

IN THE COURT OF APPEAL
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

APPEAL NO: CA/A/ /2022
SUIT NO: FHC/ABJ/CS/976/2021

BETWEEN:

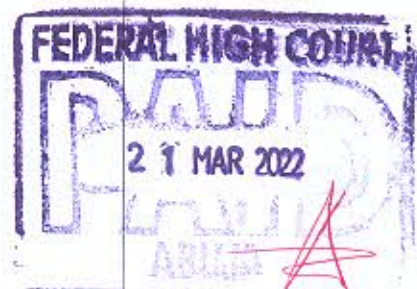
1. THE HOUSE OF ASSEMBLY FOR CROSS RIVER STATE
2. THE CLERK OF THE HOUSE OF ASSEMBLY
FOR CROSS RIVER STATE
3. RT. HON. MICHAEL ETABA
4. RT. HON. LEGOR IDAGBOR
5. RT. HON. ETENG JONAH WILLIAM
6. RT. HON. JOSEPH A. BASSEY
7. RT. HON. ODEY PETER AGBE
8. RT. HON. OKON E. EPHRAIM
9. RT. HON. REGINA L. ANYOGO
10. RT. HON. MATHEW S. OLORY
11. RT. HON. EKPO EKPO BASSEY
12. RT. HON. OGBOR OGBOR UDOP
13. RT. HON. EKPE CHARLES OKON
14. RT. HON. HILLARY EKPANG BISONG
15. RT. HON. FRANCIS B. ASUQUO
16. HON. ELVERT AYAMBEM
17. HON. DAVIS ETTA
18. HON. SUNDAY U. ACHUNEKAN
19. HON. CYNTHIA NKASI
20. HON. EDWARD AJANG
21. HON. CHRIS NJA-MBU OGAR
22. HON. MARIAM AKWAJI

APPELLANTS

AND

1. PEOPLES DEMOCRATIC PARTY
2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
3. THE SPEAKER OF THE HOUSE OF
REPRESENTATIVES, NATIONAL ASSEMBLY

RESPONDENTS



2806 3452 5201

- OF THE FEDERATION OF NIGERIA
4. THE CLERK OF THE NATIONAL ASSEMBLY OF THE FEDERATION OF NIGERIA
5. ALL PROGRESSIVES CONGRESS (APC)
- RESPONDENTS

NOTICE OF APPEAL

1) TAKE NOTICE that the Appellants being dissatisfied with the Judgment/Rulings of the **Federal High Court, sitting at Abuja**, coram: **Taiwo Obayomi Taiwo J**, delivered on the **21st day of March, 2022**, in the suit no: **FHC/ABJ/CS/976/2021 BETWEEN PEOPLES DEMOCRATIC PARTY VS. INDEPENDENT NATIONAL COMMISSION (INEC) & 25 ORS**, more particularly stated in **paragraph 2**, do hereby appeal to the Court of Appeal on the grounds contained in **paragraph 3**, and will at the hearing of the appeal seek the reliefs set out in **paragraph 4**.

AND THE APPELLANTS further state that the names and addresses of the persons directly affected by the appeal are stated in **paragraph 5**.

2) THE DECISION COMPLAINED OF:-

THE WHOLE DECISION (JUDGMENT/RULINGS) EXCEPT THE FINDINGS THAT ARE IN FAVOUR OF THE APPELLANTS.

3) GROUND OF APPEAL

GROUND 1

The trial court erred in law when it entertained the Plaintiffs/Respondents' suit and delivered judgment without jurisdiction.

PARTICULARS OF ERROR

- i) The trial court lacked the requisite jurisdiction to have entertained the suit leading to the instant appeal.
- ii) Arising from the hostile nature of the suit that gave rise to this appeal, the failure of the trial court to order pleadings denied the Appellants the opportunity to properly present their case thereby stripping them of their constitutional right to fair hearing.

