

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 16TH DAY OF DECEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/1104/2021

BETWEEN:

ALHAJI USMAN HALILU

CLAIMANT

AND

- 1. ALL PROGRESSIVES CONGRESS (APC)**
- 2. DAHIRU ADAMU YAHAYA**
- 3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)**

DEFENDANTS

JUDGMENT

This Judgment is on a pre-election dispute.

By way of an Originating Summons dated and filed on the 16th of June, 2021, the Claimant had commenced this suit seeking the determination of the following questions:-

1. Whether in view of section 87 of the Electoral Act, 2010 (as amended) and having regards to the provisions of Article 20 of the Constitution of the All Progressives Congress, the APC Guidelines for Nomination of Candidates for the Council Ward Election 2022 Direct Primaries relating to the conduct and result of the APC Primaries and the upholding and declaration at the venue of the election, it was lawful for the 1st Defendant to have forwarded the name of the 2nd Defendant to the 3rd Defendant as the 1st Defendant's nominated candidate in respect of the Jiwa Ward Council.

2. Whether in view of section 87 of the Electoral Act, 2010 (as amended) and having regards to the provisions of Article 20 of the Constitution of the All Progressives Congress, the APC Guidelines for Nomination of candidates for the Council Ward Election 2022 Direct Primaries relating to the conduct and result of the APC Primaries and the upholding and declaration at the venue of the election, it was lawful for the 1st Defendant to change the result of the primary election it conducted for Jiwa Ward in which the Claimant emerged winner and was so declared by the election committee of the 1st Defendant.
3. Whether in view of section 87 of the Electoral Act, 2010 (as amended) and having regards to the provisions of Article 20 of the Constitution of the All Progressives Congress, the APC Guidelines for Nomination of Candidates for the Council Ward Election 2022 Direct Primaries relating to the conduct and result of the APC Primaries and the upholding and declaration at the venue of the election, the 1st Defendant was not bound in law to forward the name of the Claimant to the 3rd Defendant as the 1st Defendant's nominated candidate in respect of Jiwa Ward in the 2022 Council Election.
4. Whether in view of section 87 of the Electoral Act, 2010 (as amended) and having regards to the provisions of Article 20 of the Constitution of the All Progressives Congress, the APC Guidelines for Nomination of Candidates for the Council Ward Election 2022 Direct Primaries relating to the conduct and result of the APC Primaries and the upholding and declaration at the venue of the election, the 3rd Defendant is not bound in law to remove the name of the 2nd Defendant as the nominated candidate of the 1st Defendant replacing same with the name of the Claimant as the 1st Defendant's nominated candidate in respect of the Jiwa Ward Council election in the 2022 election.

5. Whether in view of section 87 of the Electoral Act, 2010 (as amended) and having regards to the provisions of Article 20 of the Constitution of the All Progressives Congress, the APC Guidelines for Nomination of Candidates for the Council Ward Election 2022 Direct Primaries relating to the conduct and result of the APC Primaries and the upholding and declaration at the venue of the election, the forwarding of the name of the 2nd Defendant by the 1st Defendant to the 3rd Defendant as the 1st Defendant's nominated candidate in respect of Jiwa Ward Council in the 2022 Election is not illegal, null and void.

Upon an affirmative determination of the questions, the Claimant seeks the following reliefs from this Court:-

1. A Declaration that upon the interpretation of section 87(4)(c) (*sic*) of the Electoral Act, 2010 (as amended), Article 20(iii) (*sic*) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Ward Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, it was unlawful for the 1st Defendant to have forwarded the name of the 2nd Defendant to the 3rd Defendant as the 1st Defendant's nominated candidate in respect of the Jiwa Ward Council in the 2022 Council Election.
2. A Declaration that upon the interpretation of section 87(4)(c) (*sic*) of the Electoral Act, 2010 (as amended), Article 20(iii) (*sic*) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Ward Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, the 1st Defendant was bound in law to forward the name of the Claimant to the 3rd Defendant as the 1st Defendant's nominated

candidate in respect of the Jiwa Ward Council in the 2022 Council Election.

