

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

**ON TUESDAY, 8<sup>TH</sup> DAY OF FEBRUARY, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/38/2022**

**[FCT/HC/FT/01/2022]**

**BETWEEN**

- 1. PEOPLES DEMOCRATIC PARTY**
- 2. NUHU USMAN**



**CLAIMANTS**

**AND**

- 1. INDEPENDENT NATIONAL ELECTORAL  
COMMISSION [INEC]**
- 2. ISAAC BMIBMITAWUZA YUSUF**



**DEFENDANTS**

**JUDGMENT**

In the Originating Summons filed on 10/1/2022, the claimants submitted one question for the Court's determination, to wit:

Whether sequel to 2<sup>nd</sup> defendant -ISAAC BMIBMITAWUZA YUSUF resignation as a member of the 1<sup>st</sup> claimant and withdrawal as the 1<sup>st</sup> claimant's Councillorship candidate for the Quarters Ward of Gwagwalada Area Council election scheduled for the 12<sup>th</sup> February 2022 and pursuant

to sections 33, 35 and 38 Electoral Act, the 1<sup>st</sup> claimant is legible [*sic*] to substitute/replace 2<sup>nd</sup> defendant - ISAAC BMIBMITAWUZA YUSUF with the 2<sup>nd</sup> claimant -NUHU USMAN as 1<sup>st</sup> claimant's Councillorship candidate for the Quarters Ward of Gwagwalada Area Council election scheduled by the [1<sup>st</sup>] defendant for the 12<sup>th</sup> February 2022.

The claimants seek the following two reliefs against the defendants:

1. A declaration that the 1<sup>st</sup> claimant is legible [*sic*] to substitute/replace 2<sup>nd</sup> defendant - ISAAC BMIBMITAWUZA YUSUF with the 2<sup>nd</sup> claimant - NUHU USMAN as the 1<sup>st</sup> claimant's Councillorship candidate for the Quarters Ward of Gwagwalada Area Council Federal Capital Territory in the FCT Area Council election scheduled by the 1<sup>st</sup> defendant for the 12<sup>th</sup> February 2022.
2. An order on the 1<sup>st</sup> defendant to forthwith remove the name of 2<sup>nd</sup> defendant - ISAAC BMIBMITAWUZA YUSUF as the 1<sup>st</sup> claimant's Councillorship candidate for the Quarters Ward of Gwagwalada Area Council Federal Capital Territory Area Council election scheduled by the 1<sup>st</sup> defendant for 12<sup>th</sup> February, 2022 [and] replace the 2<sup>nd</sup> defendant - ISAAC BMIBMITAWUZA YUSUF with NUHU USMAN as the 1<sup>st</sup> claimant's Councillorship candidate for the Quarters Ward of Gwagwalada Area Council Federal Capital Territory election.

In support of the Originating Summons, BakoAngulu, 1<sup>st</sup> claimant's Federal Capital Territory [FCT], Abuja State secretary, filed an 11-paragraph affidavit; attached therewith are Exhibits 1, 2, 3 & A. Charles IkennaOkoyeEsq. filed a written address. In opposition, HussainiAbdullahi, an executive officer in the 1<sup>st</sup> defendant, filed a counter affidavit of 8 paragraphs on 28/1/2022. Ibrahim S. Mohammed Esq. filed a written address with the counter affidavit. On 31/1/2022, BakoAngulu filed a 9-paragraph further affidavit together with the reply on points of law of Charles IkennaOkoyeEsq. At the hearing of the suit on 1/2/2022, the two learned counsel adopted their processes.

In the affidavit of BakoAngulu, he stated that:

1. The 2<sup>nd</sup> claimant is a member of the 1<sup>st</sup> claimant [a registered political party in Nigeria]. The 2<sup>nd</sup> defendant was a former member of the 1<sup>st</sup> claimant at Quarters Ward of Gwagwalada Area Council, FCT, Abuja.
2. On 25/6/2021, 1<sup>st</sup> claimant [as evident in Exhibit 1] submitted the name of the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant as its Councillorship candidate for Quarters Ward of Gwagwalada Area Council in the FCT Abuja Area Council election scheduled by the 1<sup>st</sup> defendant for 12/2/2022.
3. The 2<sup>nd</sup> defendant resigned his membership of the 1<sup>st</sup> claimant. The letter of resignation dated 13/12/2021 is Exhibit 2. There is the need to replace 2<sup>nd</sup> defendant with the 2<sup>nd</sup> claimant as 1<sup>st</sup> claimant's candidate for the Quarters Ward of Gwagwalada Area Council in the FCT, Abuja Area Council election scheduled by the 1<sup>st</sup> defendant for 12/2/2022.

