

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA**

THIS THURSDAY, THE 25TH DAY OF NOVEMBER, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2024/11

ABDULLAHI SAMARI.....CLAIMANT

AND

ALL PROGRESSIVES CONGRESS.....DEFENDANT

JUDGMENT

The Claimant herein initiated this action vide an originating summons dated **17th August, 2021** and filed at the Court's Registry on **18th August, 2021** for the determination of the following questions:

- 1. Whether having regard to the provision of Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 85 of the Electoral Act 2010 (As amended) and Article 13.4 (xvi) of the All Progressives Congress Constitution, the Claimant was not duly nominated and appointed as the Chairman Caretaker Committee of the Defendant's Kwara State Chapter.**
- 2. Whether upon a proper interpretation and application of the Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 85 of the Electoral Act 2010 (As amended) and Article 13.4 (xvi) of the All Progressives Congress Constitution, the Claimant was not validly appointed as Chairman Caretaker Committee, when there was vacancy pursuant to Article 13.4 (xvi) of the Defendant's Constitution.**

- 3. Whether upon a proper interpretation and application of the Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 85 of the Electoral Act 2010 (As amended) and Article 13.4 (xvi) of the All Progressives Congress Constitution, the Claimant is not entitled to remain in office as chairman caretaker committee of Kwara State Chapter of the All Progressives Congress pending the conduct of democratic election by the Defendant.**
- 4. Whether upon a proper interpretation and application of the Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 85 of the Electoral Act 2010 (As amended) and Article 13.4 (xvi) of the All Progressives Congress Constitution, the Defendant lack the power to remove or alter the status of the Claimant as the Chairman of the Caretaker Committee Chairman of Kwara State All Progressives Congress.**
- 5. Whether the Court can grant an injunction to restrain the Defendant from interfering with the Claimant's official duties as the Chairman Caretaker Committee of Kwara State All Progressives Congress.**

Upon a resolution of the above questions, the Claimant claims against the Defendant, the following Reliefs:

- 1. A declaration that the conjunctive reading of the provisions of Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 85 of the Electoral Act 2010 (As amended) and Article 13.4 (xvi) of the All Progressives Congress Constitution, the Defendant cannot remove the Claimant from office as the Chairman of the Caretaker Committee of Kwara State.**
- 2. A declaration that having regards for the provisions of Article 13 of the Defendant's Constitution, the Defendant cannot stop the Claimant from exercising its power under the Defendant's constitution.**

- 3. A declaration that upon a proper interpretation and application of the provision of Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 85 of the Electoral Act 2010 (As amended) and Article 13.4 (xvi) of the All Progressives Congress Constitution, the Defendant does not have the power to remove the claimant from office as the Chairman of Caretaker Committee of Kwara State Chapter of the Defendant.**
- 4. A declaration that upon a proper interpretation and application of the provision of Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 85 of the Electoral Act 2010 (As amended) and Article 13.4 (xvi) of the All Progressives Congress Constitution, the Claimant position as the Chairman Caretaker Committee of the Defendant's Kwara State Chapter if valid and subsisting.**
- 5. An order restraining the Defendant either by its agents, privies and or members at large from removing the claimant from office as Chairman Caretaker Committee until a valid Congress is conducted to democratically elect State Executive Committee members.**
- 6. An order directive the Defendant to desist immediately from appointing another Chairman Caretaker Committee in Kwara State.**
- 7. An injunction prohibiting the Defendant from interfering with the official duty of the Chairman Caretaker Committee of Kwara State All Progressives Congress.**
- 8. And for such other Order(s) or consequential order(s) as this Honourable Court may deem fit to make in this circumstance of this case and in the interest of justice.**

The application is supported by an eleven (11) paragraphs affidavit deposed to by one **Oluwayemi Charles**, a litigation secretary in the law firm of Primage Legal Practitioners and Consultants, Counsel to the Claimant. No annexure was **referred** to and attached. A very brief written address was filed in compliance with the

Rules in which **(4) issues** were raised as arising for determination. The case made out is simply that the Claimant was duly nominated and appointed as the Chairman. Caretaker Committee for the Kwara State Chapter of the All Progressives Congress (APC) in compliance with extant provisions of the constitution, the Electoral Act 2010 (As Amended) and the Constitution of the APC and that he cannot be removed contrary to the provisions of these legislations and the constitution.

