Wards Congresses held on 16th October, 2021, 4th September, 2021 and 31st July, 2021 respectively, particularly when same is still pending and has not been resolved.

2. A DECLARATION that upon the combined interpretation of Section 222 (c), 223(1)(a) and (2)(a) of the Constitution of the Federal Republic of Nigeria, 1999 as altered, Section 85(3) of the Electoral Act, 2010 (as amended) and Articles 2 and 7(viii) of the Constitution of the All Progressives Congress, 2014as amended), the 2nd Defendant cannot proceed to swear in the 1st Defendant and/or members of his executives at the State, Local Government and Ward Levels, of the All Progressives Congress, Sokoto State Chapter, at its National Headquarters in the Federal Capital Territory, Abuja, when the 2nd Defendant has not accepted any report of Sokoto State State, Local Government and

Wards Congresses held on 16th October, 2021, 4th September, 2021 and 31st July, 2021 respectively.

- 3. AN ORDER of this Honourable Court directing the 2nd Defendant and any person(s) acting through them to halt the purported swearing of the 1st Defendant and members of his executives at the State, Local Government and Ward Levels of the All Progressives Congress, Sokoto State Chapter, at its National Headquarters in the Federal Capital Territory, Abuja until the petition forwarded to the 2nd Defendant in respect of the Sokoto State, Local Government and Wards Congresses held on 16th October, 2021, 4th September, 2021 and 31st July, 2021 respectively, has been duly resolved.**
- 4. AN ORDER of this Honourable Court restraining the 2nd Defendant and any person(s) acting through them howsoever described from giving recognition to the 1st Defendant, and members of his executives at the State, Local Government and Ward Levels, of the All Progressives Congress, Sokoto State Chapter.**
- 5. And for such further order or other relief(s) as this honourable court may deem just and Expedient to make in the circumstances**

In support of their case, the Claimants filed a thirty-one (31) paragraph affidavit deposed to by one Abdulkadir Muhammed and attached exhibits AM1 to AM12.

Exhibits AM1, AM2, AM3, AM4, AM5 and AM6 are copies of the expression of interest forms filled and submitted by the Claimants in this case. Exhibits AM7, AM8 and AM9 are the copies of the guidelines issued by the 2nd Defendant in respect of the congresses with the affidavit of compliance attached as exhibit AM10. Exhibit AM11 is the petition written and submitted by the Claimants to the 2nd Defendant. Finally, exhibit AM12 is the constitution of the 2nd Defendant.

The Claimants also filed a written address in support of their case. In the said written address, the Claimants' counsel adopted the issues submitted for interpretation and argued that the party's constitution is supreme as it regulates not only the members of the party but the party itself. The Claimants' counsel relied on article 2 of the party's constitution which provides that: *Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and any other Laws for the time being in force in the Federal Republic of Nigeria, the provisions of this Constitution shall be supreme PROVIDED that where any Rule, Regulation, or any other enactment of the Party is inconsistent with the*

provisions of the Constitution of the Federal Republic of Nigeria, such a Rule, Regulation and Enactment shall, to the extent of its inconsistency, be null and void and of no effect whatsoever.”

The learned counsel for the Claimants referred the Court to Sections 222(c), 223(1)&(2) of the Constitution of the Federal Republic of Nigeria and Section 85(3) of the Electoral Act, 2010 (as amended). The counsel argued that the common denominator in the referenced statute is the fact that political party such as the 2nd Defendant must ensure internal democracy.

Claimants’ counsel argued further that the 2nd Defendant has failed to abide by its guidelines having failed to consider the petition (AM11) submitted to the party’s headquarters in Abuja. It was argued that the appeal committee having not considered the petition and made its findings and having not submitted any report, it was premature to contemplate swearing in anybody.

To fortify his argument, learned counsel for the Claimants relied on the cases of **Hope Uzodinma V Senator Osita Izunaso (2011) 17 NWLR (PT. 1275)30, PDP V. SYLVA (2012) 13 NWLR (Part 1316) 85, PDP V. SHERRIF (2017) 15 NWLR (Part 1588) 219, MONGUNO V APC & ORS (2019) LPELR-47740 (CA) Pg. 25** all to the effect that a political party is bound by its constitution.

Learned Counsel for the Claimants argued that the Claimants need not wait for the Defendant to inflict injury before it approaches the court for redress. He argued further that a diligent and vigilant litigant is expected to approach the court when it is obvious that his right is about to be infringed upon and relied on the case of **AG, ANAMBRA vs. EBOH (1992) 1 NWLR (Pt. 218) 491.**

The Claimants' counsel concluded by urging this Court to resolve the issues in their favour and grant their reliefs. This is the Claimants' case before this Court.

In response to the Claimants' case, the 1st Defendant filed a counter affidavit of Eight (8) paragraphs on the 3rd of December 2021 and attached exhibits A to J.