3. A Declaration that upon the interpretation of section 87(4)(c) (*sic*) of the Electoral Act, 2010 (as amended), Article 20(iii) (*sic*) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Ward Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, the 3rd Defendant is bound in law to remove the name of the 2nd Defendant as the nominated candidate of the 1st Defendant and replacing same with the name of the Claimant as the 1st Defendant's nominated candidate in respect of the Jiwa Ward Council in the 2022 Council election.
4. A Declaration that upon the interpretation of section 87(4)(c) (*sic*) of the Electoral Act, 2010 (as amended), Article 20 (iii) (*sic*) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, the forwarding of the name of the 2nd Defendant to the 3rd Defendant by the 1st Defendant as its nominated candidate in respect of Jiwa Ward in the 2022 Council Election is illegal, null and void.
5. A Declaration that upon the interpretation of section 87(4)(c) (*sic*) of the Electoral Act, 2020 (as amended), Article 20(iii) (*sic*) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Ward Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, the publication of the name of the 2nd Defendant as the

candidate of the 1st Defendant in respect of Jiwa Ward in the 2022 Council election by the 3rd Defendant is illegal, null and void.

6. An Order of this Honourable Court directing the Defendants to forthwith recognize the Claimant as the duly nominated candidate of the 1st Defendant in respect of the Jiwa Ward in the 2022 Council election.
7. An Order of this Honourable Court directing the 3rd Defendant to immediately replace and publish the name of the 2nd Defendant with the name of the Claimant as the 1st Defendant's duly nominated candidate in respect of Jiwa Ward in the 2022 Council election.
8. An Order of injunction restraining the 2nd Defendant from parading himself as the candidate of the 1st Defendant for the Jiwa Ward at the 2022 Council election.
9. The cost of this suit.

The Originating Summons was supported by an affidavit disclosing the facts upon which the Claimant relied to bring the action, nine exhibits marked **Exhibits A, B, C, D1, D2, E1, E2, F, and G** which, respectively, were party membership card of the Claimant, Constitution of the 1st Defendant, Guidelines for the Nomination of Candidates for the 2022 Council Election 2022 Direct Primaries, Expression of Interest Form, Nomination Form, evidence of payment for the said Forms, acknowledgement copies of the said Forms, copy of the duplicate of the record of the votes cast, and a copy of the letter from the 1st Defendant forwarding the name of the 2nd Defendant as the winner of the primary election to the 3rd Defendant. The Claimant also filed a Written Address in support of the Originating Summons.

In the facts as disclosed in the affidavit in support of the Originating Summons, the Claimant, who was a card-carrying member of the 1st Defendant and, in that capacity, indicated interest to contest the Councillorship election for Jiwa Ward, claimed that he contested for the

primary election of the 1st Defendant for the nomination of the party's candidate for the Jiwa Ward Councillorship election and, according to him, did win the election where he scored 558 votes of the total votes cast. He further swore that the other aspirants, one Abdullazeez A. Khadijat and one Dahiru Adamu Yahaya who is also the 2nd Defendant in this suit, scored 38 and 378 respectively of the total votes cast at the 1st Defendant's primary election. He substantiated this claim with **Exhibit F**, the result of the primary election issued by the primary election Committee for Jiwa Ward.

Shortly after the election which the Claimant insisted was free and fair, the Claimant averred that the 1st Defendant forwarded the name of the 2nd Defendant as the winner of the primary election to the 3rd Defendant through **Exhibit G**, a letter dated the 25th of May, 2021. He further claimed that the fact of this substitution came to his knowledge when the 3rd Defendant published the names of eligible candidates for the 2022 Ward/Council elections in the Federal Capital Territory, Abuja. He therefore sought the intervention of the Court to halt what he described as an impunity.

In the legal argument in support of the Originating Summons, learned Counsel for the Claimant formulated two issues for determination. The issues are:-

- 1. Whether the 1st Defendant lawfully forwarded the name of the 2nd Defendant to the 3rd Defendant as the 1st Defendant's nominated candidate in respect of Jiwa Ward in the 2022 Council Elections.*
- 2. Whether the 3rd Defendant lawfully published the name of the 2nd Defendant as the 1st Defendant's nominated candidate in respect of Jiwa Ward in the 2022 Council Elections.*

In his joint argument on the two issues, learned Counsel submitted that all political parties had a statutory obligation to abide by the provisions of the

Electoral Act, 2010 as amended, the party's Constitution and the Guidelines for the nomination of its candidate. He further submitted that the Act also empowered a dissatisfied aspirant to challenge the decision of the party in the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.