4. The 2<sup>nd</sup> claimant is the present Councillorship candidate of the 1<sup>st</sup> claimant for the Quarters Ward of Gwagwalada Area Council in the FCT, Abuja Council election scheduled for 12/2/2022.
5. The Electoral Act 2010 [as amended] permits 1<sup>st</sup> claimant to substitute/replace a candidate whose name was submitted to the 1<sup>st</sup> defendant upon the candidate's withdrawal of his candidature. The said Act also permits the 1<sup>st</sup> defendant to give effect to the 1<sup>st</sup> claimant's replacement of candidate that withdrew his candidature.
6. On 21/12/2021, the 1<sup>st</sup> claimant wrote and submitted to the 1<sup>st</sup> defendant the letter of withdrawal of the 2<sup>nd</sup> defendant as its Councillorship candidate for the Quarters Ward of Gwagwalada Area Council in the FCT, Abuja Area Council election and the replacement of the 2<sup>nd</sup> defendant with the 2<sup>nd</sup> claimant. The letter dated 21/12/2021 signed by 1<sup>st</sup> claimant's National Chairman and National Secretary is Exhibit 3.
7. He was informed by JafaruSadiq, a staff of the 1<sup>st</sup> claimant's National Secretariat, Wadata Plaza, Wuse Zone 5, Abuja on 7/1/2022 that:
  - a) He [JafaruSadiq] was assigned with the responsibility to submit the 1<sup>st</sup> claimant's letter [Exhibit 3] headed "*WITHDRAWAL OF PDP COUNCILLORSHIP CANDIDATE AND REPLACEMENT PURSUANTTO SECTIONS 33 AND 35 OF THE ELECTORAL ACT [2010 AS AMENDED]*" with the following attached documents:
    - i. Letter from the 1<sup>st</sup> claimant's FCT Secretariat;

- ii. The 2<sup>nd</sup> defendant's letter of resignation of membership of Peoples Democratic Party and withdrawal of Councillorship candidature; and
  - iii. Duly completed Form EC 9G, Form 11G, Form EC 13G and Form EC 9.
- b) He [JafaruSadiq] submitted a copy of Exhibit 3 to the office of the Chairman of the 1<sup>st</sup> defendant, but on 6/1/2022, the 1<sup>st</sup> defendant rejected Exhibit 3 on the excuse that by its Timetable and Schedule of Activities for 2022 FCT Area Councils Election, the last day for withdrawal by a candidate/replacement of withdrawn candidate by political parties ended on 26/6/2021. The 1<sup>st</sup> defendant's Timetable and Schedule of Activities for 2022 FCT Area Councils Election dated 30/3/2021 is Exhibit A.
- c) He was informed by the 2<sup>nd</sup> claimant on 10/1/2022 that he [the 2<sup>nd</sup> claimant] is qualified to contest the position of the Councilor for Quarters Ward of Gwagwalada Area Council, FCT, Abuja sponsored by the 1<sup>st</sup> claimant and he has completed all the requirements.

In the counter affidavit, HussainiAbdullahi stated as follows:

1. On 30/3/2021, the 1<sup>st</sup> defendant issued a Timetable and Schedule of Activities for 2022 FCT Area Councils Election to all political parties; the said Timetable is Exhibit A attached to the claimants' affidavit.

2. Pursuant to Exhibit A, the 1<sup>st</sup> claimant submitted the name of the 2<sup>nd</sup> defendant to 1<sup>st</sup> defendant as its candidate for the FCT Area Councils Councillorship election scheduled to hold on 12/2/2022.
3. By Exhibit A, 26/6/2021 was set as the last day for withdrawal by candidates/replacement of withdrawn candidates by political parties for the FCT Area Councils Election.
4. The time to replace the 2<sup>nd</sup> defendant has since lapsed. Exhibit 2 attached to claimants' affidavit was never submitted to 1<sup>st</sup> defendant. Also, Exhibit 3 was never submitted in the office of the 1<sup>st</sup> defendant.

In his further affidavit, BakoAngulu stated that:

1. Exhibits 2 and 3 attached to the Originating Summons were duly submitted to the 1<sup>st</sup> defendant at its Headquarters, No. 16 Zambezi Crescent, Maitama FCT, Abuja.
2. The 1<sup>st</sup> defendant in its final publication, published the 2<sup>nd</sup> defendant's name as 1<sup>st</sup> claimant's candidate for the Quarters Ward of Gwagwalada Area Council for the Councillorship election scheduled for 12/2/2022 at [or during] the pendency of this suit.
3. He was informed by JafaruSadiq on 31/1/2022 that:
  - i. He submitted Exhibit 3 to the office of the Chairman of the 1<sup>st</sup> defendant on behalf of 1<sup>st</sup> claimant; Exhibit 2 is part of Exhibit 3.