In opposing, the Defendant filed a seven (7) paragraphs counter-affidavit and also filed a very brief written address in support in which one issue was raised as arising for determination. The simple case made out is that the **Defendant** do not intend to remove the Claimant from office illegally and his allegations are completely unfounded and puts the Claimant to the strictest proof.

At the hearing, counsel on either side relied on the processes filed and on the part of claimant urged the court to grant the reliefs sought while on the other side of the aisle, the Defendant urged the court to dismiss the case as completely lacking in merit.

I have carefully considered the processes filed on both sides of the aisle and the narrow issue from the affidavit has to do with the validity of the complaint of claimant that he is about to be unlawfully removed as Chairman Caretaker Committee of APC in Kwara State. The Defendant denied this allegation and puts the claimant to proof. The extant dispute therefore has to do with **whether claimant has in the circumstances creditably made out a case to entitle him to the Reliefs sought.**

It is therefore relevant to state the general and important principles that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) of the Evidence Act.** Equally by **Section 131 (2)**, where a person is bound to prove the existence of any facts, it is said that the burden of proof lies on that person. For a matter under the **originating summons**, let me also quickly add that it is not enough to simply make assertions in the affidavit in support of the summons without credible proof in support especially here where these assertions are vigorously contested or challenged by the adversary. The implication is that

where averments are made in an affidavit and they are denied or disputed, then the onus of proof is on he who asserts such a fact to establish same by credible evidence. This is so because bare averments in an affidavit and which are challenged do not constitute evidence unless same is admitted. The logical follow up question here is simply whether the plaintiff has established the allegations made in the affidavit in support of his originating summons?

Now in this case, I prefer to situate the case made out by claimant. In the affidavit in support, he averred thus:

I, Oluwayemi Charles, Christian, Adult, male and a Nigerian citizen of Suit 10, Efab Plaza, Area 11, Abuja do solemnly swear, and state as follows that:

- 1. That I am a Litigation Secretary in the Law Firm of Primage Legal Practitioner and Consultants, the counsel to the Claimant in this suit.**
- 2. That I have the authority of my employer to depose to this affidavit.**
- 3. That I was informed by Chiemelie Nneoma Onyia, Esq counsel in the law firm of Primage Legal Practitioner and Consultants, representing the Claimant, on the 12th days of August, 2021 at the hour of 3.30pm in the forenoon at the premises of my office in Abuja and I verily believe her as follows:**
 - a. The Claimant is the Chairman Caretaker Committee in Kwara State Chapter of the All Progressives Congress.**
 - b. The Defendant is a registered political party in Nigeria with Organs and Structure in its various State Chapters.**
 - c. That the Defendant's Constitution stipulated that citizen of Nigeria should be allowed to register as members of the party without any hindrance.**

- d. That the Defendant's Constitution empower the members of the party to be appointed and elected as officers of the party in any capacity as they so desire.**
 - e. That by the provisions of the Electoral Act 2010 (As amended), the Defendant's Constitution, it is mandatory for the Defendant to have functioning organs at all time.**
 - f. That notwithstanding the above, the Defendant is on the verge of disregarding these laws and guidelines to unlawfully remove the Chairman caretaker committee of the party in Kwara State.**
 - g. The tenure of the Caretaker Committee ought to expire after the conduct of State Congress in Kwara State in line with the mandate given by President Mhammadu Buhari and the leadership of the party.**
 - h. That the Defendant has the responsibility of conducting their affairs in accordance with the provisions of the Constitution of the Political Party, their Guidelines, Rules and regulations made pursuant to the Electoral Act.**
- 4. That the Defendant have concluded plan to conduct Local Government and state congresses across the country where new executive committees shall be elected.**
- 5. That the Claimant and other party members who are members of the caretaker committee will suffer irreparable damage if the court does not grant this application.**
- 6. That is urgent that the court grant this application to prevent illegality.**

