

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

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/1505/2022

DATE: 19/5/2022

BETWEEN:

OGOR TINA.....PLAINTIFF

AND

(1). OGBONNA VICTOR
(Secretary of PDP 2022 Primary Election Ward
Congresses Electoral Committee in Anambra State) }DEFENDANTS

(2). PEOPLES DEMOCRATIC PARTY (PDP) }

APPEARANCES:

A. C. Ozioko Esq for the Plaintiff.
Defendants absent and unrepresented.

JUDGMENT

By an Originating Summons dated the 9th day of May, 2022 and filed same day. The Plaintiff raised the following questions for determination thus: -

“(1). Whether upon the proper interpretation of the provisions of Section 223(1)(a) and (2)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and Section 47(1) of the Constitution of the Peoples Democratic

Party located in Wuse Zone 5, Abuja (as Amended in 2017) elected party officials in the Local Government and Ward Congresses of the party are entitled to a four year tenure of office.

- (2). Whether going by the provisions of Section 223(1)(a) and 2(a) of the Constitution of the Federal Republic of Nigeria 1999 (As amended); Section 47(1) of the Constitution of the Peoples Democratic Party (PDP) (As Amended 2017) and the Guidelines for the conduct of the 2022 primary elections, particularly paragraphs 1(a), ii, iii; and 1(b)(i) of the said Guidelines the Ward Chairman, Ward Vice Chairman, Secretary, Woman Leader, Youth Leader, 3 Ad-hoc delegates of the Ward; and the Local Government party Chairman, Vice Chairman, Secretary, Woman Leader, Youth Leader and National Delegate of the Local Government elected at the respective Ward and Local Government Congresses in the State and whose names and result sheet were already submitted to the 2nd Defendant located in Wuse Zone 5 Abuja within the territorial jurisdiction of this Court are entitled to vote in the party's primary election to be conducted for the selection of the party's flag bearer for the election into the House of Representatives, Senate of the National Assembly and State House of Assembly.**
- 3. Whether considering the provisions of Section 223 (1) (a) and (2)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As amended), Section 31(2)(j) of the Constitution of the Peoples Democratic Party (PDP) (As Amended in 2017) and the PDP Guidelines for the conduct of the 2022 primary elections particularly paragraph 1(b)(i) of the said Guidelines the 1st Defendant in collusion with the Peoples Democratic Party, (the 2nd Defendant) can alter, change, tamper with the result sheets of the 3 persons per Ward elected as Ad hoc delegates at the Ward Congresses of the party in Anambra State and submitted to the National Organizing Secretary of the 2nd Defendant located in Wuse Zone 5 Abuja which is within the territorial jurisdiction of this Court for the purpose of nominating the**

party's candidate for the upcoming National Assembly and State House of Assembly elections slated for 18th, 20th and 21st of May, 2022 or any other date.

Consequently, the Plaintiff claims the following reliefs thus:-

- “(1). A DECLARATION of this Honourable Court that the combined provisions of Section 223(1)(a) and (2)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and Section 47(1) of the Constitution of the Peoples Democratic Party, guarantees a four year tenure of office for its elected party officers for their respective Local Government Areas and the Wards officers.**

- (2). A DECLARATION of this Honourable Court that in view of Section 223(1)(a) 2(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended); Section 47(1) of the Constitution of the Peoples Democratic Party and the PDP Guidelines for the conduct of the 2022 primary elections, the Ward Chairman, Ward Vice Chairman, Secretary, Woman Leader, Youth Leader, 3 Man Ad hoc elected delegates of the Ward; and the Local Government Party Chairman, Vice Chairman, Secretary, Woman Leader, Youth Leader and National Delegate of the Local Government elected at the respective Ward and Local Government Congresses in the State and submitted to the National Organizing Secretary of the 2nd Defendant located in Wuse Zone 5 Abuja which is within the territorial jurisdiction of this Court are entitled to vote in the party's primary election to be conducted on the 18th, 20th and 21st of May 2022 or any other date for the purpose of selecting the party's flag bearers for the election into the House of Representatives, Senate of the National Assembly and State House of Assembly.**

- (3). A DECLARATION of this Honourable Court that in view of Section 223(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 31(2) (j) of the Constitution of the Peoples Democratic Party and paragraph 1 (b)(i) of the PDP Guidelines for the conduct of**

the 2022 primary elections, the Peoples Democratic party cannot disregard its own Constitution and Guidelines and push aside its elected Local Government and Ward Executive officers and the elected Ad hoc delegates it elected at the Ward and Local Government Congresses of the party for the purpose of its primary elections and select or use other persons not elected at the said Ward and Local Government Congresses for the said primary elections, whose results were already submitted to the 2nd Defendant located in Wuse Zone 5, Abuja.