Counsel contended that the act of the 1st Defendant in forwarding the name of the 2nd Defendant to the 3rd Defendant was a violation of section 87 of the Electoral Act, 2010 as amended. He also submitted that the Constitution of the 1st Defendant and the Guidelines for the conduct of the primary election issued by the 1st Defendant were relevant to the determination of the questions raised in this suit. He contended that where an aspirant scored the highest number of votes cast at an election, it was incumbent on the party to declare that candidate the winner of the election and to forward their name to the 3rd Defendant. Since the 1st Defendant had refused to do the right thing, it was necessary for the Court to intervene, he insisted.

In support of all his arguments on these two issues, learned Counsel cited and relied on ***Lau v. PDP (2018) 4 NWLR (Pt. 1608) 60; PDP v. Oranezi (2018) 7 NWLR (Pt. 1618) 245; Uguegede v. Asadu (2018) 10 NWLR (Pt. 1628) 460; Mato v. Hember (2018) 5 NWLR (Pt. 1612) 258; APC v. Karfi (2018) 6 NWLR (Pt. 1616) 479; Uzodimma v. Izunaso (No. 2) (2011) 17 NWLR (Pt. 1275) 30; and Senator Lado v. CPC & Ors (2011) 48 NSCQR 501.***

All the Defendants filed responses to the Claimant's Originating Summons. The 1st Defendant, in its Counter-Affidavit deposed to by one Adenike Shittu (Ms), a Librarian in the law office of S. E. Aruwa & Co., Counsel to the 1st Defendant, denied all the averments of the Claimant in his affidavit in support of his application. She swore that the 1st Defendant was a non-juristic person and so lacked the capacity to sue and be sued. She further asserted that the Claimant did not exhibit the documents which he wanted the Court to interpret

and added that the dispute was an internal affair of the party and the Court lacked the jurisdiction to entertain same.

In the Written Address, in opposition, the Counsel to the 1st Defendant formulated one issue for determination, to wit: *“Whether this matter is not statute barred, an abuse of the processes of this Honourable Court and whether this Honourable Court has the jurisdiction to entertain this suit in view of the subject matter and the reliefs sought by the Claimant.”* In his argument, learned Counsel submitted that none of the facts disclosed in the affidavit in support of the Originating Summons could sustain any of the reliefs sought by the Claimant in this suit.

The 2nd Defendant similarly challenged the suit of the Claimant. In his Counter-Affidavit deposed to on his behalf by one Oludare Jesudamilola, a Litigation Secretary in the law firm of Ojukwu Chikaosolu & Co., Counsel to the 2nd Defendant, the deponent admitted the veracity of the facts contained in paragraphs 1, 3, 4, 5, 6 and 7 of the affidavit in support of the Originating Summons. She put the Claimant under an obligation to prove the averments contained in paragraphs 2, 8, 9 and 13 of the affidavit in support of the Originating Summons while she denied paragraphs 10, 11, 14, 15 and 16 of the affidavit in support of the Originating Summons.

She claimed that the 2nd Defendant was the winner of the primary election conducted by the 1st Defendant for the Jiwa Ward Councillorship election, adding that his name was rightly forwarded to the 3rd Defendant. She further claimed that the suit should not have been commenced by way of Originating Summons, since there was the need to cross-examine the Claimant in respect of some of the documents that he exhibited and also for the 2nd Defendant to call evidence with regards to the true and correct result of the said primary election. She also claimed that the Claimant conspired with some impostors to frustrate the primary election of the 1st Defendant which

the 2nd Defendant won. The 2nd Defendant did not attach any documentary exhibit to support his claims.

In the Written Address in support of the Counter-Affidavit, learned Counsel for the 2nd Defendant formulated one issue for determination, to wit: “*Whether or not the Claimant has proved his entitlement of (sic) the relief sought in this case?*” In addressing this sole issue, learned Counsel prefaced his submission by pointing out to the Court that the Claimant had two evidential burden to discharge before he would be entitled to the reliefs he was seeking. These, according to learned Counsel, were the duty to establish the veracity of his claim and the burden to prove the untenability of the defence of the 2nd Defendant. He cited the case of ***Buhari v. INEC & Ors (2008) LPELR-814 (SC)*** where the apex Court restated the settled principle of law that civil cases were decided on a preponderance of evidence.