- iii) Originating Summons ought rightly to be resorted to only where rights of parties depend on construction of enactment only without reference to hotly disputed facts.
- iv) The Appellants predicated the reasons and grounds for their act of defection on the raging crisis and division that rocked the National leadership and State leadership of the Peoples Democratic Party (1st Respondent) at the material time, the facts of which were hotly disputed and refuted by the Plaintiff/1st Respondent.
- v) Consequently, the suit leading to the instant appeal was not suitable for Originating Summons procedure.
- vi) The Appellants had applied for transfer of the suit leading to this appeal from the Abuja Judicial Division to the Calabar Judicial Division of the Federal High Court where the cause of action arose and the subject matter is situated.
- vii) The trial court refused to transfer the suit to the Calabar Judicial Division of the Federal High Court in defiance of the practice direction as contained in the said circular issued by the Honourable Chief Judge of the Federal High Court.
- viii) The trial court erroneously heard the Appellants' motion for transfer of the suit to the Calabar Judicial Division of the Federal High Court contemporaneously and together with the Notice preliminary objection challenging jurisdiction of the court and the substantive Originating Summons.
- ix) The Appellants had protested the procedure adopted by the trial court but the Honourable trial Court bluntly refused to hold the protest even when its attention was fully drawn to the motion for transfer which ought to have been taken first and pronounced upon one way or the other.
- x) Hearing the Appellants' motion for transfer of the suit to the Calabar Judicial Division of the Federal High Court simultaneously with the Notice preliminary objection challenging jurisdiction and the substantive Originating Summons constitutes an abuse of court process and procedure.

- xi) The failure of the trial court to transfer this suit that gave rise to this appeal to the Calabar Judicial Division of the Federal High Court in Calabar, Cross River State where the 1st Respondent's alleged cause of action arose amounts to forum-shopping, Judge-shopping and abuse of court process.
- xii) The rules of court and practice direction of the court have force of law and must be obeyed by the court.
- xiii) The issue ownership of votes or transfer of votes is a matter for determination by an Election Tribunal and not a regular Federal High Court vide Originating Summons (**EJURA V. IDRIS & ORS (2006) LPELR - 5827 (CA)**).
- xiv) Therefore, the issue of defection cannot be tied with ownership or transfer of votes such as to confer jurisdiction on the Federal High Court.
- xv) Reference to ownership of votes or transfer of votes amount to a surreptitious way of challenging the election and return of the Appellants before the Federal High Court, rather than before an election Petition Tribunal.
- xvi) No election and return at an election under the Electoral Act shall be questioned in any manner other than by a petition properly presented before the competent Election tribunal or court by virtue of section **133 (1) and 134(1)** of the Electoral Act, **2010** (as amended in **2014** and section **130A(1)** of the Electoral Act, **2022**.
- xvii) The interpretation of the "tribunal or court" does not include the Federal High Court.

GROUND 2

The learned trial court erred in law when it failed to consider the Appellants' defence to the effect that the Appellants had already been expelled from the 1st Respondent (Peoples Democratic Party) before they later joined the 3rd Respondent (APC).

PARTICULARS OF ERROR

- i) It is the Appellants' case that they did not defect but that they merely joined the 3rd Respondent (APC) after being expelled from the 1st Respondent (PDP), in the exercise of their right to freedom of association and assembly.

- ii) The Appellants were already expelled at their various wards and were without political parties before joining the All Progressives Congress (APC).
- iii) There was overwhelming pieces of evidence before the learned trial court as contained in the series of unchallenged exhibits and consequently on record before this honourable court showing such earlier expulsion.
- iv) After being expelled from the 1st Respondent, the Appellants joined the 3rd Respondent in exercise of their constitutional right to freedom of association and assembly as enshrined in the Constitution of the Federal Republic of Nigeria, 1999, as altered.
- v) The decision of the trial court has occasioned a serious miscarriage of justice.

GROUND 3

The learned trial court erred in law when it granted the Plaintiff/1st Respondent's reliefs and ordered Appellants to vacate their legislative seats.

PARTICULARS OF ERROR

- i) Appellants had justifiable constitutional reasons to join the 3rd Respondent after being expelled from the 1st Respondent.
- ii) The question of expulsion of the Appellants as backed by documentary evidence was never challenged by the 3rd Respondent.
- iii) The crisis and divisions at the national body of the 1st Respondent at the material time constituted a constitutional exception to the constitutional bar to the defection/cross - carpeting by the law makers as provided for in the proviso to section 68(1) of the Constitution of the Federal Republic of Nigeria, 1999, as altered.
- iv) The decision of the trial court has occasioned a grave miscarriage of justice.