- ii. At the office of 1<sup>st</sup> defendant's Chairman where he submitted Exhibit 3 on 21/12/2021, he met some officers/staff of the 1<sup>st</sup> defendant and handed over Exhibit 3 to one of them. Having received Exhibit 3 from him, the officer/staff put a call to Mr. Buhari [also a staff of the 1<sup>st</sup> defendant], spoke with Mr. Buhari and handed over the phone to him [JafaruSadiq] to speak with Mr. Buhari.
- iii. Mr. Buhari intimated him [i.e. JafaruSadiq] that the time for substitution/replacement lapsed on 26/6/2021 and is belated sequel to the 1<sup>st</sup> defendant's Timetable; and that they will not acknowledge the receipt of the letter.
- iv. The 1<sup>st</sup> defendant refused to acknowledge in writing the receipt of Exhibit 3 after the submission by the 1<sup>st</sup> claimant.
- v. Form EC 9G, Form 11G, Form EC 13G and Form EC 9 attached to Exhibit 3 were duly issued by the 1<sup>st</sup> defendant for the purpose of the substitution/replacement.

**Submissions of learned counsel for the claimants:**

In his written address, Charles IkennaOkoye Esq., learned counsel for the claimants, posed one issue for determination, which is the same question/issue submitted for determination in the Originating Summons. He posited that with the 2<sup>nd</sup> defendant's withdrawal as the 1<sup>st</sup> claimant's Councillorship

candidate for the Quarters Ward of Gwagwalada Area Council for the FCT Area Council election scheduled for 12/2/2022, a deep vacuum was created and needed immediate remedy by the 1<sup>st</sup> claimant and the 1<sup>st</sup> defendant to replace or substitute the 2<sup>nd</sup> defendant with the 2<sup>nd</sup> claimant. Sections 33 and 35 of the Electoral Act [as amended] provided the 1<sup>st</sup> claimant with the remedy. The sections provide:

- 33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of this Act, except in the case of death or withdrawal by the candidate.*
- 35. A candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election and the political party shall convey such withdrawal to the Commission and which shall only be allowed not later than 45 days to the election.*

Learned counsel for the claimants submitted that the grant of the reliefs sought is premised on the above provisions. The fact that the last date for withdrawal by candidate[s]/replacement of withdrawn candidate[s] by political parties was on 26/6/2021 as stated in the Timetable and Schedule of Activities for 2022 FCT Area Councils Election [Exhibit A] cannot take priority over the provisions of sections 33 and 35 of the said Act on change or substitution of withdrawn candidates. He referred to **Captain IdrisIchalla Wada &Ors. v. Yahaya Bello &Ors. [2016] LPELR-47015 [SC]** to support the



principle that a political party can substitute a dead candidate or a candidate who has withdrawn from the election with another candidate, subject to the provisions of the Electoral Act.

Charles IkennaOkoye Esq. concluded that the resolution of the issue for determination in favour of the claimants and the grant of the reliefs will not prejudice the defendants, but will further enhance the electoral process.

**Submissions of learned counsel for the 1<sup>st</sup> defendant:**

In his written address, Ibrahim S. Mohammed Esq., learned counsel for the 1<sup>st</sup> defendant, distilled one issue for determination, to wit:

Whether having regard to the facts of this case as constituted vis-à-vis the applicable laws, the claimants have established their case to warrant this Honourable Court to grant the reliefs sought by them.

The 1<sup>st</sup> defendant's counsel stated that the claimants did not challenge the content of the Timetable and Schedule of Activities for 2022 FCT Area Council Election issued by the 1<sup>st</sup> defendant. The claimants complied with the timelines provided in the Timetable for the purpose of participating in the election. In compliance with the Timetable, 1<sup>st</sup> claimant submitted the name of the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant. By the said Timetable, 26/6/2021 was set as the last date for withdrawal by candidates/replacement of withdrawn candidates by political parties for the FCT Area Councils election.

Ibrahim S. Mohammed Esq. argued that the mention of “*not later than 45 days to the election*” in section 35 of the Electoral Act [as amended] “*only sets a limit that it cannot go outside that 45 days to the election*”; it can be earlier. The 1<sup>st</sup> claimant did not substitute its Councillorship candidate for the Quarters Ward of Gwagwalada Area Council on 26/6/2021. It was submitted that the Timetable has the force of law and must be strictly complied with. He referred to NDP v. INEC [2012] 14 NWLR [Pt. 1319] 176 @ 197, PDP v. Sylva [2012] 13 NWLR [Pt. 1316] 85 and Action Alliance & Ors. v. INEC [2019] LPELR-49364 [CA] to support the principle that Timetable issued by the 1<sup>st</sup> defendant [INEC] has the force of law and must be strictly complied with.