Arguing further, he maintained that a claimant who sought declaratory reliefs must succeed on the strength of their own case and not on the weakness of the other party’s case. He reiterated his position that the depositions in the Claimant’s affidavit were false and that he had failed to prove that he was entitled to any of the reliefs sought. He also submitted that the mode of commencement adopted by the Claimant was inappropriate for a suit of this nature. He urged the Court, therefore, to dismiss the suit of the Claimant.

For all his submissions on this sole issue, learned Counsel cited the cases of ***Okuarume v. Obabokor (1965) All NLR 360; Are v. Adisa (1967) 1 All NLR 148; Ajao v. Ademola (2005) 3 NWLR (Pt. 193) 636; David Fabunmi v. Agbe (1985) 1 NWLR (Pt. 2) 316; Nnaemeka Okoye & Ors v. Nwankwo (2014) LPELR-23172 (SC); WAEC V. Akinkunmi (2008) 9 NWLR (Pt. 1091) 151 and Udene v. Ugwu (1997) 3 NWLR (pt. 491) 57.***

On the other hand, the 3rd Defendant merely filed an Affidavit of facts in response to the Originating Summons. In the said affidavit deposed to by one Hussein Abdullahi, an Executive Officer in the Litigation and Prosecution Department of the 3rd Defendant, the 3rd Defendant admitted paragraphs 3, 5, 6, 7, 10, 11 and 12 of the affidavit in support of the Originating Summons and left the burden of proving the veracity of paragraphs 1, 2, 4, 8, 9, 13, 14, 15 and 16 to the Claimant.

Further to the above, the deponent averred that the 3rd Defendant monitored the conduct of the primary elections of the 1st Defendant's Jiwa Ward Councillorship Primary Election which held on the 24th of April, 2021, adding that the officials of the 3rd Defendant who monitored the primary election submitted a written report to the 3rd Defendant. This report was exhibited as **Exhibit INEC 1**. In conclusion, the deponent stated that the law placed a burden on political parties to ensure internal democracy in the conduct of their affairs.

In the written address in support of the affidavit, learned Counsel for the 3rd Defendant formulated a sole issue for determination which is, "*Whether the Plaintiff has placed before this Honourable Court sufficient facts and materials to warrant grant of the reliefs sought by the Plaintiff.*"

Arguing this sole issue, learned Counsel for the 3rd Defendant submitted that the 3rd Defendant had the constitutional and statutory duty to monitor the activities of political parties and to ensure that same were in compliance with the law and the Constitution. He cited section 153(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended, section 87 of the Electoral Act, 2010 as amended, and the cases of ***Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227 at 296; Hope Uzodimma v. Osita izunaso (No. 2) (2011) 17 NWLR (Pt. 1275) 30 and Attorney-General of the Federation & Ors v. Alhaji Atiku Abubakar & Ors 32 NSCQR 1 at 174 – 175.***

He restated the principle of law that though political parties had the discretion to nominate candidates of their choices for elections, they, must, however, do so in accordance with their Constitutions and Guidelines as well as the laws of the country, adding that the Courts were vested with the jurisdiction to step in and correct any aberration.

The Claimant, in exercising his right of reply on points filed same against the Counter-Affidavits and Written Address of the 1st and 2nd Defendants. In his reply on points of law to the 1st Defendant's Counter-Affidavit and Written Address, Counsel to the Claimant submitted that the relevant paragraphs of the 1st Defendant's Counter-Affidavit were defective and should be struck out for being at variance with the provisions of section 115(1), (2), (3) and (4) of the Evidence Act, 2011, seeing that the deponent did not depose to the facts from her personal knowledge, but from the information made available to her by one Mr Dare Oketade, the Director of Legal Department of the 1st Defendant. He also cited the case of ***Ola v. Unilorin (2014) 15 NWLR (Pt. 1131) 453*** and ***Emeka v. Chuba-Ikpeazu (2017) 15 NWLR (Pt. 1589) 356***. He therefore urged the Court to dismiss the defence of the 1st Defendant in this suit.