Exhibits A,B& C are the copies of the guidelines and timetable for the congresses to be conducted by the 2nd Defendant while the certificate of compliance is exhibit D.

Exhibits E,F& G are the reports of the electoral committee of the 2nd Defendant. Exhibits H and I are copies of the report of the appeal committee on the Ward and Local Government congresses respectively. Exhibit J is a copy of the report of the appeal panel submitted to the 2nd Defendant at its Headquarters at Abuja.

On the same day, the 1st Defendant filed a counter claim to the Claimants case whereas the 1st Defendant (Counter claimant) presented two (2) questions for determination and sought five (5) reliefs against the Defendants to the Counter claim. The

counterclaimant, in support of his case filed eight (8) paragraphs affidavit and attached exhibit K which is the copy of the result sheet for the State congress. The 1st Defendant/Counter claimant filed a composite written address in opposition to the address filed by the Claimant and in support of the counter affidavit to the originating summons and in support of the counter claim.

Counsel for the 1st Defendant/Counter claimant adopted verbatim the questions presented in the originating summons and argued the issued together.

In his submission, the learned counsel for the 1st Defendant/Counter claimant argued that exhibits E, F, G, H, I, J & K bear testimony to the fact that the entire congress conducted by the 2nd Defendant met all democratic standards. Counsel also relied on the report of the Independent National Electoral Commission (INEC) to the effect that same is conclusive proof that the congresses were duly conducted and as such there is no basis to stop the swearing in at the National Headquarters of the 2nd Defendant at Abuja.

The learned counsel agreed with the Claimants that the 2nd Defendant's constitution is binding on all its members. He argued that aside from presenting Sections 222(c), 223(1) & (2) of the Constitution of the Federal Republic of Nigeria and Section 85(3) of the Electoral Act, 2010 (as amended) to the Court, the Claimants have failed to demonstrate how the provisions were

breached so much to prevent the swearing in to take place at the National headquarters at Abuja.

The learned counsel argued that the principle of interpretation of statute is firmly established that where statute are clear and free from ambiguity, the position of the law is that the words shall be construed as to give effect to their ordinary meaning and relied on the cases of **N.B.N. LTD V WEIDE & CO. (NIG) LTD & ORS (1996) 8 NWLR (PT. 465) 150, BUHARI V OBASANJO (2005) All FWLR (Pt. 273) 1** and **SALEH V. ABAH (2017) 12 NWLR (PT.1578) 100.**

In his reaction to the assertion of the Claimants that they wrote petition to the 2nd Defendant as per exhibit AM11, learned counsel for the 1st Defendant vehemently denied the assertion and urged the court to calmly observe that the said letter was never delivered to the headquarters of the 2nd Defendant. He argued further that exhibits H,I&J showed that every complaint submitted to the appeal committee were dealt with. Learned counsel for the 1st Defendant concluded his submission that having not submitted the alleged complaint, no rights of the Claimants were violated and urged the Court to dismiss the Claimants' suit.

In the counter claim filed by the 1st Defendant/Counter claimant, two issues were formulated to wit;

1. WHETHER IN THE LIGHT OF THE CLEAR PROVISIONS OF SECTION 223(1)(a), 223(2)(a) OF THE CONSTITUTION

OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS ALTERED, SECTION 85(3), (4), 86(1) OF THE ELECTORAL ACT, 2010 AS AMENDED) AND ARTICLES 12.8, 12.10, 12.13, 12.16, 13.4(IV), 13.7, 13.8, 13.11 AND 13.13 OF THE ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED)THE 7TH DEFENDANT TO THE COUNTER CLAIM HAVING NOT SET ASIDE THE REPORT OF THE APPEAL PANEL ON THE SOKOTO STATE CONGRESSES SUBMITTED TO IT AT ITS HEADQUARTERS IN ABUJA; OUGHT TO ACCORD THE COUNTER CLAIMANT AND MEMBERS OF HIS EXECUTIVES ALL THE RIGHTS AND PRIVILEGES OF A STATE EXECUTIVE COMMITTEE PROVIDED FOR IN THE CONSTITUTION OF THE ALL PROGRESSIVES CONGRESS.

2. WHETHER IN THE LIGHT OF THE CLEAR PROVISIONS OF SECTION 223(1)(a), 223(2)(a) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS ALTERED) SECTION 85(3), (4), 86(1) OF THE ELECTORAL ACT, 2010 (AS AMENDED) AND ARTICLES 12.1(VI), (VII), (VIII), 13.1 OF THE ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED) ,THE COUNTER CLAIMANT AND MEMBERS OF HIS EXECUTIVES, AND ALL OTHER PERSONS ELECTED AT THE LOCAL GOVERNMENT AND WARD CONGRESSES ARE NOT ENTITLED TO BE MEMBERS OF THE NATIONAL

CONVENTION OF THE 7TH DEFENDANT TO THE COUNTER CLAIM.