Learned counsel for the 1<sup>st</sup> defendant further submitted that unless 26/6/2021 fixed by the 1<sup>st</sup> defendant for the withdrawal of candidates and substitution of candidates falls short of the 45 days to the election, the claimants cannot have a cause of action against the Timetable and Schedule of Activities for the 2022 FCT Area Council Election published by the 1<sup>st</sup> defendant.

Mr. Ibrahim S. Mohammed also argued that there was no attempt by the 1<sup>st</sup> claimant to substitute/replace its nominated candidate. From the Exhibits attached to the claimants’ affidavit, there is nothing to suggest or indicate that the documents for substitution were submitted at the 1<sup>st</sup> defendant’s office on 26/6/2021 or any other date. The claimants must show that the documents were validly submitted at the 1<sup>st</sup> defendant’s Headquarters and same were not processed. The claimants did not prove that they were at the premises of

1<sup>st</sup> defendant on 26/6/2021 or any other date for the purpose of substituting its candidate. The Court cannot speculate the missing link in the claimants' case. For the claimants to be entitled to the declaratory reliefs sought, they must succeed on the strength of their case. He referred to **CBN v. Amao [2012] 2 NWLR [Pt. 1219] 271** for the principles for the grant of declaratory reliefs. The 1<sup>st</sup> defendant's counsel therefore urged the Court to dismiss the suit.

**Reply on points of law by learned counsel for the claimants:**

Mr. Charles IkennaOkoye submitted that section 33 of the Electoral Act did not subject substitution/replacement of the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant's Timetable [Exhibit A]. The Timetable issued by the 1<sup>st</sup> defendant failed to address the injustice which the claimants or any political party will suffer where the candidate resigns after 26/6/2021. Section 153 of the Act, which empowers 1<sup>st</sup> defendant to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of the Act, empowered it to issue the Timetable [Exhibit A]. The content of the Timetable connotes procedure, which does not take priority over the provisions of section 33 of the Act, which are specific.

It was further submitted that a judgment should always be read in the light of the facts on which the case was decided. The rules of *stare decisis* do not allow courts to apply the ratio of a case across board and with little regard to the facts of the case before them. He referred to the case of **Emeka v.**

Okadigbo[2012] 18 NWLR [Pt. 1331] 18. The claimants' counsel referred to the facts of the cases of NDP v. INEC [supra], PDP v. Sylva [supra] and Action Alliance & Ors. v. INEC [supra] relied upon by 1<sup>st</sup> defendant's counsel and submitted that the facts and circumstances of those cases are different from the facts and circumstances of the instant case. Therefore, the decisions in those cases are not applicable to this case.

Finally, in respect of the argument of the 1<sup>st</sup> defendant's counsel that the claimants did not submit the documents for substitution/replacement to the 1<sup>st</sup> defendant, Mr. Okoye referred to the further affidavit where it is deposed that Form EC 9G, Form 11G, Form EC 13G and Form EC 9 attached to Exhibit 3 were duly issued by the 1<sup>st</sup> defendant to the 1<sup>st</sup> claimant for the purpose of the substitution/replacement of the 2<sup>nd</sup> defendant with the 2<sup>nd</sup> claimant. He also relied on the deposition that upon submission of Exhibit 3 at the office of the 1<sup>st</sup> defendant, Mr. Buhari and other staff of the 1<sup>st</sup> defendant refused to acknowledge receipt of same on the excuse that the time within which to substitute/replace candidates had elapsed. He submitted that the 1<sup>st</sup> claimant fulfilled its obligations for the substitution/replacement of the 2<sup>nd</sup> defendant with the 2<sup>nd</sup> claimant.

**Decision by the Court:**

The claimants' first relief is a declaratory order. The success or otherwise of the second relief is largely dependent on the decision of the Court on the first

relief. As rightly posited by learned counsel for the 1<sup>st</sup> defendant, it is trite law that a party seeking a declaratory relief must adduce credible and satisfactory evidence to support the grant of the order. See **Kuburi Int'l Trading Co. Ltd. & Anor. v. Musti & Anor. [2018] LPELR-44004 [CA]**.