GROUND 4

The learned trial Judge erred in law when he failed to consider the issue of major crisis and division at the national leadership and state leadership levels of the 1st

Respondent (Peoples Democratic Party) as raised in the Appellants' defence and as contained in the Appellants' counter affidavit against the Originating Summons.

PARTICULARS OF ERROR

- i) The Appellants predicated the grounds of their being expelled by the 1st Respondent justifiable and subsequently joining the 3rd Respondent to be justifiable due to the leadership crisis and divisions that bedeviled the 1st Respondent (Peoples Democratic Party) at the material time.
- ii) The trial court failed and neglected to consider such vital issue that called for oral evidence despite the overwhelming evidence of such facts of crisis and divisions.
- iii) The trial court had the burden duty to consider all the issues and evidence submitted by the parties thereto.
- iv) The failure of the trial court to consider the evidence of the Appellants on record is a violation of the Appellants' right to fair hearing.
- v) The said failure has occasioned a serious miscarriage of justice.

GROUND 5

The trial court erred in law when it dismissed the Appellants' application for transfer of the suit leading to this appeal from Abuja to the Calabar Division of the Federal High Court where the cause of action accrued and the subject matters (res) are situate.

PARTICULARS OF ERROR

- i) The Appellants applied for transfer of the suit leading to this appeal from Abuja Judicial Division of the Federal High Court to the Calabar Judicial Division where the cause of action accrued and the subject matter is situate.
- ii) The trial court refused to hear and determine the issue of transfer separately in defiance to the practice direction as contained in the circular issued by the Honourable Chief Judge of the Federal High Court.
- iii) The failure of the trial court to transfer this suit that gave rise to this appeal to the Calabar Judicial Division of the Federal High Court where

the 1st Respondent's alleged cause of action amounts to abuse of court process, forum-shopping and judge-shopping.

- iv) The rules of court and practice direction of the court have the force of law and must be obeyed by the court.

GROUND 6

The learned trial court erred in law when it held that votes cast in an election belong to the political party as against the candidates.

PARTICULARS OF ERROR

- i) The important status of the candidates in all the stages of election cannot be over-emphasized under the current regime of the Nigerian electoral law.
- ii) The current constitutional design is that votes belong to the candidates who participated in all the stages of an election process (S. 141, Electoral Act, 2010, as amended).
- iii) By virtue of section 285 (13) of the Fourth Alteration to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), an election tribunal or court shall not declare any person a winner at an election in which such a person has not fully participated in all stages of the election.
- iv) The votes are canvassed for by the political party as a mere vehicle for the benefit of the candidate.
- v) It is the requirement of the Constitution and the Electoral Act, 2022, that the candidate (and not the political party) that has the highest number of votes at an election who shall be declared as the winner of such election.
- vi) A political party is nothing more than an agent of the candidate in gathering votes for an election.
- vii) It is against this backdrop that the Electoral Act, 2022, further provides for the means of challenging the return of the **candidate** (and not his political party).
- viii) The case of **AMAECHE V INEC (2008) 5 NWLR (Pt. 1080) and FALEKE vs INEC (2016) 18, NWLR (PT. 1543)** have since been

overruled and overtaken by the provisions of section 285 (13) of the 4th Alteration to the 1999 Constitution as altered in 2017 many years after AMAECHI'S case and after Faleke's case, which have now vested the votes on the candidate and no longer on the political party on whose platform he was elected.

- ix) After the AMAECHI's decision, section 141 of the former Electoral Act, 2010 (as amended) was enacted and later the current regime of the provision of section 285(13) of 4th Alteration to the 1999 Constitution, as altered was enacted into law and all have since over ruled the said decision in AMEACHI V INEC (supra).
- x) The Supreme Court has also held that the decision in AMEACHI V INEC (supra) has been set aside while interpreting the provision of section 141 of the old Electoral Act, 2010 in CPC & ANOR v. OMBUGADU & ANOR (2013) LPELR-21007(SC) which is impari materia with the provision of section 285 (13) of the Constitution of the Federal Republic of Nigeria, 1999 (As amended). In OZOMGBACH V. AMADI & 1 ORS (2018) LPELR – 45152 (SC), the apex court specifically held as follows:

"...I believe the Supreme Court has laid to rest the contention that it is the political party which contests and wins an election. In C.P.C. v OMBUGADU (2013) 18 NWLR (Pt. 1385), the Court was categorical that individuals as candidates win election and not the political parties." Per MARY UKAEGO PETER-ODILI, JSC (Pp 48 - 49 Paras E - A).

