

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI, ABUJA - FCT**

**CLERK: CHARITY ONUZULIKE
COURT NO. 10**

**SUIT NO: FCT/HC/CV/3401/2022
DATE: 17/1/2023**

BETWEEN:

MR. NDU UCHE INNOCENT.....APPLICANT

AND:

- | | | |
|---|---|--------------------|
| <ul style="list-style-type: none">1. ACCORD PARTY2. HON. MUHAMMED LAWAL NALADO
(National Chairman Accord Party)3. MR. OTI MOSES4. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC) | } | RESPONDENTS |
|---|---|--------------------|

JUDGMENT

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

The Applicant by name Mr. Ndu Uche Innocent prayed this Court vide the Originating Motion for the following reliefs:

- 1. AN ORDER OF MANDAMUS** directing and or compelling the Respondents particularly the 4th Respondent to immediately published in the 4th Respondent's portal, the Applicant as the 1st Respondent's candidate for Umunneochi Abia State House of Assembly election in the 2023 General Election.

2. **AN ORDER OF MANDAMUS** directing and or compelling the Respondents particularly the 4th Respondent to remove the name of the 3rd Respondent who has since been substituted by virtue of the fresh primaries conducted by the 1st Respondent on 6th of August 2022 thereby forwarding the name of the Applicant to the 4th Respondent portal as the 1st Respondent's candidate for Umunneochi Abia State House of Assembly Election in the 2023 General Election.
3. **AND FOR OTHER ORDER(S)** as the Honourable Court may deem fit to make in the circumstances of this suit.

THE GROUNDS UPON WHICH THE RELIEFS ARE SOUGHT

- A. The 4th Respondent is the Electoral umpire in charge of conducting a free, fair and credible election in the 2023 General Election and other subsequent elections in Nigeria.
- B. In the build up to the 2023 General Election, the 1st and 2nd Respondents forwarded the Applicant name as their candidate for Umunneochi Abia State House of Assembly Election after the conduct of 1st Respondent fresh primaries held on the 6th of August 2022 substituting the name of the 3rd Respondent who withdraw from the context with the name of the Applicant in line with section 33 of Electoral Act 2022.
- C. The Applicant being the successful candidates, his name was used thereby in substituting the name of the 3rd Respondent as stipulated by section 33 of the electoral Act 2022.
- D. That the 1st and 2nd Respondent submitted a hard copy of the Results of the fresh primaries to the 4th Respondent but all efforts to send same electronically failed due to network problem.

- E. The 1st and 2nd Respondent consistently tried to electronically forward the names of the Applicants but unfortunately the names of Applicant ended up not published which was among the 11 names submitted by the 1st Respondent after the fresh primaries substituting the name of the 3rd Respondent as the candidate of the 1st Respondent in the Umunneochi Abia State House of Assembly election come 2023 general Election.
- F. Sequel to the above facts, the 4th Respondent has gone ahead to upload the names of all successful candidates in respect of the 2023 General Election without uploading the name of the Applicant in the 4th Respondent website.
- G. That the 4th Respondent could not effect the change in their web site thereby resulting to the publishing of the name of the 3rd Respondent whose name has been substituted with the name of the Applicant hence the need for this Application for a mandamus order of this Court compelling the 4th Respondent to comply with section 33 of the Electoral Act 2022.
- H. Consequently, it is therefore imperative for the Honourable Court to direct, compel and or mandate the Respondents especially the 4th Respondent to immediately upload and or publish the name and personal particulars of the Applicant in the 4th Respondent's portal as the 1st Respondent's candidate for Umunneochi State House of Assembly in the 2023 general election.

The facts that gave rise to this application before this Honourable Court is more aptly captured in the grounds for which this application is brought and the affidavit in support of same and there will be no need reproducing same.

I must however, emphasise that on 12/1/2023 when the matter came up in Court, Mr. James Joshua who held the brief of 1st, 2nd and 3rd Respondents did not object to the grant of this application. In the same vein, the 4th Defendant i.e. INEC did not attend the Court. They file no process and took no step to defend the action. This means this suit is not challenged a bit by all the Respondents. What is the merit of this application?