- 4. A DECLARATION of this Honourable Court that the persons elected in the said Congresses as contained in Exhibits E to G attached to this suit and already submitted to the National Organizing Secretary of the 2nd Defendant located in Wuse Zone 5, Abuja are the duly elected persons to serve as delegates for the PDP 2022 National and State Assembly primary elections in the State, slated for the 18th, 20th and 21st of May, 2022 respectively or any other date.***
- 5. AN ORDER of this Honourable Court declaring as null and void and of no effect whatsoever, any primary election of the PDP in Anambra State particularly in Dunukofia/Njikoka/Anaocha Federal Constituency conducted without the duly elected Ad hoc delegates list of the Constituency as contained in Exhibit G to this suit which is in possession of the National Organizing Secretary of the 2nd Defendant located in Wuse Zone 5, Abuja.***
- 6. A DECLARATION of this Honourable Court that in view of Section 223(1) (a) and (2) (a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 47 (1) of the Constitution of the Peoples Democratic Party and the PDP Guidelines for the conduct of the 2022 primary elections, it is only the Congresses conducted by the National Working Committee of the party as set out in this suit that is valid for the purpose of any primary election of the PDP in the State.***

7. ***AN ORDER of this Honourable Court declaring as null and void any other Congress or Parallel Congress not conducted by the National Working Committee of the party or by any individual or any group of individuals how so ever described.***
8. ***ANY FURTHER OR OTHER ORDER OR ORDERS, as this Honourable Court may deem fit to make to meet the justice of this case.***
9. ***Costs.”***

Filed in support of the Originating Summons is a 20 paragraphed affidavit deposed to by Ogor Tina, the Plaintiff in this suit. Attached to the supporting affidavit are annextures marked as Exhibits A, B, C, D, E1 – E12, F1 – F228 and G1 – G18 respectively. Equally filed in support is a Written Address dated the 9th day of May, 2022.

Addressing the Court on 18th May, 2022 learned Counsel to the Plaintiff, A. C. Ozioko Esq, adopted their processes and urged the Court to grant the reliefs sought in the Originating Summons.

On the other hand, it is instructive to note that the Defendants who were served with the originating processes via an Order of Court for substituted service, refused, neglected and or avoided to file their respective Counter Affidavit and Written Address in line with the Rules of the Court. The Court therefore is left with a one way application to consider and determine.

Nevertheless, I have carefully perused the Originating Summons, the question raised for determination, the reliefs sought, the supporting affidavit, the annextures attached therewith and the Written Address in support.

Having done all these, it is therefore my humble view that the issue for determination is whether from the facts and surrounding circumstances of this case, the Plaintiff has made out a case to be entitled to the grant of the reliefs sought.

I shall first of all consider the legal implication of the Defendants action before delving into the substantive suit.

As pointed out earlier, the Defendants in this suit did not file any Counter Affidavit to challenge, controvert or contradict the averments in the affidavit of the Plaintiff before this Honourable Court.

The implication of the Defendants' action is trite law. The depositions to say the least are deemed to be admitted in law and they therefore form the agreed facts of the case between the parties. See the case of **AGBOR V THE POLYTECHNIC CALABAR (2009) LPELR-8690 (CA)**.

However, I must be quick to mention here that an opposing party should not be expected to challenge evidence that is hallow, empty, or bereft of any substance. See the case of **FASIMI V. LASIMA & ORS (2014) LPELR-22253**.

Having stated the position of law, I shall consider the case of the Plaintiff to ascertain its merit.