Therefore, the main issue that calls for determination is whether, from the facts before the Court, the claimants are entitled to the reliefs sought. It seems to me that the resolution of this issue turns upon the answer to two questions. These questions - which will be considered one after the other - are:

1. Whether the claimants have proved that the letter titled: Withdrawal of PDP Councillorship Candidate and Replacement Pursuant to Sections 33 and 35 of the Electoral Act [2010 as Amended] i.e. Exhibit 3 was submitted to the 1<sup>st</sup> defendant on 21/12/2021.
2. If the answer to Question 1 is in the affirmative, whether the 1<sup>st</sup> claimant complied with the requirement for substitution/replacement of the 2<sup>nd</sup> defendant with the 2<sup>nd</sup> claimant as its Councillorship candidate for the Quarters Ward of Gwagwalada Area Council for the FCT Area Council Election scheduled to hold on 12/2/2022.

**Question 1:**

***Whether the claimants have proved that the letter titled: Withdrawal of PDP Councillorship Candidate and Replacement Pursuant to Sections***

***33 and 35 of the Electoral Act [2010 as Amended] i.e. Exhibit 3 was submitted to the 1<sup>st</sup> defendant on 21/12/2021.***

In the affidavit in support of the Originating Summons, BakoAngulu stated that he was informed by JafaruSadiq [a staff of the 1<sup>st</sup> claimant at its National Secretariat] that he submitted Exhibit 3 i.e. the letter titled: *Withdrawal of PDP Councillorship Candidate and Replacement Pursuant to Sections 33 and 35 of the Electoral Act 2010 [as Amended]* and the attached documents to the office of the 1<sup>st</sup> defendant's Chairman on 21/12/2021. In the counter affidavit, HussainiAbdullahi stated that Exhibit 3 was never submitted to the 1<sup>st</sup> defendant.

In paragraph 8[iii]-[viii] of the further affidavit, BakoAngulu stated the information he got from JafaruSadiq on how he submitted Exhibit 3, which he verily believed. The said depositions have been set out earlier. However, for emphasis, the depositions are that on 21/12/2021, JafaruSadiq went to the office of the Chairman of the 1<sup>st</sup> defendant where he submitted/handed over Exhibit 3 to one of the officers/staff of the 1<sup>st</sup> defendant. That staff put a call to Mr. Buhari [also a staff of the defendant]. After speaking with Mr. Buhari, the staff handed over the phone to him [JafaruSadiq] and he spoke with Mr. Buhari. Mr. Buhari then told him [JafaruSadiq] that the time for substitution of candidates lapsed on 26/6/2021; that the letter for substitution/replacement is belated sequel to the 1<sup>st</sup> defendant's Timetable; and that they will not

acknowledge the letter. The 1<sup>st</sup> defendant refused to acknowledge receipt of Exhibit 3 in writing.

There can be no doubt that the further affidavit introduced fresh or new facts, which are vital or material to the question whether the 1<sup>st</sup> claimant submitted Exhibit 3 to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant did not respond or react to the above depositions by filing a further counter affidavit. The position of the law is that where facts in respect of anything deposed to in a counter affidavit or further affidavit are not met or addressed by the other party in a further and better affidavit, the proper conclusion to reach is that the facts stated in the counter affidavit or in the further affidavit remain unchallenged. See the cases of **Uzodinma v. Izunaso&Ors. [2011] LPELR-20027 [CA]** and **F.B.N. Plc. v. Ndarake& Sons Nig. Ltd. [2009] 15 NWLR [Pt. 1164] 406.**

The Court holds the considered view that the above principle is applicable to the instant case. The effect is that the facts stated in the further affidavit were unchallenged and uncontroverted. The Court is legally bound to accept and act on them.

At the hearing of the Originating Summons, learned counsel for the 1<sup>st</sup> defendant referred to the case of **JMR Ltd. v. MT Mother Benedicta [2019] 12 NWLR [Pt. 1686] 323** to support the view that depositions in an affidavit indicting a person who is not a party to the suit should be served on him for his reaction. This submission was put forward in reaction to the depositions in paragraph 8[iii]-[viii] of the further affidavit. My respectful opinion is that

this submission is not applicable to this case. The 1<sup>st</sup> defendant had a duty to file a reaction to the said depositions if it intended to challenge them.

In the light of the foregoing, the Court's answer to the question under focus is in the affirmative. The Court holds that from the facts before it, the claimants have proved that the letter titled: *Withdrawal of PDP Councillorship Candidate and Replacement Pursuant to Sections 33 and 35 of the Electoral Act, 2010 [as Amended]* i.e. Exhibit 3 was submitted to the 1<sup>st</sup> defendant on 21/12/2021.