The Applicant's Counsel discern a lone issue for determination and which is:

Whether considering the facts and circumstances of this case, it is not in the interest of justice to direct, compel or mandate the 4th Respondent to immediately upload and or publish the name and personal particulars of the Applicant in the 4th Respondent's portal as the 1st Respondent candidate for Umunneochi Abia State House of Assembly election in the 2023 General Election.

Having regard to the grounds for bringing this application by the Applicant. And the facts as stated, I do find considerable merit in it.

The duty of the Applicant began by obtaining the nomination and expression of interest form and the attendant participation in the fresh primary election of the 1st Respondent and winning of same. This is where the duty of the Applicant begins and ends. The duty of forwarding the names of all successful candidates vying for elective positions under the platform of the 1st Respondent is the responsibility of the 1st and 2nd Respondent. Furthermore, the duty of publishing and or uploading the name of the Applicant in the official website or portal of the 4th Respondent is entirely that of the 4th Respondent and not that of the Applicant.

The Applicant has passionately pleaded with the 4th Respondent to upload his name as the candidate contesting for the House of Representative of Umunneochi Abia State House of Assembly election under the platform of the 1st Respondent in the 2023 General Election but despite the Applicant's plea, the 4th Respondent has either failed, refused or neglected her statutory responsibility. It seems to me that unless compelled by an Order of this Honourable Court, the 4th Respondent will still not perform her responsibility in this regard and this will occasion grave injustice on the part of the Applicant. This fact therefore encapsulates the case of the Applicant and the extreme as well as urgent need for the kind intervention of this Honourable Court.

The essence of judicial review such as mandamus is to secure or enforce the performance of a public duty. In the case of **FAWEHINMI VS. IGP (2009) 7 NWLR (PT. 767) AT Pp. 697-698 PARAS H-A**, the Supreme Court held as follows:

“The prerogative writ of mandamus is issued or ordered by the Courts to secure or enforce the performance of a public duty...”

A cursory look at the Affidavit evidence of the Applicant brings to lime light the fact that the Applicant has made consistent plea to the 3rd Respondent for his name to be published as a candidate contesting for the seat of Member House of Representative of Umunneochi Abia State House of Assembly.

I refer again to the case of **FAWEHINMI VS. IGP (SUPRA)** where the **Supreme Court** while considering the pre-conditions to the grant of prerogative writs of mandamus also held as follows:

“...it is pre-eminently a discretionary power and the Courts will decline to award it if other legal remedies are available and effective. An Applicant for the grant of the Order must show that he has sufficient legal interest to protect and that he has demanded the performance of the public duty from those obliged to do so and was refused.”

Furthermore, in the case of **OHAKIM VS. AGBASO (2010) 19 NWLR (PT. 1226) AT Pp 227 – 228, PARAS. F-A**, the Supreme Court held as follows:

“Mandamus is an Order issued by a Court of law, usually the High Court, to compel the performance of a public duty in which the person applying for same has sufficient legal interest. An Order of mandamus only issues to a person or corporation requiring him or them to do some particular thing therein specified which appertains to his or their office, and is in the nature of public duty....”

I therefore on the whole, hold that the Respondents especially the 3rd Respondent is bound to upload and publish the name of the Applicant as the candidate of the 1st Respondent for Umunneochi Abia State House of Assembly election in the 2023 General Election. In short, this claim is granted in toto. For avoidance of doubt, it is hereby ordered as follows:

1. **AN ORDER OF MANDAMUS** directing and or compelling the Respondents particularly the 4th Respondent to immediately

published in the 4th Respondent’s portal, the Applicant as the 1st Respondent’s candidate for Umunneochi Abia State House of Assembly election in the 2023 General Election is hereby granted.

2. **AN ORDER OF MANDAMUS** directing and or compelling the Respondents particularly the 4th Respondent to remove the name of the 3rd Respondent who has since been substituted by virtue of the fresh primaries conducted by the 1st Respondent on 6th of August 2022 thereby forwarding the name of the Applicant to the 4th Respondent portal as the 1st Respondent’s candidate for Umunneochi Abia State House of Assembly Election in the 2023 General Election is hereby granted.

.....
S. B. Belgore
(Judge) 17/1/23