In answering the question, the 1st Defendant/Counter claimant sought the following reliefs from the Court to wit:

- 1. A DECLARATION THAT BY THE CLEAR PROVISIONS OF SECTION 223(1)(a), 223(2)(a) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS ALTERED, SECTION 85(3), (4), 86(1) OF THE ELECTORAL ACT, 2010 (AS AMENDED) AND ARTICLES 12.8, 12.10, 12.13, 12.16, 13.4(IV), 13.7, 13.8, 13.11 AND 13.13 OF THE ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED), THE 7TH DEFENDANT TO THE COUNTER CLAIM HAVING NOT SET ASIDE THE REPORT OF THE APPEAL PANEL ON THE SOKOTO STATE CONGRESSES, SUBMITTED TO IT AT ITS HEADQUARTERS IN ABUJA; OUGHT TO ACCORD THE COUNTER CLAIMANT AND MEMBERS OF HIS EXECUTIVES ALL THE RIGHTS AND PRIVILEGES OF A STATE EXECUTIVE COMMITTEE PROVIDED FOR IN THE CONSTITUTION OF THE ALL PROGRESSIVES CONGRESS.**
- 2. A DECLARATION THAT THE COUNTER CLAIMANT AND MEMBERS OF HIS EXECUTIVES; PERSONS ELECTED AT THE LOCAL GOVERNMENT CONGRESSES AND THE THREE DELEGATES FROM EACH LOCAL GOVERNMENT AREA**

ARE, BY THE PROVISIONS OF THE ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED), ENTITLED TO BE MEMBERS OF THE NATIONAL CONVENTION OF THE 7TH DEFENDANT TO THE COUNTER CLAIM.

3. A DECLARATION THAT THE 7TH DEFENDANT, CANNOT AT ITS NATIONAL HEADQUATERS IN ABUJA, OR AT ANY OTHER PLACE, SUBSTUTITE THE NAMES OF THE COUNTER CLAIMANT, MEMBERS OF HIS EXECUTIVE, MEMBERS OF THE LOCAL GOVERNMENT AREA EXECUTIVES, THE WARD EXECUTIVE COMMITTEE WHO WERE DULY ELECTED IN THE SOKOTO STATE CONGRESSES ORGANISED BY THE 7TH DEFENDANT TO THE COUNTERCLAIM.

4. AN ORDER OF THIS HONOURABLE COURT DIRECTING THE DEFENDANTS AND ANY PERSON(S) ACTING THROUGH THEM TO ALLOW THE COUNTER CLAIMANT, MEMBERS OF HIS EXECUTIVE, MEMBERS OF THE LOCAL GOVERNMENT AREA EXECUTIVES, AND THE WARD EXECUTIVE COMMITTEE TO, WITHOUT INHIBITION, PERFORM THEIR FUNCTIONS AND BE MEMBERS OF COMMITTEES AS RECONGINSED IN ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED).

5. AN ORDER OF THIS HONOURABLE COURT RESTRAINING THE DEFENDANTS AND ANY PERSON(S) ACTING THROUGH THEM HOWSOEVER DESCRIBED, HOWSOEVER CALLED, FROM INHIBITING THE COUNTER CLAIMANT, MEMBERS OF HIS EXECUTIVE, MEMBERS OF THE LOCAL GOVERNMENT AREA EXECUTIVES, AND THE WARD EXECUTIVE COMMITTEE TO, WITHOUT INHIBITION, PERFORM THEIR FUNCTIONS AND BE MEMBERS OF COMMITTEES AS RECONGINSED IN ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED)

Proffering argument in support of the counter claim, the 1st Defendant/Counter claimant argued that going by exhibits E,F,G,H,I,J &K, it is not disputable that the Ward, Local Government and State congresses were peaceful, free, fair and credible.

That by the provisions of Article 12.8, 12.10, 12.12, 12.13, 12.16 of the Constitution of the 2nd Defendant, the Counter Claimant, his members of executive detailed in the affidavit in support of the Counter Claim duly constituted the State Executive Committee and State Working Committee. In the same vein, that the duly elected Local Government Chairmen, also constitute the Local Government Area Executive Committee whilst the Ward members constitute the Ward Executive Committee.

That going by Article 12.1, the Counter claimant, all Chairmen and Secretaries who emerged from the Local Government Congress and

the three elected delegates from the Local Government Area are members of the 7th Defendant to the Counter Claimant's National Convention.

The learned counsel concluded his argument by submitting that the 7th Defendant to the counter claim is bound by the provisions of its constitution and cannot deviate from same. He relied on the following cases: **LAU V. PDP (2018) 4 NWLR (Part 1608) 60** and **PDP V. SHERRIF (2017) 15 NWLR (Part 1588) 219**. Learned counsel prayed this Court to dismiss the case filed by the Claimants and grant the reliefs as contained in the counter claim.