**Question 2:**

*If the answer to Question 1 is in the affirmative, whether the 1<sup>st</sup> claimant complied with the requirement for substitution/replacement of the 2<sup>nd</sup> defendant with the 2<sup>nd</sup> claimant as its Councillorship candidate for the Quarters Ward of Gwagwalada Area Council for the FCT Area Council Election scheduled to hold on 12/2/2022.*

By section 33 of the Electoral Act, a political party shall not be allowed to change or substitute its candidate whose name has been submitted to the 1<sup>st</sup> defendant "except in the case of death or withdrawal by the candidate."

It is worthy of note that the originating processes and all other processes in this case were served on the 2<sup>nd</sup> defendant. He did not file any process. Thus, it is not in dispute that the 2<sup>nd</sup> defendant, whose name was submitted to the 1<sup>st</sup> defendant by 1<sup>st</sup> claimant as its Councillorship candidate for the Quarters Ward of Gwagwalada Area Council for the FCT Area Council election



scheduled for 12/2/2022 resigned as a member of the 1<sup>st</sup> claimant and withdrew as the 1<sup>st</sup> claimant's candidate for the said election.

For clarity, the 2<sup>nd</sup> defendant's letter dated 13/2/2021 [Exhibit 2], addressed to the Chairman of the 1<sup>st</sup> claimant, Gwagwalada Area Council, Abuja, reads:

*I, ISAAC BMIBMITAWUZA YUSUF the Peoples Democratic Party [PDP] nominated Councillorship Candidate for Quarters Ward Gwagwalada, Gwagwalada Area Council Abuja in the forthcoming FCT Area Council election scheduled for February 2022 write to resign my membership of the Peoples Democratic Party [PDP], forthwith.*

*Henceforth, I am no longer a member of your Party, no longer interested in the Councillorship contest.*

*I submit my membership card and all documents of the Party.*

By virtue of section 33 of the Electoral Act, 2010 [as amended], the 1<sup>st</sup> claimant is entitled to change or substitute the 2<sup>nd</sup> defendant as its candidate for the Quarters Ward for the said Area Council election. Since, as I had found, the 1<sup>st</sup> claimant submitted Exhibit 3 to the 1<sup>st</sup> defendant on 21/12/2021 and the FCT Area Council election is scheduled for 12/2/2022, it mean that Exhibit 3 was submitted to the 1<sup>st</sup> defendant about 52 days to the date of the election.

Now, did the 1<sup>st</sup> claimant comply with the requirement for substitution or replacement of the 2<sup>nd</sup> defendant as its candidate when it submitted Exhibit 3 about 52 days to the date of the election? Mr. Charles IkennaOkoye answered

this question in the affirmative and relied on the time stipulated by section 35 of the Electoral Act i.e. “not later than 45 days to the election”. The position of Mr. Ibrahim S. Mohammed, on the other hand, is that the 1<sup>st</sup> claimant did not submit Exhibit 3 on 26/6/2021, which was the date stipulated by the Timetable and Schedule of Activities for the FCT Area Council Election.

I had earlier set out the provision of section 35 of the Electoral Act. Since it is crucial/central to the question under consideration, I will quote it again, thus:

*A candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election and the political party shall convey such withdrawal to the Commission and which shall only be allowed not later than 45 days to the election.*

In my view, the above provision is very clear and unambiguous. By the rules of interpretation, where words used in a statute are clear, they must be given their plain and ordinary meaning. See **Caesar & Jones Ltd. v. Amanda [2021] LPELR-55873 [CA]**. In the case of **PDP v. Sylva [supra]**, His Lordship, Bode Rhodes-Vivour, JSC held at *page 121, paras. G-H* that:

*“The interpretation of sections 33 and 35 of the Electoral Act is that after a candidate wins the primaries of his party, he can only be substituted by his party with another person if he dies or withdraws.*

*If he chooses to withdraw he must inform the party in writing, signed and delivered by him, and the party shall notify INEC not later than 45 days to the election. ..."*

This Court holds that the clear provision of section 35 of the Electoral Act requires a political party that nominated the candidate who withdrew his candidature for the election to *"convey such withdrawal to the Commission and which shall only be allowed not later than 45 days to the election."* Therefore, the submission of Exhibit 3 by the 1<sup>st</sup> claimant to 1<sup>st</sup> defendant on 21/12/2021 was in compliance with the time prescribed by section 35 of the Electoral Act, 2010 [as amended] as it was done *"not later than 45 days to the election."*

At this juncture, let me refer to the facts of the cases relied upon by learned counsel for the 1<sup>st</sup> defendant to support his argument that the submission of Exhibit 3 after 26/6/2021 - which was the date prescribed by the Timetable and Schedule of Activities for the FCT Area Council Election - was invalid.

