

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/3112/2020

BETWEEN:

HON. ADAMU OCHEPO ENTONU.....CLAIMANT

VS

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

2. HON. SAMUEL ODAGBOYI GODDAY.....DEFENDANTS

RULING/JUDGMENT

The Claimant Commenced this suit by an Originating Summons dated 6/11/2020 and filed same day. Pursuant to leave of court filed an Amended Originating Summons on 26/3/2021 to correct some errors. In the said Originating Summons, the Claimant seeks the determination of the following questions;

- (1) Whether the 2nd Defendant abinitio was qualified, competent and ought to be cleared, stand for, contest and voted for at the 2019 National Assembly; House of Representatives Election for the Apa/Agatu Federal Constituency Seat having given false information on oath in his form CF001 and subsequently admitted same via an affidavit dated 20th February, 2020.

- (2) Whether the 2nd Defendant having contested and purportedly declared the winner of the National Assembly; House of Representative Election for the Apa/Agatu Federal Constituency Seat ought to be disqualified, sacked from office and the Certificate of return issued to him be immediately withdrawn for filing false information on oath in his INEC Form CF001 and subsequently admitted same via an affidavit dated the 20th day of February, 2020.
- (3) Whether this Honourable Court ought to Order the 1st Defendant to immediately issue a certificate of return to the Claimant who is the qualified candidate with the highest number of valid votes cast during the 2019 National Assembly House of Representatives Election for Apa/Agatu Federal Constituency Seat.

If the answer to the 1st question is in the negative and the answers to the 2nd and 3rd questions are in the positive, the Claimant seeks the following reliefs;

- (1) A DECLARATION that the 2nd Defendant abinitio was not qualified, competent and ought not to be cleared, stand for, contest and voted for at the 2019 National Assembly; House of Representatives Election for the Apa/Agatu Federal Constituency Seat having given false information on oath in his INEC Form CF001 and subsequently admitted same via an affidavit dated 20th February, 2020.
- (2) A DECLARATION that the 2nd Defendant having contested and purportedly declared the winner of the National Assembly; House of Representative Election for the Apa/Agatu Federal Constituency Seat ought to be disqualified, sacked from office and the Certificate of

- return issued to him be immediately withdrawn for filing false information on oath in his INEC Form CF001 and subsequently admitted same via an affidavit dated the 20th day of February, 2020.
- (3) AN ORDER disqualifying the 2nd Defendant from contesting the 2019 National Assembly House of Representatives Election for Apa/Agatu Federal Constituency Seat for giving the 1st Defendant false information on oath in his INEC Form CF001 and subsequently admitted same via an affidavit dated the 20th day of February, 2020.
 - (4) AN ORDER sacking the 2nd Defendant from the office of the House of Representatives representing Apa/Agatu Federal Constituency, votes cast for him during the 2019 National Assembly House of Representatives Election annulled and declared invalid having given false information on oath in his Form CF001 and subsequently admitted same via an affidavit dated the 20th day of February, 2020.
 - (5) AN ORDER OF THIS COURT ordering the 1st Defendant to immediately withdraw the certificate of return issued to the 2nd Defendant pursuant to the 2019 National Assembly House of Representative Election for the Apa/Agatu Federal Constituency Seat.
 - (6) AN ORDER OF THIS COURT; ordering the 1st Defendant to immediately issue a certificate of return to the Claimant, for being the qualified candidate with the highest number of valid votes during the 2019 National Assembly; House of Representatives Election for Apa/Agatu Federal Constituency Seat.

In support of the Originating Summons is a 29 Paragraph affidavit sworn to on 6/11/2020 by the Claimant with 4 Exhibits annexed. Also filed a Written Address and adopts the Address.

The 1st Defendant did not file a Counter-Affidavit in response to the Originating Summons, rather leaves it at the discretion of the court in dealing with the originating summons of the Claimant.

The 2nd Defendant in opposition to Claimant's Originating Summons, filed a Counter-Affidavit dated 30/3/2021 but filed on 30/6/2021 of 29 Paragraphs Sworn to by the 2nd Defendant himself with six (6) Exhibits annexed. Also filed a Written Address and adopts the said Address.

In response to the 2nd Defendant Counter-affidavit, the Claimant filed a further affidavit of 15 Paragraphs on 28/9/2021 deposed to by the Claimant. Also filed a further reply on points of law.