It is the case of the Plaintiff inter alia as distilled from the affidavit in support that she is a member of the PDP from Nawfia Ward II in Njikoka Local Government Area of Anambra State and one of the 3 Ad hoc delegates elected in the said Ward. That the National Working Committee of the PDP sent its officers that successfully conducted the Local Government and Ward Congresses in Anambra State including the election of 3 Man Ad hoc delegates for each Ward in the State and on the 19th day of February, 2022 the Ward Congresses were conducted while the Local Government Congresses were conducted on the 26th day of February, 2022. That it is from the said Local Government and Ward Executive that the statutory delegates that will vote in the primary elections would emerge. That the officers elected in the Ward and Local Government Congresses have four years tenure, whereas the Ad hoc delegates are only temporary for the purpose of the party's 2022 primary elections. That it is the members of the party who were elected at the Local Government and Ward Congresses plus the Ad hoc delegates that constitute the waiting population in the said coming primaries.

Having pointed out these, it should be noted at this juncture that a suit commence by an Originating summons is fought and won strictly on affidavit evidence. Therefore, the Plaintiff deposed in the supporting affidavit to the Originating Summons particularly at paragraphs 12 and 13 as follows:

“(12). That presently, the Defendants at the Head office of the PDP in Abuja, within the jurisdiction of this Honourable Court are manipulating the list of the voters as stated in paragraph 11 above by removing some people that were duly elected to take part in the primary elections and substituting them with others that were not elected.

(13). That the Defendants want to alter the voting list to make it different from the duly elected statutory and Ad hoc delegates as provided by the Constitution and Guidelines of the party for the primary elections.”

Now, from the paragraphs referred above, it is clear that the Plaintiff is speculative, in my view there’s no evidence before the Court to prove the veracity of the depositions contained in the said paragraphs nor is there any evidence placed before the Court by the Plaintiff to contradict Exhibits E1 to E21 and G1 to G18 attached to the supporting affidavit.

Consequently, the law is trite that Courts of law do not give to speculation but rely on the evidence placed before it in arriving at its conclusion. In other words, the Court of law must rely on facts and evidence before it and not on speculation. This position of law was re-echoed in the case of **ZABUSKY V. ISRAIL AIRCRAFT IND. (2008) 2 NWLR (Pt. 1070) 133 at 137, Para F –G** where it was held thus:-

“....Courts are not given to speculation, they act on evidence....”

Similarly, it was held in **N.B.C.I V ALFIOR (NIG) LTD (1993) 4 NWLR (Pt.187) at 346** that:

“....It is settled law that a Court can only act on the basis of the evidence before it....”

Again, it was held in the case of **RUFUS ANYANWU & ORS V. THE STATE (2012) LPELR-14196 (CA) (PP.17, Paras A) per TSAMMANI, J.C.A** that:

“It is the law that a Court of trial should base its decision on the legal evidence adduced before it. It should therefore not arrive at a presumption or conclusion based on mere speculation or

suspicion as suspicion or speculation is not the duty of a Court of Law.”

In view of the foregoing, it is my considered opinion that the Plaintiff's suit is built upon speculation as there's no admissible evidence before the Court to show that the Defendants are manipulating or have manipulated the list of voters (as said by the Plaintiff). I so hold.

To this end, it should be pointed out that although as stated earlier that the Defendants did not file Counter Affidavit in opposition, the Plaintiff nevertheless must succeed on the strength of its case not on weakness of the defence. In this respect, see the case of ***HAMMAKOPP CONSRTIUM LIMITED & ORS V GIFT UDOFIA & ORS (2021) LPELR-55716 (CA) (PP.12, Paras C) per OWOADE, J.C.A.*** where it was held thus:

“It is trite that a Plaintiff must succeed or perhaps fail on the strength and weakness of its own case.”

Moreso, if there was a change of names of the Claimants as speculated, the Claimant would have joined the person put in their stead as necessary parties, which was not done in this case.

At this juncture I need not belabour myself further, It is therefore my view, that the Plaintiff has failed to make out a case for the grant of the reliefs sought I so hold.

In the final analysis, I hereby without much ado resolve the issue for determination against the Plaintiff and in favour of the Defendants and hold very strongly that this suit lacks merit and is accordingly dismissed in its entirety. No order as to cost.

Signed:

***Hon. Justice S. U. Bature
19/5/2022.***