In **NDP v. INEC [supra]**, the respondent in exercise of its statutory powers to conduct the general elections in 2011, issued the time table of activities for 2011 general elections on 7/9/2010. In compliance with the time table, the appellant fixed and conducted its special national convention on 29/10/2010. At the convention, the single aspirants were confirmed and ratified by the Party and their names duly compiled and forwarded to the respondent as the appellant's candidates in the 2011 general elections. The appellant by letter dated 3/12/2010 requested the respondent to deliver to it the statutory forms

i.e. Forms CF001 and CF002 to enable it complete the nomination procedures within the time prescribed. The respondent refused to issue the forms to the appellant.

On 23/11/2010, the respondent published another time table of activities for 2011 general elections. The appellant insisted that the respondent was bound by the first time table as it does not have the power to issue a second time table on the same 2011 general elections in so far as it related to conduct of party primaries and nominations. On the other hand, the respondent averred that the second time table of activities for 2011 general elections superseded the first time table. The respondent further averred that the appellant did not hold primaries for the purpose of nomination of its aspirants to the various elective positions as required by law nor did it request for the statutory forms to be issued to it following the second time table.

The appellant filed an action by originating summons against the respondent seeking *inter alia* a declaration that having complied with every prescribed step in the first time table, it was entitled to have the names of its candidates published for the 2011 general elections. The trial court dismissed the suit. On appeal to the Court of Appeal, one of the issues was whether the respondent was right in substituting the first time table issued on 7/9/2010 for the conduct of the 2011 general elections with the second time table issued on 23/11/2010 in so far as it related to the conduct of party primaries and nomination of candidates. The Court of Appeal resolved this issue in the affirmative and dismissed the appeal.

*His Lordship, Regina ObiageliNwodo, JCA [in the Leading Judgment] at page 197, para. D* restated the principle that:

*“The Time table is a guideline with the force of law. This is because any action taken outside the published time table is fatal to the political party involved. The activities and the time schedule set out in the time table are not directory.”*

In **PDP v. Sylva [supra]**, the two main issues before the Supreme Court were: [i] whether after the 1<sup>st</sup> respondent won the primaries conducted by the 2<sup>nd</sup> respondent [INEC] in January 2011 and his name sent to the 2<sup>nd</sup> respondent as the appellant’s candidate for the gubernatorial elections fixed for April 2011, he was still the appellant’s candidate for the gubernatorial elections held on 12/2/2012; and [ii] whether appellant could stop or prevent the 1<sup>st</sup> respondent from contesting its primary election conducted on 19/11/2011 to choose its candidate for the gubernatorial election of 12/2/2012. The Supreme Court resolved the first issue in the negative while the second issue was resolved in the affirmative.

In **Action Alliance &Ors. v. INEC [supra]**, the facts were that preparatory to the Governorship Election scheduled for 16/11/2019 in Kogi and Bayelsa States, the respondent, on 16/5/2019 published an Amended Timetable and Schedule of Activities for the said elections [Exhibit INEC 1]. By Serial Number 5 of the said Schedule of Activities, the respondent fixed the time in

respect of the last day for submission of Forms CF001 and CF002 at the INEC Headquarters on 9/9/2019. The respondent in giving effect to the said Time Table and Schedule of Activities issued a Press Release on 5/9/2019 for the close of nominations for Bayelsa and Kogi States Governorship Elections. The Press Release [Exhibit INEC 3] stated that all nominations must be received latest 6 p.m. on Monday, 9/9/2019.

The case of the appellants was that on 9/9/2019, one of the days for the submission of Forms CF001 & CF002 by political parties, the National Secretary of the 1<sup>st</sup> appellant went to the office of the respondent and was issued with Tag No. 15 duly signed by the respondent's staff, but on getting to his turn, the officials of the respondent refused to accept their Forms for Kogi and Bayelsa States on the reason that their Party was on suspension, a reason that was unfounded. In a suit filed by the appellants, the learned trial Judge of the Federal High Court found that from the evidence before him, the plaintiffs did not comply with the defendant's Guidelines, which required the submission of the Forms for Governorship Candidates for Kogi and Bayelsa States for the November, 2019 elections on or before 6.00 p.m. on 9/9/2019.