Sequel to this application that is, the Originating Summons of Claimant/Applicant, the 2nd Defendant/Respondent filed a Notice of Preliminary Objection (NPO) to this application challenging the jurisdiction of this court to entertain this suit. It is therefore, necessary in line with the law to determine the issue of jurisdiction first before proceeding to determine the Originating Summons. See the case of *InakojiVsAdeleke* (2007) 4 NWLR (PT. 1025) 423 @ 622 – 623.

Jurisdiction overtime has been described as the live wire of any judicial proceedings and once raised; the court must determine it once and for all, the failure to do so, would amount to waste of judicial time of court, if it is found that indeed, it has no jurisdiction to hear. See the case of *DaewoodNig Ltd*

VsProjects Masters Nig. Ltd (2010) LPELR – 4010 (CA) Per Thomas JCA stated thus;

“It is no more in dispute that the issue on jurisdiction of the court must first of all, be determined because jurisdiction of all court or even the parties, is the live wire on which the matter is hinged, more so the issue is premised on the notice of Preliminary Objection.....”

See InakojiVsAdeleke (Supra). See also Government of Kwara State Vs Mohammed Lawal (2007) 13 NWLR PT. 1051 @ 347.

To determine this issue resort must be made to the Writ of Summons and Statement of Claim, as in this suit, the questions set out for determination and the reliefs sought. See OsigweVs PSPLS Management Consortium Ltd (2009) 3 NWLR (PT. 1128) 387 @ 399 Para E.

In the 2nd Defendant/Respondent Notice of Preliminary Objection dated 30/6/2021 and filed same day prays the court to dismiss this suit. The grounds upon which the Preliminary Objection is brought are:-

- (1) The entire Claimant’s Originating Summons as borne out in Paragraphs 6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29 particularly in respect of the alleged falsification of the 2nd Defendant’s information in CF001, Exhibit “B” thereof in the Claimant’s supporting affidavit to the Originating Summons, clearly and unequivocally indicates activities connected to, but happened before, the election for which the 2nd Defendant contested and won.

- (2) Section 285 (9) of the 4th Alteration Act No. 21 of 2017 to the Constitution of the Federal Republic of Nigeria 1999 stipulates a limitation period of 14 from the date of the occurrence of the event, decision or action complained of in the suit within which every pre-election matter shall be filed.
- (3) Claimant's Originating Summons was brought three (3) years after the constitutional time limit within which any such action may be brought.
- (4) The initiation of the Claimant's suit outside the 14 days stipulated under the Section 285(9) of the 4th Alteration Act No. 21 of 2017 to the Constitution of the Federal Republic of Nigeria, 1999 from the date of the occurrence of the event, decision or action complained of in the suit within which every pre-election matter shall be filed robs this Honourable Court of the vire and jurisdiction to entertain the Originating Summons.
- (5) The Claimant's suit by reason of being brought outside the constitutionally stipulated 14 days renders the originating summons incompetent and liable to be dismissed.

In support of the Notice of Preliminary Objection, is a 5 Paragraph affidavit. Also filed a Written Address, adopts the Address, in urging the court to dismiss the suit.

The 1st Defendant did not file any process in response to the Notice of Preliminary Objection leaves it to court to exercise its discretion.

In opposition to the Notice of Preliminary Objection, the Claimant filed a Counter-Affidavit dated 28/9/2021 of 12 Paragraph sworn to by the Claimant. Also filed a Written Address, adopts the Address, in urging the court to refuse the application and grant the Originating Summons.

In the Written Address of 2nd Defendant/Objector settled by Chris Agbiti, two (2) issues were formulated for determination namely;

- (1) Whether by the Constitution of this suit as to time and subject matter, this court is not robbed of the jurisdiction to entertain the suit having regard to the fact that it has become statute barred.
- (2) Whether this suit is properly commenced by means of Originating Summons considering the nature of facts founding the suit.

On issue 1, submit that this action is pre-election matter and by virtue of Section 285 (9) of the 4th Alteration Act No. 21 of 2017 to the 1999 Constitution, this suit is statute barred and outside the jurisdiction of the court. That the action being pre-election matter, within the ambit of the 2017 Act, by the said Act the time frame for instituting an action of this nature is 14 days. That the basis of the Claimant's Claim is premised on the allegation of falsification of information in form CF001 that is the Exhibit "B" annexed to the Claimant's supporting affidavit. That this suit is statute barred, the Claimant's 14 days limited under the Constitution within which to approach the court to challenged the qualification of the 2nd Defendant having elapsed since the 24th of November, 2018 by Operation of the law.