On her part, the 2nd Defendant, the All Progressives Congress filed a five (5) paragraph counter affidavit dated the 10th of December 2021 deposed to by Adenike Adelokun who relied on the information supplied to her by the Head of Legal department of the 2nd Defendant to the effect that the 2nd Defendant issued guidelines preparatory to the conduct of the wards, Local Government and State congresses. That the 2nd Defendant also established appeal panels to entertain and settle complaints arising from the congresses. That the congresses held were peaceful to a great extent.

That she was informed by the said Head of the Legal Department of the 2nd Defendant that petition with respect to the ward congresses in Sokoto State was submitted by one Rt. Hon. Aminu

Achida and six other persons who were not contestants in the ward congresses and that no petition was received from any of the Claimants. It was also stated that exhibit AM11 mentioned in the affidavit in support of the originating summons was not submitted to the 2nd Defendant.

The 2nd Defendant also filed a written address in opposition to the originating summons. In its brief submission, learned counsel on behalf of the 2nd Defendant submitted though the Claimants prayed the court to interpret Sections 222(c), 223(1)(a) & (2)(a) of the Constitution of the Federal Republic of Nigeria (as amended), Section 85(3) of the Electoral Act 2010 (as amended) and Article 7(viii) of the constitution of the 2nd Defendant, they have failed to show how the aforementioned provisions were breached by the 2nd Defendant.

The learned counsel on behalf of the 2nd Defendant agreed with the Claimants that the constitution of the party is binding on all its members going by the provision of Article 2 hence all registered members including the Claimants are bound by the provisions of the said constitution.

Learned counsel argued that the Claimants do not merit the exercise of the discretion of this Court in their favour and that the claims of the Claimants are misconceived and without lawful basis. He prayed the court to refuse the grant of the reliefs sought by the Claimants in their originating summons.

This is the case of the parties as presented before this court.

I have carefully studied the entire processes filed by the respective parties. I have read carefully the affidavit evidence of the Claimants alongside the exhibits annexed thereto, particularly exhibits AM11 and AM12 which the Claimants heavily relied on. I have carefully considered the stiff opposition to this case as demonstrated by the Defendants in this case. The affidavit evidence of the 1st Defendant alongside the exhibits E,F,G,H,I& J. I have gone through the affidavit evidence of the 2nd Defendant.

From the gamut of evidence presented by the parties before me, I have no doubt in my mind that the Claimants are duly registered members of the 2nd Defendant. I have glanced at the expression of interest forms annexed as exhibits AM1 to AM6 which shows that the Claimants vied for various positions in Sokoto State chapter of the 2nd Defendant.

The grouse of the Claimants in this case can be deciphered from exhibit AM11. The said exhibit AM11 is the alleged petition which the Claimants stated that they submitted to the headquarters of the 2nd Defendant. In paragraph 19 of the affidavit in support, the 6th Claimant averred thus:

19. 'Specifically, as a contestant for the position of the State Chairman of the 1st Defendant's Chapter in Sokoto State, which held on the 16th October, 2021,

I authored a petition and submitted same to the Headquarters of the 2nd Defendant for onward consideration.

Now the Claimants are aggrieved that the 2nd Defendant has not considered the said petition and to add salt to the injury, the 2nd Defendant is perfecting plans to swear in the 1st Defendant at the 2nd Defendant's headquarters in FCT, Abuja.

I consider it important to reproduce paragraphs 20 to 23 of the affidavit of the Claimants were it was stated that:

20. *“That I know that despite setting up a committee to look into the complaint of members, the 2nd Defendant failed to consider the petition I submitted to it.*
21. *Strangely, news making the rounds is that the 1st Defendant, who purportedly emerged 2nd Defendant's Sokoto State Chairman, would anytime from now be invited alongside other elected State Chairmen to be sworn in in Abuja at the 2nd Defendant's Headquarters.*
22. *That I am not aware that any appeal committee has submitted report of its finding to the 2nd Defendant in Abuja.*

23. That I have not been invited by the 1st Defendant at its National Headquarters in Abuja, regarding my petition.”

For the above stated reasons, the Claimants believed strongly that their rights have been grossly violated by the 2nd Defendant hence this instant suit to seek redress. The Claimants, by their reliefs 3 and 4 on the originating summons prays this court to 2nd Defendant to halt the purported swearing in of the 1st Defendant and his executives at the Wards, Local Governments and State levels which is to take place at the Headquarters of the 2nd Defendant in FCT, Abuja and restrain the 2nd Defendant from giving recognition to the 1st Defendant and members of his executives.

I have had to revisit the said exhibit AM11 which is the petition personally written by the 6th Claimant to the 2nd Defendant. From the content of the said petition, it is clear that the 6th Claimant is viciously angered by the conduct of the congresses in Sokoto State which he described as a 'charade'. He is shocked that the 1st Defendant emerged as the State Chairman and that he is about to be sworn in at the party's headquarters at Abuja.