On appeal, the Court of Appeal affirmed the decision of the trial court. *His Lordship, Akomolafe-Wilson, JCA* held at pages 36-37 held that:

*"The argument of the Appellants that "a dependent or subordinate legislation can have no wider binding or effective force than the paramount law which gives it force" is good law ... Although the*

*principle of law so stated is still good law, they are however not applicable to this case. The law has firmly been settled beyond any peradventure that the guidelines issued by INEC are subsidiary legislation made pursuant to Section 153 of the principal Act, Electoral Act, 2010 [as amended] and therefore binding. In the circumstances Exhibits INEC 1 and INEC 2, have the force of law. The Appellants were therefore obliged to comply with the mandatory directives in the time table set out in Exhibit INEC 1. ..."*

I have deliberately referred to the facts and/or issues in the above cases to show that, as rightly submitted by Mr.Okoye, the facts and issues in those cases are different from the facts and issues in this case. The principle that the time table issued by INEC is a guideline with the force of law represents the position of the law. However, I hold the humble opinion that this principle is not applicable in this case where the last date for withdrawal by candidate[s]/ replacement of withdrawn candidate[s] by political parties [i.e. 26/6/2021] as stated in the Timetable and Schedule of Activities for 2022 FCT Area Councils Elections is in conflict with the time stated in section 35 of the Electoral Act, 2010 [as amended] for withdrawal of candidates [which is "*not later than 45 days to the election.*"].

The Court also holds the view that section 35 of the Electoral Act, 2010 [as amended] confers a right on a political party, like the 1<sup>st</sup> claimant in this case, to replace or substitute its candidate for an election. That right cannot be

taken away or altered by the Timetable and Schedule of Activities for 2022 FCT Area Councils Elections. In other words, the Timetable and Schedule of Activities for 2022 FCT Area Councils Elections cannot supersede or override the provision of section 35 of the Electoral Act. I rely on the principle restated in **Action Alliance &Ors. v. INEC [supra]** that *“a dependent or subordinate legislation can have no wider binding or effective force than the paramount law which gives it force”*.

As I round up, it is pertinent to refer to section 153 of the Electoral Act, 2010 [as amended], which provides: *“The Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of this Act and for its administration thereof.”* By this provision, any regulation or guideline issued by INEC [like the Timetable and Schedule of Activities for 2022 FCT, Abuja Area Councils Elections] is subject to the provisions of the said Act [like section 35 thereof] and must be made for the purpose of giving effect to the provisions of the Act. Thus, a regulation or guideline issued by INEC pursuant to section 153 of the Act will not be valid if it is issued to subvert, undermine or disregard any provision of the Electoral Act, 2010 [as amended].

In the light of all that I have said, the Court’s answer to Question 2 is in the affirmative. The decision of the Court is that the 1<sup>st</sup> claimant complied with the requirement for substitution/replacement of the 2<sup>nd</sup> defendant with the 2<sup>nd</sup> claimant as its Councillorship candidate for the Quarters Ward of Gwagwalada



Area Council for the FCT Area Council Election scheduled to hold on 12/2/2022.

**Conclusion:**

From all that I have said, I answer the question submitted for determination in the Originating Summons in the affirmative save to substitute the word “legible” with the words “eligible or entitled”.

The claimants’ two reliefs are granted except to substitute the word “legible” with the words “eligible or entitled” in relief 1. For the avoidance of doubt, the Court enters judgment for the claimants and grants the following orders:

1. A declaration that the 1<sup>st</sup> claimant is eligible or entitled to substitute/replace 2<sup>nd</sup> defendant [ISAAC BMIBMITAWUZA YUSUF] with the 2<sup>nd</sup> claimant [NUHU USMAN] as its Councillorship candidate for the Quarters Ward of Gwagwalada Area Council, Federal Capital Territory in the FCT Area Councils election scheduled by the 1<sup>st</sup> defendant for the 12<sup>th</sup> day of February 2022.
2. An order directing the 1<sup>st</sup> defendant to forthwith remove the name of the 2<sup>nd</sup> defendant [ISAAC BMIBMITAWUZA YUSUF] as the 1<sup>st</sup> claimant’s Councillorship candidate for the Quarters Ward of Gwagwalada Area Council, Federal Capital Territory in the FCT Area Councils election scheduled by the 1<sup>st</sup> defendant for the 12<sup>th</sup> day

of February, 2022 and to replace the 2<sup>nd</sup> defendant [ISAAC BMIBMITAWUZA YUSUF] with NUHU USMAN [the 2<sup>nd</sup> claimant] as the 1<sup>st</sup> claimant's Councillorship candidate for the Quarters Ward of Gwagwalada Area Council, Federal Capital Territory in the said FCT Area Councils election.

The parties shall bear their costs.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Counsel:*

C. I. OkoyeEsq. for the claimants; with C. NwaokorieEsq.