Further submit that by virtue of Section 31 (1) and (2) of the Electoral Act, 2010 (As Amended), and contrary to the claim of Claimant suggesting that he only became aware of the existence of the Exhibit "B" upon obtaining a certified true copy on 21st October, 2020, had actually become aware of the existence of Exhibit "B" in November, 2018 when 1st Defendant in compliance with the Provision of Section 31 of the Electoral Act published the personal particulars of the 2nd Defendant. Counsel place reliance on the following judicial authorities; UdeaghaVsOmegara (2010) 11 NWLR (PT. 1204), 168 @ 203 – 204, Attorney General Adamawa State Vs AG, Federation (2019) LPELR – 47426 (CA), DauduVs University of Agriculture, Makurdi&Ors (2002) 17 NWLR (PT. 796) @ 384 – 385 Para H-D.

On issue 2, submits that the originating Summons totally hinges on Claimant's grievance arising from allegations of falsification in the form CF001 upon which Claimant seek the determination of various and the accompanying reliefs. That the allegations are founded on criminal allegations of forgery and false statement and makes Claimant's case a hostile one. That Originating Summons procedure should only be used in cases where the facts are not in dispute or there is no likelihood of them being in dispute and not matters of controversy. That the mode of Originating Summons employed by Claimant in initiating this action completely overlook the controversial and hostile facts that are mainly criminal in nature requiring proof beyond reasonable doubt and thereby making the Originating Summons inappropriate as initiating process. That having improperly brought this suit not following due process of law, this court is robbed of jurisdiction to entertain the suit as constituted. Counsel cited the following judicial authorities; National Bank of Nigeria

VsAlakija&Anor (1978) 2 LRN, 78, KeyamoVs House of Assembly, Lagos State (2000) 11 WRN, 29 @ 40, ObasanyaVsBabafemi (2000) 23 WRN, (PT. 698) 1 @ 17, EziegwenVsNwawulu&Ors (2010) LPELR – 1201 @ 29 Paras A – C, Ben Obi NwabuezeVs Justice Obi Okoye (1989) 4 NWLR (PT. 91664) @ 668.

In the Written Address of Claimant/Respondent, Counsel for Claimant/Respondent Abiodun .E. Olusanya formulated a lone issue for determination and that is;

“Whether this court ought to grant the prayers of the Claimant on his Originating Summons”.

Answered in the affirmative and adopted their argument in the Written Address in support of the Originating Summons. And submit that the court is vested with jurisdiction to hear this suit on its merit. On whether the suit is properly commenced by originating Summons, answered strongly in the affirmative and submit the suit is most appropriately settled on its merit by Originating Summons as the germane and crux of the suit is clear. Counsel commend the court also to several judicial authorities; PDP VsDerigeremienyo (2021) 9 NWLR (PT. 1781) 274, UgoalaVs the State of Lagos (2021) 3 NWLR (PT. 1763) 263, Capital Oil & Gas Ltd VsOteri Holding Ltd (2021) 1 NWLR (PT. 1758) 483, NgigeVs Obi (2012) All FWLR (PT. 617) 738 AG Adamawa State Vs Ware (2006) All FWLR 306, 860.

Having carefully given an insightful consideration to the affidavit evidence, the Written Submission and the judicial authorities cited in their arguments for and against the grant of the relief sought in this instant Notice of Preliminary

Objection, sequel to the Originating Summons, the court finds that there is only one (1) issue that calls for determination, which is;

“Whether or not this suit as presently constituted, in the face of the grounds of the objection, is statute barred and therefore incompetent and robbed the court with the jurisdiction to hear and determine”

A careful perusal of the reliefs and questions in the Originating Summons gives a pointer that the instant suit borders on pre-election matter within the meaning ascribed to it by the Provisions of Section 285 (4) of Constitution of Federal Republic of Nigeria 1999 (Fourth Alteration) Act 2017. See the reliefs 1 – 6 of the Originating Summons and questions set for determination as contained in the Originating Summons. The 2nd Defendant/Objector in his Written Submission in support of Notice of Preliminary Objection is also in agreement that this instant suit is a pre-election. This suit emanated from the complaint of the Claimant against 2nd Defendant over alleged giving of false information on Oath in his INEC form CF001, that is the Exhibit “B” annexed to Claimant’s affidavit in support of the Originating Summons upon which the 2nd Defendant contested and declared winner of the National Assembly House of Representative Election for the Apa/Agatu Federal Constituency seat. It is therefore, not in contention that this matter is not a pre-election matter.