- xi) The facts in FALEKE V INEC (supra) are totally distinguishable from this instant appeal.
- xii) In APC V. SEN. MARAFA (2020) 6 NWLR (PT. 1721), the Supreme Court held:

"...For the avoidance of doubt, a party that has no candidates in an election cannot be declared the winner of the election. This being so, the votes credited to the alleged candidates of the Appellant in the 2019 general elections in Zamfara State are wasted votes. For that reason, it is hereby ordered that candidates of parties other than the 1st Appellant with the highest votes and the required spread stand elected into

various offices that were contested for in Zamfara State in the 2019 General Elections..." The law had earlier been stated by the Supreme Court in AGHEDO V. ADENOMO (2018) 13 NWLR (Pt.1636) 264 @ 304 - 305 Per EKO JSC thus: "...No political party by virtue of the said section 106 (d) of the Constitution can be declared winner of any general election conducted by the INEC (3rd Respondent) if it had no candidate qualified to conduct the election. See also the case of OZOMGBACHI V. AMADI (2018) 7 NWLR (Pt.1647) 171 @ 196 where the Supreme Court per PETER-ODILI JSC held as follows: "...I agree with the counsel for the 1st Respondent that the present case is a total departure from the foregoing cases, I believe the Supreme Court has laid to rest the contention that it is the Political Party to contest and win an election. In CPC V. OMBUGADU (2013) 18 NWLR (Pt.1385) 66, The Court was categorical that individuals as candidates win elections and not political parties..."

- xiii) In **NWANKWO & ANOR VS INEC (2019) LPELR – 48862 (CA)**, the intermediate court relying on earlier decisions of the Supreme Court in **WADA V. BÉLLO, (2016) 17 NWLR (PT.1542) 374 @ 427-428, PARASH-A. AND NGIGE V. AKUNYILI (2012) 15 NWLR (PT.1323) 343 @ 357-376**, the court held as follows:

"...it is my considered view that the Appellant in relying on the provision quoted above (section 211 of the Constitution), has conveniently lost sight of the underlined words which show that a political party canvasses for votes on behalf of the candidate. In other words that a political party is nothing more than an agent of the candidate in gathering votes for an election. It is my further view that is against the backdrop of this, that the Electoral Act (Supra) requires the candidate (and not the party of the candidate) that has the highest number of votes at an election to be declared as the winner of the said election, and further provides for the means of challenging the return of the candidate (and not his political party..." Interestingly, PW2 who was the Returning Officer in the election in contest also admitted that by the provisions of the Electoral Act, 2010 (as amended), INEC Manual and Guidelines, it is a natural person and not an artificial person that can be returned in an election.

In Paragraph 13 of his Statement on oath, he stated thus: "...that I know I was expected to return a natural person and not a political party as the winner had not been controverted..." That since the 2nd Respondent has no candidate for the election, the position of the law is very clear as to validity of votes cast for a political party who has no candidates.

- xiv) The decision of the trial court has occasioned a serious miscarriage of justice and in violation of settled position of the law.

GROUND 7

The entire Judgment of the Federal High Court is against the weight of evidence.

TAKE FURTHER NOTICE that additional Grounds of appeal shall be filed upon the receipt of the full records of appeal.

4) RELIEFS SOUGHT FROM THE COURT OF APPEAL:

1. **AN ORDER** of this honourable court allowing this appeal.
2. **AN ORDER** of this honourable setting aside the Judgment of the Federal High Court, **sitting at the Abuja**, coram: **Taiwo Obayomi Taiwo J**, delivered on the **21st day of March, 2022**, in suit no: **FHC/ABJ/CS/976/2021**.

5) PERSONS DIRECTLY AFFECTED BY THIS APPEAL.