In his Further Affidavit to the 2nd Defendant's Counter-Affidavit, the deponent, who is also the Claimant in this suit, reiterated his averments in the affidavit in support of the Originating Summons. He denied the depositions of the 2nd Defendant in his Counter-Affidavit and insisted that he won the primary election of the 1st Defendant for the Jiwa Ward Councillorship election and that the name of the 2nd Defendant was wrongly forwarded to the 3rd Defendant. He relied on the certified true copy of the monitoring report of the 3rd Defendant. He finally pointed out to the Court that the 2nd Defendant did not exhibit a contrary primary election result for the Jiwa Councillorship election.

In his Written Address in support of the Further Affidavit, learned Counsel for the Claimant formulated one issue for determination, which is: “*Whether or not the Claimant has proved his entitlement of (sic) the reliefs sought in this case.*” In his argument, learned Counsel contended that the Claimant had placed sufficient materials to be entitled to the grant of the reliefs sought in this suit, adding that the facts were straightforward and not contentious. He referred to the case of ***Buhari v. INEC & Ors (2008) LPELR-814 (SC)*** where the Court stated that the standard of proof in civil cases, including election petitions, was on the preponderance of evidence or the balance of probabilities. He insisted that the Claimant had discharged this burden placed on him. In conclusion, he cited the case of ***Senator Lado v. CPC & Ors (2011) 48 NSCQR 501*** and submitted that an aspirant that had scored the highest votes cast at a primary election ought to be declared the winner of the election. He urged the Court to so hold.

The above represent a concise summary of the cases of all the parties before this Court. On the 10th of November, 2021, the 1st and 2nd Defendants regularised their processes before this Honourable Court; and on the 18th of November, 2021, the Claimant regularized his Further Affidavit to the Counter-Affidavit of the 2nd Defendant as well as his Replies on Points of Law to the Written Addresses of the 1st and 2nd Defendants while the 3rd Defendant regularized its processes before this Honourable Court. Having sanitized their processes, the parties proceeded to argue the substantive suit whereupon this Honourable Court reserved Judgment and adjourned the matter for Judgment to a date to be communicated to the parties.

The dispute before this Court, as I see it, is very straightforward. The Claimant has invited this Court to construe the provisions of section 87 of the Electoral Act, 2010 as amended, Article 20 of the Constitution of the All Progressives Congress and the All Progressives Congress’ Guidelines for the

Nomination of Candidates for the Council Ward Election 2022 Direct Primaries in order to determine who, between the Claimant and the 2nd Defendant, is the right candidate of the 1st Defendant in the forthcoming Council/Ward elections coming up in 2022. I have therefore formulated the following issue in order to resolve this dispute:

“Whether from a combined reading of section 87 of the Electoral Act, 2010 as amended, Article 20 of the Constitution of the All Progressives Congress and the All Progressives Congress’ Guidelines for Nomination of Candidates for the Council/Ward Election 2022 Direct Primaries this Court should not answer the questions in the Originating Summons in the affirmative and grant the reliefs sought by the Claimant therein?”

I must say something about the style of draftsmanship the 1st Defendant’s Counsel employed in his processes. I do not understand the rationale behind using the same process for both the Notice of Preliminary Objection and the Counter-Affidavit to the Originating Summons. To worsen an already deplorable condition, the Counter-Affidavit to the Originating Summons is embedded in the Notice of Preliminary Objection and the Written Address in response to the Originating Summons is merely a sub-heading in the Written Address in support of the Notice of Preliminary Objection. What the 1st Defendant paid for as filing fees is only in respect of the Notice of Preliminary Objection. The implication is that the Counter-Affidavit of the 1st Defendant in opposition to the Originating Summons and the Written Address in support thereof were not properly filed in this suit and, therefore, liable to be struck out. Since the Claimant through his Counsel did not deem it fit to challenge the competency of the processes of the 1st Defendant filed in this suit, this Court will not do his job for him by descending into the arena of the conflict to do that for the Claimant.