The above is the very basis of the complaints of claimant but the validity of these averments are in serious question in the light of the provision of **Section 115(1),**

(3), (4) of the Evidence Act which provides thus:

“115 (1): Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

(3) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

(4) When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information”.

Now I have carefully read the above provisions which appear to me clear and unambiguous. The word “**shall**” clearly appears in the above provisions which in law and in the context in which it appears has a mandatory connotation. The word “**shall**” when used in a statutory provision imports that a thing must be done. It is a form of command or mandate. It is not permissive, it is mandatory. The word shall in its ordinary meaning is a word of command which is normally given compulsory meaning as it is intended to denote obligation. See **Onochie V. Odogwu (2006)6 N.W.L.R (pt.975)65; Nwankwo V. Yaradua (2010)12 N.W.L.R (pt.1209)518.**

The critical question here is whether these mandatory provisions were adhered to by Claimant.

Now it is obvious that this affidavit was deposed to by a litigation secretary in the law firm representing claimant. The source of the information he averred in **paragraph 3** is from one **Chiemelie Nneoma Onyia**, Esq also counsel in the law firm representing the Claimant. It is obvious and or self evident that neither the deponent or counsel is the **claimant**. Indeed the law firm representing claimant is based in Abuja going by the address on the processes they filed.

Again on the materials supplied, there is no doubt that neither the deponent or counsel who supplied him the information is a member APC chapter in Kwara State and are thus not in a position to provide the facts streamlined in paragraph 3 which forms the basis for the reliefs sought by claimant. The entire paragraphs 3a-f, 4 and 5 of the affidavit in support clearly violates the above provisions of **Section 115(1) and (3) of the Evidence Act (supra)** and liable to be struck out and or discountenanced.

The facts deposed to by the deponent of the affidavit in support of the extant originating summons relying on the information of counsel clearly do not relate to facts of his own personal knowledge. The Counsel who allegedly informed him of the facts did not state the name of the informant or his reasonable particulars given and the time, place and circumstances of the information were not streamlined. The said paragraphs 3-5 of the affidavit are clearly fatally compromised and shall be struck out and or discountenanced. In considering similar provisions as **Section 115**, the Superior Courts have consistently had that failure to abide by the provisions of **Section 115 of the Evidence Act** is fatal.

In **Abiodun V. C.J Kwara State (2007)18 N.W.L.R (pt.1065)109 at 144**, the Court of Appeal held as follows:

“By virtue of Section 88 of the Evidence Act, when a person deposes to his belief on any matter of fact and his belief is derived from any other sources, other than his own personal knowledge, he shall set forth explicitly, the facts and circumstances forming the ground of his belief. Thus the combined reading of Sections 76, 77, 86, 87 and 88 of the Evidence Act is that a deposition in an affidavit must be direct. Where the evidence is derived from another person such person and the circumstances of the knowledge which he believes must be stated so that the court and the other party deposing to contrary evidence can confirm or ascertain the truth.”

In **Gov of Lagos State V. Ojukwu (1986)1 N.W.L.R (pt.18)621**, it was held that an informant must be named, if the deponent is swearing to information given to him by another person; that hearsay in an affidavit is not countenanced, especially if the deponent swears to what he was told by an unnamed person. In **Barclays Bank Ltd V. C.B.N (1976)176**, it was held thus:

“The substance of the affidavit constitutes the evidence before the trial court and its veracity must be ascertainable as the evidence of a witness on oath in the witness box, giving oral testimony. It is not enough to make sweeping statements of facts which are not stated to be within the knowledge of the maker, communicated by unnamed person to the maker.”