- i) **THE APPELLANTS,**
C/o Their Counsel,
Chief Mike A. A. Ozekhome, SAN, OFR, FCI Arb, LL.M, Ph.D, LL.D
Mike Ozekhome's Chambers,
(Counsel to the Appellants),
Ukwe Court,
Plot 2215, Cadastral Zone, Nile Street,
Maitama, Abuja.
- ii) **THE 1ST RESPONDENT,**
PEOPLES DEMOCRATIC PARTY (PDP)

**WADATA PLAZA,
WUSE ZONE 5,
ABUJA.**

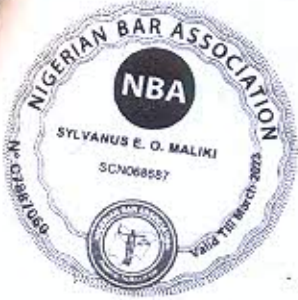
OR

**C/O The 1st Respondent's Counsel
Emmanuel C. Ukala Esq, SAN
E.C Ukala & Company
No. 18 Thomas Sankara Street,
Asokoro, Abuja.**

- iii) **THE 2ND RESPONDENT,
INDEPENDENT NATIONAL ELECTORAL COMMISSION
(INEC)
INEC Headquarters,
Plot 436 Zambezi Crescent, Maitama Abuja.**
- iv) **THE 3RD RESPONDENT
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
NATIONAL ASSEMBLY OF THE FEDERATION OF
NIGERIA,
National Assembly Complex,
Three Arms Zone,
FCT,
Abuja.**
- v) **THE 4TH RESPONDENT
THE CLERK OF THE NATIONAL ASSEMBLY
OF THE FEDERATION OF NIGERIA,
NATIONAL ASSEMBLY OF THE FEDERATION OF
NIGERIA,
National Assembly Complex,
Three Arms Zone,
FCT,
Abuja.**
- vi) **THE 5TH RESPONDENT,
ALL PROGRESSIVES CONGRESS (APC)
40 Blantyre Street,
Wuse 2, Abuja.**

Dated this 21st day of March, 2022.

Mattijwame



Chief Mike A. A. Ozekhome, SAN, OFR, FCI Arb, LL.M,
Ph.D, LL.D

Tunde Afe-Babalola, S.A.N., FC Arb

Clement Onwueunor, SAN

Benson Igbanoi, Esq.

Lady Josephine Mike Ozekhome, LL.M.

Amauche O. Onyedum (Mrs)

Godwin Iyinbor, Esq.

Onuoha Ejieke, Esq.

✓ S. E. O. Maliki, Esq.

Justin Omogbemeh, Esq.

Queen-Ubokutom I. Umana, (Miss)

Wilson A. Ibhazobe, Esq.

Jeffrey IluobeItua, Esq.

Oluchi Vivian Uche (Miss)

Azubuiké Solomon, Esq.

Michael Eseose Aburime Esq.

Osamuède Moses Ogbomo Esq.

Osilama Mike Ozekhome, Esq.

Adadu Obandeh, Esq.

Destiny E. Odianosen, Esq.

Dixon C. Odili, Esq.

Aisosa Ogboro (Miss).

Oshomha Mike Ozekhome, Esq.

Oghenetjiri Ruth Djegbada, (Miss)

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FOR SERVICE ON:

1. **1st Respondent**
PEOPLES DEMOCRATIC PARTY (PDP)
NATIONAL HEAD QUARTERS,
WADATA PLAZA,
WUSE ZONE 5.
ABUJA.

OR

C/O HER Counsel
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S.I Ameh, SAN
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Edward Obiokor, Esq.
M.S Agwu, Esq.
O.J Iheko (Miss)
Okechukwu Omeodu, Esq.
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2. **The 2nd Respondent,**
Independent National Electoral Commission (INEC)
INEC Headquarters,
Plot 436 Zambezi Crescent, Maitama Abuja.
3. **THE 3RD RESPONDENT**
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
NATIONAL ASSEMBLY OF THE FEDERATION OF NIGERIA,
National Assembly Complex,
Three Arms Zone,
FCT,
Abuja.

4. THE 4TH RESPONDENT

THE CLERK OF THE NATIONAL ASSEMBLY
OF THE FEDERATION OF NIGERIA,
NATIONAL ASSEMBLY OF THE FEDERATION OF NIGERIA,
National Assembly Complex,
Three Arms Zone,
FCT,
Abuja.

5. The 5th Respondent,

ALL PROGRESSIVES CONGRESS (APC)
40 Blantyre Street,
Wuse 2,
Abuja.

11/11/2011
MAY 11 2011

E.C. UKALA & CO.
RECEIVED

INEC

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