Having said that, and before I delve into the substance of this Issue, I must dispense, by way of prefatory remarks, the contention of Counsel to the Claimant that the entire depositions of facts in the 1st Defendant's Counter-Affidavit were contrary to the provisions of section 115 (1), (2), (3) and (4) of the Evidence Act, 2011 and, therefore, should be discountenanced. The said section provides that:-

- (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.***
- (2) An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion.***
- (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.***

The deponent of the 1st Defendant's Counter-Affidavit, Adenike Shittu (Ms), a Librarian in the law firm of S. E. Aruwa & Co., Counsel to the 1st Defendant, stated in paragraph 4 of the Counter-Affidavit that the facts she deposed to were derived from information she obtained from one Dare Oketade, the Director, Legal Department of the 1st Defendant. She provided the time, place and circumstance of the information, and the facts and circumstances forming

the ground of her belief in the veracity of those facts. Her belief was founded on the fact that the said Dare Oketade who availed her of the information was the Director in charge of the Legal Department of the 1st Defendant. Specifically, the deponent deposed to the following in paragraph 4 of the 1st Defendant's Counter-Affidavit in opposition to the Originating Summons:-

“That Mr Dare Oketade, the Director, Legal Department of the 1st Defendant informed me on 23rd September, 2021 at about 10:AM while discussing this suit in our office at No. 15B, Daniel Gemana Close, Ima Douglas Okpongete Drive, Off Awalu Anwar Close, 7th Avenue, Gwarinpa, Abuja; and I verily believe him as to the following.”

The Legal Department of the 1st Defendant, as the designation connotes, is responsible for all things legal relating to the activities of the 1st Defendant, including the institution and defence of suits by or against the 1st Defendant. It is my considered view that the deponent of the 1st Defendant's Counter-Affidavit satisfied the requirements of section 115 (1), (2), (3) and (4) of the Evidence Act, 2011, especially subsections (3) and (4). The Counter-Affidavit of the 1st Defendant is competent within the meaning of section 115 of the Evidence Act, 2011. Accordingly, the challenge of the Claimant's Counsel on this point is hereby overruled.

Having dispensed with the objection of the Counsel to the Claimant on the competency of the 1st Defendant's Counter-Affidavit, I hereby return to the Issue which I have formulated. The appropriate *terminus a quo* in the determination of this sole issue is the reproduction, for the sake of immediacy, of the provisions of the relevant enactment and instrument which this Court has been invited to interpret. The relevant subsections of section 87 of the Electoral Act, 2010 as amended are subsections (1), (2), (3), (5) and (9). The said subsections provide as follow:-

- (1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.**
- (2) The procedure for the nomination of candidates by political parties for the various elective positions shall be by direct or indirect primaries.**
- (3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.**
- (4) . . .**
- (5) In the case of a Councillorship candidate, the procedure for the nomination of the candidate shall be by direct primaries in the ward and the name of the candidate with the highest number of votes shall be submitted to the Commission as the candidate of the party.**
- (6) . . .**
- (7) . . .**
- (8) . . .**
- (9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court of the High Court of a State or FCT, for redress.”**

The relevant paragraph of Article 20 of the Constitution of the All Progressives Congress is Paragraph (ii) (a) and it stipulates thus:

“Nomination of Candidates for Councillorship shall be by direct primary election conducted at the Ward level. For the purpose of this primary election, party members in every Ward shall vote by open-secret ballot for the candidates of their choice where there is no consensus, provided that where a candidate has emerged by consensus for an elective position, a vote of “yes” or “no” should be called to ensure that it was not an imposition which could breed discontent and crisis.”

The facts as disclosed in all the affidavits before me indicate that the 1st Defendant conducted the primary election for the Jiwa Ward Councillorship position on the 24th of April, 2021 at Jiwa LEA Primary School playground, Jiwa, Abuja. The Claimant, the 2nd Defendant and one Abdullazeez A. Khadijat contested for the slot. The 3rd Defendant, pursuant to its constitutional and statutory mandate, supervised and monitored the process. According to the Claimant, the aspirants who stood for the election scored the following votes: (i) Alhaji Usman Halilu (that is, the Claimant) – 558 votes; (ii) Abdullazeez A. Khadijat – 38 votes; and (iii) Dahiru Adamu Yahaya (that is, the 2nd Defendant) – 378 votes. This result is substantiated by the contents of **Exhibit F** annexed to the affidavit in support of the Originating Summons. The 2nd Defendant challenged this score, but he did not provide an alternative result sheet or even depose to any contrary result in his Counter-Affidavit. The 3rd Defendant in its affidavit of facts, admitted the averment in paragraph 10 of the Claimant’s affidavit in support of the Originating Summons and further reinforced this admission by virtue of **Exhibit INEC 1** attached to its affidavit. The said **Exhibit INEC 1** corroborated the claims of the Claimant as to the results of the primary election.