However, on the face of the said petition, there exists no endorsement or acknowledgment to show that the said petition (exhibit AM11) was submitted to the headquarters of the 2nd Defendant. Though the 6th Claimant averred strenuously that

exhibit AM11 was submitted to the headquarters of the 2nd Defendant, I find no proof of such assertion before this Court. I am unable to agree with the Claimants that exhibit AM11 was received by the 2nd Defendant.

At paragraph 6(V) of the counter affidavit filed by the 1st Defendant, the 1st Defendant vehemently denied the assertion of the Claimants that the petition was submitted to the 2nd Defendant. This same position was held by the 2nd Defendant at paragraph 4(VIII) of its counter affidavit. The 2nd Defendant denied receiving any petition from any of the Claimants regarding the conduct of the congresses.

The Supreme Court in the case of **Engr. Mustapha Yunusa Maihaja V Alh. Ibrahim Gaidam & ors. (2017) LPELR-42474(SC)** at pages 50-51 held thus: *“The law is settled that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, shall prove that those facts exist. It is also the law that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. See Sections 131, 132 and 135 (c) of the Evidence Act 2011”*

See **Mohammed V Wammako & Ors. (2017)LPELR-42667(SC)**, pg. 17.

At this juncture, the onus shifted to the Claimants to produce cogent and sufficient proof of delivery of the petition to the 2nd Defendant. Unfortunately, the Claimants failed to furnish or produce such proof. The Claimants want this Court to speculate on this point. In the case of **Engr. Mustapha YunusaMaihaja V Alh. Ibrahim Gaidam & ors.**(supra), the Supreme Court held further at page 61 that *“When a fact is asserted without proof then the existence of the alleged fact is not established. That is why Section 132 of the Evidence Act provides further that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side”*

The position of the law is trite that courts of law do not speculate but act on concrete evidence. See **Ilori V. Tella (2007) ALL FWLR pt. 393 p. 122 at 139, paras. E - G (CA)** where the Court held as follows:

“It is not the duty of a court to embark upon cloistered justice by making enquiry into the case outside the court, not even by examination of documents which were in evidence when same had not been examined in the open court. A Judge is not an investigator. He should conduct a case based

*on pleadings and evidence adduced in open court.
He should not speculate”.*

I wish to state that writing a petition is quite different from submission/or delivery of same to the necessary quarters. The Claimants seem to have muddled these two issues. In the case of **B. MANFAG.(NIG.) LTD. V M/S. O.I. LTD. (2007) 14 NWLR (PT. 1053) 109**, the Supreme Court elaborately dealt with the issue. The fact of the case under reference involved the lease of a plot of land known situate in Kaduna, Kaduna State which was leased to the Appellant for a period of ten years without the consent of the Governor of Kaduna State and in direct contravention of Section 22 (1) of the Land Use Act, 1978. The lease agreement between the parties was not dated, not delivered to the Governor and was thus not registered in accordance with the law.

Pursuant to the refusal of the 1st Respondent to apply for consent, the right of occupancy granted over the land was revoked. The 1st Respondent challenged the revocation of its title and the trial court held that the revocation by the Government of Kaduna State was right. On the importance of the delivery of the lease agreement to the Governor for his consent, Ogbuagu JSC held at pages 146-147 thus:

“I note that at the time the appellant instigated or alleged by his letter, that the 1st Respondent, had sub-leased the property without the consent of the Governor, it did not realize that that complaint will boomerang against it. This is because, the sub-lease had not been dated, not stamped and not registered. In other words, the agreement had not been delivered. Surely and this is settled, a deed becomes effective in law, at the time of delivery. See Awojugbagbe’s case (supra). A contravention of Section 22 of this Act will occur in the case of a proper/conclusive alienation of a right of occupancy carried out by a deed, at the time when the relevant deed was delivered and not at the time it was executed or even sealed. So, if a deed is delivered after the Governor’s consent, there will be no contravention of section 22 of the Act.

This is because, in my respective view, it is settled that a transaction created by a deed will not come into effect prior to the delivery of the deed. In other words, a deed only becomes effective, upon its delivery. So until the time specified had arrived or

the condition had been performed or the Governor has given his consent, the instrument, will not be a deed so to speak, but is a mere escrow....”

In the more recent case of **IBRAHIM V ABDALLAH (2019)17 NWLR (PT. 1701)293** the importance of the delivery of the letter of resignation of the Appellant came under spotlight. The Appellant in this case scored the second highest vote in the primary election of the All Progressives Congress in Dala Federal Constituency of the House of Representatives. He claimed the winner was at the time of the primary election not qualified and as such, should be disqualified. He lost at both the trial court and at the Court of Appeal.

At the Supreme Court, the 1st Respondent also cross appealed by challenging the locus standi of the Appellant to file the suit *ab initio* having not properly resigned as an Assistant Superintendent with the Nigeria Customs Service which is contrary to Section 66(f) of the Constitution.