Again in **Chief Francis Edu V. Comm. for Agric, Water Resources and Rural Development (2000)12 N.W.L.R (pt.681)316** at 333, the Court of Appeal held thus:

“By virtue of Section 86, 87 and 88 of the Evidence Act, an affidavit must contain only those facts of which the maker or deponent has personal knowledge or which are based on information which he believes to be true and the maker must state the name and full particulars of his information...”

At Pages 332-333, Edozie J.C.A (as he then was) held thus:

“It is not disputed that the facts deposed to in the appellants supporting affidavit by Mr Mathew Ekpo are not within his personal knowledge.”

Again at Pages 334 of the same report, Ekpo J.C.A held as follows:

“Sections 86, 88 and 89 of the Evidence Act, 1990 are mandatory or obligatory and non-compliance is bound to lead to the rejection of the affected paragraphs of the affidavit.”

With the striking out of these paragraphs, the case of the Claimant stands completely undermined as there are no facts to support the case made out. The case should at this point suffer the inevitable consequence of been dismissed for want of proof but in the event I am even wrong, let me out of caution still consider whether the case would have succeeded if the paragraphs 3 - 5 of the affidavit were to have validity.

It may be pertinent to point out quickly before going into the merits that the substantive reliefs sought by Claimant are **Declaratory reliefs** vide Reliefs 1-4. Indeed the success of the orders sought vide **Reliefs 5-8** are based on the success of **Reliefs 1-4**. Now on the authorizes, declarations are in the nature of special claims

or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. Indeed it would be futile when Declaratory reliefs are sought to seek refuge on the proposition that there were admissions by the adversary on the pleadings or other processes. The authorities on this principle are legion. I will refer to a few.

In **Vincent Bello V. Magnus Eweka (1981)1 SC 101 at 182**, the Supreme Court stated aptly thus:

“It is true as was contended before us by the appellants counsel that the rules of court and evidence relieve a party of the need to prove what is admitted but where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence not by admission in the pleading of the defendant that he is entitled to the declaration.”

The law is thus established that to obtain a declaratory relief as to a right, there has to be credible evidence which supports an argument as to the entitlement to such a right. The right will not be conferred simply upon the state of the pleadings or by admissions therein.

In **Helzgar V. Department of Health and Social Welfare (1977)3 AII ER 444 at 451; Megarry V.C** eloquently stated as follows:

“The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what, it has found to be the law after proper argument, not merely after admissions by the parties. There are no declarations without argument. That is quite plain.”

I may also refer to the observations of Nnamani J.S.C (of blessed memory) in **Sorongbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262 (1988)5 N.W.L.R (pt.92)90** as follows:

“The court of Appeal relied on the decision of this court in Lewis & Peat (N.R.I.) Ltd V. Akhimien (1976)7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in a case such as

one for declaration of title where the onus is clearly on the plaintiff to lead such strong and positive evidence to establish his case for such a declaration, an evasive averment...does not remove the burden on Plaintiff. See also Eke V. Okwaranya (2001)12 N.W.L.R (pt.726)181; Akaniwo V. Nsirim (2008)9 N.W.L.R (pt.1093)439; Maja V. Samouris (2002)7 N.W.L.R (pt.765)78 at 100-101.”

The underlying principle from the above authorities is simply that **Declarations** are not made because of the stance or position of parties in their pleadings or processes but on proof by credible and convincing evidence at the hearing. The point simply is that the claimant in this case must establish his allegations by credible and convincing evidence to put the court in a firm position to grant the Declaratory reliefs sought.