In a curious twist, however, the 1st Defendant substituted the name of the 2nd Defendant for the name of the Claimant. This can be seen from the letter from

the 1st Defendant to the 3rd Defendant with Reference Number APC/NHDQ/INEC/19/021/01SA and which was received by the 3rd Defendant on the 29th of May, 2021 and attached as **Exhibit G** to the affidavit in support of the Originating Summons. No reason was given by the 1st Defendant for this action. There was no report from the 3rd Defendant indicating that the primary election for the Jiwa Councillorship was anything but peaceful, free and fair. In its report, the 3rd Defendant stated that “*The APC primaries were peaceful and generally accepted by the (APC) party members*”. In **Exhibit F** attached to the affidavit in support of the Originating Summons, the Committee which conducted the primary election stated that all the participants complied with the provisions of the 1st Defendant’s Guidelines.

In the absence of any adverse report disclosing non-compliance with the Electoral Act, 2010 as amended, its Constitution and Guidelines, the 1st Defendant had a statutory obligation to comply with the provisions of section 87(5) of the Electoral Act which enjoins it to submit as its candidate for the general election the name of the candidate with the highest number of votes at the primary election to the 3rd Defendant. Clearly, this action of the 1st Defendant gives the Claimant the legal right to challenge its decision pursuant to the provisions of section 87(9) of the Electoral Act, 2010 as amended.

Considering the averments of the Claimant in his affidavit in support of the Originating Summons, the depositions of fact in the 3rd Defendant’s affidavit of facts, the 1st Defendant’s failure to adduce any justifiable reason for the unlawful substitution of the Claimant with the 2nd Defendant as its candidate for the councillorship election in the 2022 Council/Ward elections and the 2nd Defendant’s failure to adduce any evidence that he won the primary election for the Jiwa Councillorship position of the 1st Defendant, this Court must step

in in order to vacate the impunity and gross violation of the statutes perpetrated by the 1st Defendant.

In ***Odedo v. PDP & Ors (2015) LPELR-24738 (SC) at pp 62 paras A***, the Supreme Court per Fabiyi, JSC held that,

“It is here imperative for me to make some remarks on the provision of section 87(9) of the Electoral Act, 2010 as amended. It is an aggrieved aspirant who physically participated in a primary election conducted by the National Executive Committee of his party that is imbued with the requisite locus standi to raise a finger of complaint. In short, the law provides that a candidate with the highest votes cast at a primary election organized by the National Executive Committee of the party to the knowledge of the 4th Respondent (INEC) can approach the court for redress if he is excluded by the party without a verifiable reason. The above principle as stated in Emenike v. People’s Democratic Party & Ors (2012) NWLR (Pt. 1315) 556 at 591 has become entrenched and reiterated severally by this Court. Lado v. CPC (2011) 18 NWLR (Pt. 1279) 689; People’s Democratic Party v. Sylva & Ors (2012) 13 NWLR (Pt. 1316) 85 and Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 are also in point.”

In ***Isah & Anor v. INEC & Ors (2019) LPELR-49001 (CA)***, the Court of Appeal while interpreting the provisions of section 140(3) of the Electoral Act, 2019 as amended, held that ***“Where a candidate who was declared elected, did not score majority of lawful votes cast at an election, the Court is under a duty to declare as elected the candidate with the highest number of lawful votes cast at the election.”*** Though this decision is in respect of a post-election case and not a pre-election dispute as this

instant case, the principle established therein, to wit, that a candidate with the highest number of lawful votes cast at any electoral contest is the winner of that contest, can be applied *mutatis mutandis* to this present case. Thus, the name of the Claimant, who scored the highest number of lawful votes cast at the primary election of the 1st Defendant for the Jiwa Ward Councillorship position, and not that of the 2nd Defendant who was the first runner-up, ought to have been forwarded by the 1st Defendant to the 3rd Defendant as the candidate of the 1st Defendant for the 2022 Council/Ward elections of the Federal Capital Territory, Abuja. This is consistent with the principle in ***Odedo v. PDP & Ors (2015) Supra.***

It is sad to see a foremost political party undermining all the foundations of its internal democracy at a time Nigeria is making commendable efforts towards entrenching the principles of constitutional democracy not only in all spheres of public life, but also in the psyche of the citizens. If the political parties and the politicians cannot be counted upon to do the right thing, the Courts, pursuant to the provisions of section 87(9) of the Electoral Act, 2010 as amended, will invariably step in to halt the descent into impunity, lawlessness and unconstitutionality.