In dismissing the argument of the cross appellant, Abba Aji JSC held thus:

“.....the evidence before me is that the cross respondent exhibited his letter of resignation and acknowledgement of same, which suffices to preponderate evidence in his favour that he had duly resigned his appointment from the date it was

received as endorsed thereon.....A notice of resignation is effective, not from the date of the letter or from the date of the purported acceptance, but from the date the letter was received by the employer or his agent. See W.A.E.C V Oshionebo (2006) 12 NWLR (pt. 994)258. Resignation takes effect from the date notice is received by the employer or its agent....”

See also the case of **U.M.B LTD. V CBN (2017) ALL FWLR (PT. 850) pages 825 at 840. Paras. C-D.**

I have painstakingly read and cited these authorities to bring to the fore the importance of the delivery and/or submission of the petition as asserted by the Claimants in this case. I cannot find any credible proof of the delivery of the petition to the 2nd Defendant’s headquarters.

In the light of the above, I find it difficult to agree with the Claimants that the petition, exhibit AM11 was submitted to the headquarters of the 2nd Defendant. I therefore reject the averment of the Claimants that exhibit AM11 was submitted to the 2nd Defendant. In the absence of any credible evidence, I find in support of the 1st and 2nd Defendants that no petition was submitted by any of the Claimants to the 2nd Defendant. I so hold.

Now, having held that no petition was submitted by any of the Claimants to the 2nd Defendant, can it be said that the appeal committee failed to consider the petition of the Claimants to justify the grant of their reliefs?

From the evidence presented before this Court, it is not in dispute that the 2nd Defendant constituted appeals to entertain complaints arising from the conduct of the congresses. Paragraphs 17, 20 & 20 of the Claimants' affidavit in support of the originating summons attest to that fact. In the same vein, paragraphs 6(F,G,I,M,R,T &U) of the 1st Defendant's counter affidavit in opposition to the affidavit in support of the originating summons are clear testimony to the fact that appeal committees were constituted by the 2nd Defendant. On the part of the 2nd Defendant, the Head of Legal department of the 2nd Defendant informed the deponent in paragraph 4(IV) of the counter affidavit that "as part of the processes for the Congresses as contained in the guidelines the 2nd Defendant established Appeal Panels to entertain and settle complaints arising from each of the Congresses.

It is therefore not in contention that the 2nd Defendant duly constituted appeal committees to accept, entertain and resolve complaints arising from the conduct of the congresses at all levels. It is needless to state the fact that the appeal committees will only act on complaints/petitions submitted to them by aggrieved party members. The members of the appeal committees cannot generate

complaint by themselves. They can only act of complaints duly submitted to the party.

In this instant case, the Claimants failed to submit any complaint/petition to the 2nd Defendant. There was no petition to be entertained by the appeal committee constituted by the 2nd Defendant. The assertion by the 6th Claimant that the panel did not consider his petition and that he was not invited holds no water and same is hereby discountenanced. The position of the law remains settled that you cannot build something on nothing and expect same to stand. See the case of **MACFOY V. UAC LTD (1962) A.C.152.**

My attention is drawn to exhibit J which was presented by the 1st Defendant. The said exhibit is the report of appeal committee headed by Sen. Abdullahi A. Gumel on the conduct of the State congresses which was submitted to the National headquarters of the 2nd Defendant on the 1st of November 2021.

I have considered the report and I find on page 2 of the report the following.

"....However after the committee sitting and examine thoroughly the documents before it which shows that congress activities that took place on 16thOctober 2021. It was peacefully conducted and in accordance with the party constitution and guideline with no petition presented by any member/aspirants.

CONCLUSION

In the light peaceful conduct of this congress and no petitions was submitted against the conducts as it has follows religiously the party's congress guidelines with all documented evidence attached; the committee hereby affirms and upheld the congress."

In view of the above, I hold that the averment in paragraph 22 of the Claimants' affidavit in support of the originating summons is misleading, unbelievable and same is discountenanced.

On this note, I find it difficult to accept the affidavit evidence of the Claimants that the appeal committee was yet to submit its finding to the 2nd Defendant. The endorsement seal of the 2nd Defendant on the top right hand corner shows that the report was received at the 2nd Defendant's headquarters on the 2nd of November 2021.

It is pertinent to note that the case of the Claimants revolves around the petition which the 6th purported submitted to the 2nd Defendant. I have found earlier in this judgment that the said petition was not submitted to the 2nd Defendant. It is on the said petition that the Claimants prayed the court to halt the swearing in and the due recognition of the 1st Defendant and his executive members. According to the Claimants, having not considered the petition and having not submitted any report being the outcome of the finding of the appeal panel, it was premature to swear in the 1st Defendant and his executive members.

I have thoroughly considered the case of the Claimants and I find no merit in their case. The failure of the Claimants to present their grievance (if any) before the 2nd Defendant is their greatest undoing and same has proved fatal to their case.