I had earlier highlighted the relevant paragraphs of the affidavit of Claimant. In opposition, the Defendant averred in its counter-affidavit as follows:

“I Damilola Odusanya, Christian, Adult, Male and a Nigerian Citizen of No.40 Blantyre Street, Wuse 2, Abuja do solemnly swear and state as follows:

- 1. That I am the legal assistant in the legal department of the Defendant in this suit.**
- 2. That I have the authority of my employer to depose to this affidavit.**
- 3. That I have been informed by Mr. Temitope Ahmed an Organizing Officer at the Defendant Department of Organization on 24th August, 2021 at about 1:00pm and I verily believe him to be true as follows:**
 - a. The averment of the Claimant in paragraph 3(a-e) is correct, while the ones in paragraph f is subject to the stringent proof of the Plaintiff.**
 - b. That the Defendant deny paragraph 3(g) of the Plaintiff’s affidavit.**
 - c. That the Defendant has not remove the Caretaker Chairman of APC Kwara State from office.**

4. That the Defendant is guided by its constitution in the removal of any heiring(sic) officer from office.

5. That the Defendant will not breach the fundamental rights of its members for any reason.

The above paragraphs joining issues with the claims of Claimant are very clear. The Claimant did not however exhibit or attach any document or evidence situating where he was threatened with removal as Chairman, Caretaker Committee of the APC, Kwara State Chapter by the Defendant at any time contrary to the provisions of the constitution, the Electoral Act and the APC Constitution. There is absolutely nothing in this case to situate any threat to remove the Claimant as the Chairman Caretaker Committee of Kwara State Chapter and one really wonders how and why this case was filed in the first place. The present exercise by Claimant border on an entirely unfounded speculations of the extreme kind; and on the basis of a complete dearth of evidence to support his case, the present foray to court clearly amounts to a complete hollow exercise.

As stated earlier, declarations as sought here must be creditably established. Unfortunately as demonstrated above, the claimant has not made out a favourable case putting the court in a commanding height to grant the reliefs or declarations he seeks. There is absolutely no evidence of quality and cogency beyond bare speculative averments which were all challenged by the defendant. The law is settled that where a party abides by the constitution, the Electoral Act and party guidelines in the conduct of its activities, any complaint(s) in such circumstances will lack validity.

For any complaint(s) to have any factual and or legal traction, it has to be genuine complaint and not an attempt to simply play to the gallery and waste the precious time of our courts. Where there is however a proved infraction or breach of extant electoral laws and guidelines and this is creditably established, the court will always do the needful and make the appropriate restitutory order(s) to rectify the unlawful substitution. See **Gbileve V Adingi (supra) 394 at 422-423 paras. D-B; Peretu V Gariga (2013) 5 NWLR (pt.1348) 415**. The key emphasis however is on a proved violation of the provisions of the Constitution, the Electoral Act and party guidelines by credible evidence.

It is a fundamental principle of our legal system in respect of facts averred that where they are weak, tenous, insufficient or feeble, then it would amount to a case of failure of proof. A claimant whose affidavit does not prove the reliefs he seeks must fail. See **A.G of Anambra State V A.G Fed. (2005) All FWLR (pt.268) 1337 at 1611; 1607 G-H.**

In closing, let me here paraphrase and adopt the words of **Udo Udo J.S.C (of blessed memory)** to this case, in **Elias V. Omobore (1992)NSCC 92** by saying that, if there was ever an originating summons starved of evidence, this is certainly one. The summons cries to high heavens in vain to be fed with relevant and admissible evidence. The claimant failed to realize that judges do not act like oracles. Judges cannot perform miracles in the handling of matters before them; neither can they manufacture evidence for the purpose of assisting a party to win his case. Cases are determined on the strength of the quality of the evidence adduced in support of the Reliefs sought.

On the whole, this originating summons is bereft and devoid of any substance and merit. It is hereby dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. A.S. Babalola, Esq., for the Claimant.**

- 2. S.T. Ayodele, Esq., with Crown Emoeduma, Esq., for the Defendant.**