In view of the foregoing therefore, I answer in the affirmative, with no attempt at hesitation, the five questions which the Claimant has formulated for determination. Accordingly, all the reliefs sought by the Claimant are hereby granted as follows:-

- 1. THAT upon the interpretation of section 87(5) of the Electoral Act, 2010 (as amended), Article 20(ii) (a) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Ward Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa**

Ward Councillorship, it was unlawful for the 1st Defendant to have forwarded the name of the 2nd Defendant to the 3rd Defendant as the 1st Defendant's nominated candidate in respect of the Jiwa Ward Council in the 2022 Council Election.

2. THAT upon the interpretation of section 87(5) of the Electoral Act, 2010 (as amended), Article 20(ii) (a) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Ward Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, the 1st Defendant was bound in law to forward the name of the Claimant to the 3rd Defendant as the 1st Defendant's nominated candidate in respect of the Jiwa Ward Council in the 2022 Council Election.
3. THAT upon the interpretation of section 87(5) of the Electoral Act, 2010 (as amended), Article 20(ii) (a) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Ward Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, the 3rd Defendant is bound in law to remove the name of the 2nd Defendant as the nominated candidate of the 1st Defendant and to replace same with the name of the Claimant as the 1st Defendant's nominated candidate in respect of the Jiwa Ward Council in the 2022 Council election.
4. THAT upon the interpretation of section 87(5) of the Electoral Act, 2010 (as amended), Article 20 (ii) (a) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Council Election 2022 Direct Primaries,

the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, the forwarding of the name of the 2nd Defendant to the 3rd Defendant by the 1st Defendant as its nominated candidate in respect of Jiwa Ward in the 2022 Council Election is illegal, null and void.

5. THAT upon the interpretation of section 87(5) of the Electoral Act, 2020 (as amended), Article 20(ii) (a) of the Constitution of the 1st Defendant, the 1st Defendant's Guidelines for the Nomination of Candidates for the 2022 Ward Council Election 2022 Direct Primaries, the result of the 1st Defendant's primary election for the nomination of the 1st Defendant's candidate in respect of the Jiwa Ward Councillorship, the publication of the name of the 2nd Defendant as the candidate of the 1st Defendant in respect of Jiwa Ward in the 2022 Council election by the 3rd Defendant is illegal, null and void.
6. THAT ALL THE DEFENDANTS are hereby ordered to recognize forthwith the Claimant as the duly nominated candidate of the 1st Defendant in respect of Jiwa Ward in the 2022 Ward/Council election.
7. THAT the 3rd Defendant is hereby ordered to immediately replace the name of the 2nd Defendant with the name of the Claimant and to publish the name of the Claimant as the 1st Defendant's duly nominated candidate in respect of Jiwa Ward in the 2022 Ward/Council election.
8. THAT the 2nd Defendant is hereby further restrained from parading himself as the candidate of the 1st Defendant for Jiwa Ward at the 2022 Ward/Council election.

9. THAT the sum of 300,000.00 (Three Hundred thousand Naira only) is hereby awarded against the 1st and 2nd Defendants jointly and severally and in favour of the Claimant as the cost of this suit.

This is the Judgment of this Court delivered today, the 16th day of December, 2021.

HON. JUSTICE A. H. MUSA
JUDGE
16/12/2021

APPEARANCES:

For the Claimant:

S. T. Sani Esq.

For the 1st Defendant:

Titilayo Precious Soje Esq.

O. F. Odiniru Esq.

For the 2nd Defendant:

Ebere Nwanya (Mrs)

D. M. Agbau-Fishin

For the 3rd Defendant:

Ummu –Kulthum Muazu Esq.