In the absence of any complaint, this court cannot interpret any of the questions presented by the Claimants for determination. The case of the Claimants which is built on the foundation of the imaginary petition is bound to fail. This court cannot at this juncture agree with the Claimants. Consequently, the reliefs 1-5 sought by the Claimants in this suit are hereby refused. And I so hold.

As stated earlier in this judgment, the 1st Defendant filed a counter claim in this suit. The counter claim filed by the 1st Defendant/counter claimant was supported by eight (8) paragraph affidavit. The position of the law is settled that a counter claim is a separate suit which must be determined on the merit by the court. In the case of **Akinbade V Babatunde (2018) 7 NWLR (PT. 1618)366 at 388**, the Supreme Court held succinctly that **“a counter claim is a cross action and where the plaintiff fails in proving his claim, the defendant on proving his counter claim may succeed”** I shall therefore proceed to consider the merit or otherwise of the counter claim.

The 1st Defendant/counter claimant in the supporting affidavit averred that the electoral committee submitted a detailed report to

the 7th Defendant to the counter claim, All Progressives Congress wherein it commended the process as being free, fair and credible. Copies of the report were annexed to the affidavit. That appeal committees were constituted at all levels by the 7th Defendant to the counter claim and they also submitted their reports to the party. That despite the fact that no complaint was submitted with respect to the Sokoto State congresses, the appeal panel still submitted their report. The names of the officials that emerged from the conduct of the State congresses were listed and given the provisions of the constitution of the party, the elected members form the State Working Committee.

That the members of the State Executives Committee, Chairmen and Secretary from the Local Governments and the three elected delegates from each of the Local Government, are automatic members of the National Convention of the party. That having been duly elected as Chairman of the Sokoto State Chapter, the 1st Defendant/counter claimant and members of his Executives, are entitled to all the rights, privileges and duties as enumerated in the Constitution of the party.

Though the 1st Defendant/counter claimant's was duly served on the other parties especially the Claimants/Defendants to counter claim, no response was filed to contradict or controvert the assertion contained in the affidavit in support of the counter claim.

At this hearing of this case, counsel to the Claimants/Defendants to counter claim argued strenuously that he has read the counter claim filed by the 1st Defendant/counter claimant and he reasonably believes that the averments in affidavit filed in support of the originating summons challenge counter claim.

I have considered the affidavit filed in support of the originating summons filed by the Claimants and I cannot align myself with the submission of the learned counsel for the Claimants/Defendants to counter claim. I cannot find any frontal challenge to the depositions in support of the counter claim by the defendants to the counter claim.

The Supreme Court decided the effect of failure of a defendant to file a defence in a suit in the case of **FUT Minna & Ors. V Olutayo (2017) LPELR-43827 (SC)** where it was held inter alia that: *"In the proceedings at the Court of first instance, culminating in the appeal at the lower Court, the appellants 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."

Consequently, in the absence of any defence, the oral submission of the learned counsel for the Claimants/Defendants to counter claim on this score is discountenanced by this Court.

I shall however consider the counter claim on the merit. It is not unusual for a defendant in a case to counter claim. Where it is obvious that the defendant has a case against a claimant, he/she is at liberty to counter claim as done in this instant case rather than filing multiple suits. See **Onikoyi&ors. V Onikoyi&ors. (2018)LPELR-43680(CA)** at pg. 92.

The 1st Defendant/counter claimant has averred that the conduct of the congresses were peaceful, free, fair and credible. That no complaint(s) were received by the appeal panel yet reports were submitted. That party members emerged from the congresses. That the elected members are entitled to all the rights, privileges and duties as provided in the constitution of the party. All these germane averments were not challenged by the Defendants to the

counter claim. I find the affidavit evidence of the 1st Defendant/counter claimant credible.

There is no doubt that the constitution of the party provides the rights, duties and functions of elected executives. I have perused Articles 10,11,12.8,12.10,12.12,12.13,12.16,13,13.7,13.8,13.10 and 13.12 all of the constitution of the 2nd Defendant. I have no doubt in my mind that aside from the creation of the organs of the party, specific roles and powers were assigned to each organ.

In this case, I cannot fault the submission of the counsel for the 1st Defendant/counter claimant to the effect that having emerged from the congresses which were peacefully, free and fair, the 1st Defendant/counter claimant and his executive members should be sworn in by the 2nd Defendant.

The position as canvassed by the counsel for the 1st Defendant/counter claimant is in tandem with Section 85(3) of the Electoral Act, 2010 (as amended) which stipulates that:

'The election of members of the executive committee or other governing body of a political party, including the election to fill a vacant position in any of the aforesaid bodies, shall be conducted in a democratic manner and allowing for all members of the party or duly elected delegates to vote in support of a candidate of their choice.'