Now, see 285(9) of constitution of Federal Republic of Nigeria 1999 (Fourth Alteration) Act 2017 provides;

“Notwithstanding anything to the contrary in this constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit”

In this instant application, the crux of the objector – the 2nd Defendant, is that this suit instituted by the Claimant on the 6th of November, 2020 against the occurrence of the events which took place in November 2018 is a clear breach of the Provisions of Section 285 (9) of the Constitution of Federal Republic of Nigeria 1999 (Fourth Alteration) Act 2017.

Against this, the Claimant/Respondent contention is that this suit is not in breach of the said Section 285 (9) because by the submission of the Exhibit "C" and "D" to 1st Defendant, that is the 2nd Defendant's letter and the accompanying affidavit both dated 20/2/2020, wherein the 2nd Defendant admitted to given false information in his INEC form CF001, that is the Exhibit "B" annexed to the Originating Summons of the Claimant, much later after 1st Defendant had acted on the INEC form CF001 and without notice to other contestants and the public, the 14 days duration provided by the said Section 285 (9) of the 2017 Act would apply from the date the Claimant got wind or become aware of the documents, that is the Exhibit "C" and "D".

Having clearly identified the issue in contention next is to consider whether the suit is statute barred. And in considering this, resort must be had to the Provisions of Section 285(9) of the 2017 Act. The Provisions of Section 285(9) of the 2017 Act earlier reproduced is clear that an aggrieved party to a pre-election shall file any such complaint within 14 days from the date of the occurrence of the event.

The question to be asked is; Was the Provisions of the said Section 285 (9) of the 2017 Act adhered to by the Claimant's /Respondent's in this instant case? This suit was filed on the 6th of November, 2020. The basis of the complaint

of Claimant's/Respondent's is the alleged falsification of information by the 2nd Defendant through his INEC Form CF001 to the 1st Defendant which, on the strength of Claimant's further affidavit, became aware of on the 28th day of October, 2020 upon receipt of the Certified True Copy. See Paragraph 6 of Claimant's further affidavit filed on 28/9/2021. Now, in the clear wording of the Act, when did the Act complained of come to the notice of the Claimant/Respondent, was it on the 28th day of October, 2020 as stated in his further affidavit or in November, 2018 when the 2nd Defendant submitted his INEC Form CF001 to 1st Defendant and the 1st Defendant, in compliance with the Provisions of Section 31(3) of the Electoral Act 2020 (As Amended), published same? In my view, the 28th day of October 2020 stated by the Claimant/Respondent as the date he became aware of the act of the 2nd Defendant, cannot be the date of becoming aware, rather the date to be taken as date of becoming aware of the act of the 2nd Defendant is in November, 2018 when the 1st Defendant published the 2nd Defendant's INEC from CF001 in compliance with the Provisions of Section 31 (3) of the Electoral Act 2020 (As Amended). This clearly shows that the event complained of by the Claimant/Respondent had occurred over two years ago before the institution of this instant suit by the Claimant/Respondent.

The operative words in the said Section 285(9) of the 2017 Act are "Every pre-election shall be filed not later than 14 days from the date of the occurrence of the event". From all of these, I cannot but agreed with the submission of Counsel for the 2nd Defendant that this instant suit by the Claimant's /Respondent's is in breach of the said Section 285 (9) of the 2017

Act and its statute barred. Accordingly, I resolved the issue for determination in favour of the 2nd Defendant/Objector.

In conclusion, having found and resolve the issue for determination in favour of the 2nd Defendant/Objector, I hold that the Notice of Preliminary Objection of 2nd Defendant/Objector has merit and should succeed. Consequently, it would be of no moment to proceed to deal with the originating Summons. It is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

28/3/2022

APPEARANCE:

CHRIST AGBITI – FOR THE 2ND DEFENDANT

S. M. DANBABA – FOR THE 1ST DEFENDANT

ABIODUN .E. OLUSANYA – FOR THE CLAIMANT.