Also, Article 20 of the constitution of the All Progressives congress which provides as follows:

'All Party posts prescribed or implied by this Constitution shall be filled democratically conducted elections at the respective National Convention or Congress subject, where possible, to consensus, Provided that where a Candidate has emerged by consensus for an elective position, a vote of "yes" or "no" by ballot or voice shall be called, to ensure that it was not an imposition which could breed discontent and crisis.'

Again, I cannot fault the argument of the learned counsel for the 1st Defendant/ counter claimant that the elected officials should be accorded their rights and privileges. I concur with the learned counsel for the 1st Defendant/ counter claimant that the constitution of the party is supreme and binding on all its members. I therefore resolve the issues in the counter claim in favour of the 1st Defendant/counter claimant.

Accordingly, I order that the 1st Defendant/ counter claimant and his executive members be accorded their rights, privileges and allowed to perform their duties as provided in Articles 13.6, 13.7 and 13.8 of the constitution of the All Progressives Congress.

In clear terms, the counter claim filed by the 1st Defendant/ counter claimant succeeds. I therefore declare as follows:

- 1. THAT BY THE CLEAR PROVISIONS OF SECTION 223(1)(a), 223(2)(a) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS ALTERED, SECTION 85(3), (4), 86(1) OF THE ELECTORAL ACT, 2010 (AS AMENDED) AND ARTICLES 12.8, 12.10, 12.13, 12.16, 13.4(IV), 13.7, 13.8, 13.11 AND 13.13 OF THE ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED), THE 7TH DEFENDANT TO THE COUNTER CLAIM HAVING NOT SET ASIDE THE REPORT OF THE APPEAL PANEL ON THE SOKOTO STATE CONGRESSES, SUBMITTED TO IT AT ITS HEADQUARTERS IN ABUJA; OUGHT TO ACCORD THE COUNTER CLAIMANT AND MEMBERS OF HIS EXECUTIVES ALL THE RIGHTS AND PRIVILEGES OF A STATE EXECUTIVE COMMITTEE PROVIDED FOR IN THE CONSTITUTION OF THE ALL PROGRESSIVES CONGRESS.**
- 2. THAT THE COUNTER CLAIMANT AND MEMBERS OF HIS EXECUTIVES; PERSONS ELECTED AT THE LOCAL GOVERNMENT CONGRESSES AND THE THREE DELEGATES FROM EACH LOCAL GOVERNMENT AREA ARE, BY THE PROVISIONS OF THE ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED),**

ENTITLED TO BE MEMBERS OF THE NATIONAL CONVENTION OF THE 7TH DEFENDANT TO THE COUNTER CLAIM.

3. THAT THE 7TH DEFENDANT (APC), CANNOT AT ITS NATIONAL HEADQUATERS IN ABUJA, OR AT ANY OTHER PLACE, SUBSTUTITE THE NAMES OF THE COUNTER CLAIMANT, MEMBERS OF HIS EXECUTIVE, MEMBERS OF THE LOCAL GOVERNMENT AREA EXECUTIVES, THE WARD EXECUTIVE COMMITTEE WHO WERE DULY ELECTED IN THE SOKOTO STATE CONGRESSES ORGANISED BY THE 7TH DEFENDANT TO THE COUNTERCLAIM.

4. THAT THE DEFENDANTS AND ANY PERSON(S) ACTING THROUGH THEM ARE HEREBY DIRECTED TO ALLOW THE COUNTER CLAIMANT, MEMBERS OF HIS EXECUTIVE, MEMBERS OF THE LOCAL GOVERNMENT AREA EXECUTIVES, AND THE WARD EXECUTIVE COMMITTEE TO, WITHOUT INHIBITION, PERFORM THEIR FUNCTIONS AND BE MEMBERS OF COMMITTEES AS RECONGINSED IN ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED).

CONSEQUENTLY, I MAKE AN ORDER RESTRAINING THE DEFENDANTS AND ANY PERSON(S) ACTING THROUGH THEM HOWSOEVER DESCRIBED, HOWSOEVER CALLED,

FROM INHIBITING THE COUNTER CLAIMANT, MEMBERS OF HIS EXECUTIVE, MEMBERS OF THE LOCAL GOVERNMENT AREA EXECUTIVES, AND THE WARD EXECUTIVE COMMITTEE FROM PERFORMING THEIR FUNCTIONS AND BE MEMBERS OF COMMITTEES AS RECONGINSED IN ALL PROGRESSIVES CONGRESS CONSTITUTION 2014 (AS AMENDED).

This is the judgment of this Court. And I so hold.

This Court awards the cost of One hundred thousand (N100, 000) against the Claimants and in favour of the Defendants. Any aggrieved party is at liberty to appeal this judgment.

APPEARANCE:

Musa Etubi, Esq. for the Claimants

Oluwole Adaja, Esq. with P. A. Imoudu, Esq. for the 1st Defendant

Divine Davies, Esq. for the 2nd Defendant.

Sign
Hon. Judge
16/12/2021