

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO: FHC/ABJ/CS/976/2021

BETWEEN

PEOPLES DEMOCRATIC PARTY- PLAINTIFF/RESPONDENT

AND

- 1) INDEPENDENT NATIONAL COMMISSION (INEC)
- 2) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
NATIONAL ASSEMBLY OF THE FEDERATION OF NIGERIA
- 3) THE CLERK OF THE NATIONAL ASSEMBLY OF THE
FEDERATION OF NIGERIA
- 4) THE HOUSE OF ASSEMBLY FOR CROSS RIVER STATE
- 5) THE CLERK OF THE HOUSE OF ASSEMBLY FOR CROSS
RIVER STATE
- 6) RT. HON. MICHAEL ETABA
- 7) RT. HON. LEGOR IDAGBOR
- 8) RT. HON. ETENG JONAH WILLIAM
- 9) RT. HON. JOSEPH A. BASSEY
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- 23) HON. EDWARD AJANG
- 24) HON. CHRIS NJA-MBU OGAR
- 25) HON. MARIAM AKWAJI
- 26) ALL PROGRESSIVES CONGRESS

DEFENDANTS/
APPLICANTS



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MOTION ON NOTICE

BROUGHT PURSUANT SECTION 6 (6) (A) 36 (1), 240 AND 242 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 2011 AS AMENDED, ORDER 32 RULES 2 AND 4 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE RULES 2019), AND UNDER THE INHERENT JURISDICTION OF THE HONOURABLE COURT.

TAKE NOTICE that this Honourable Court shall be moved on theday of, 2022 at the hour of 9 0' clock in the forenoon or so soon thereafter as the Counsel to the Applicants may be heard praying the Honourable Court for the following orders/reliefs:

- 1) **AN ORDER** of this honourable court staying the execution of the Judgment delivered on the **21st of March, 2022**, by honourable Justice **Taiwo Obayomi Taiwo**, of the Federal High Court, Abuja, by the Respondents whether by themselves, agents, servants and/or privies howsoever called, from executing or further executing, enforcing or further enforcing or in any manner whatsoever giving effect to the said Judgment, pending the hearing and final determination of the appeal filed by the Applicants before the Court of Appeal, Abuja Judicial Division.
- 2) **AN ORDER** of injunction of this Honourable Court restraining the Respondents whether by themselves, agents, servants and/or privies howsoever called, from executing or further executing, enforcing or further enforcing or in any manner whatsoever giving effect to the Judgment delivered on the **21st of March, 2022**, by honourable Justice **Taiwo Obayomi Taiwo**, of the Federal High Court, Abuja pending the hearing and final determination of the appeal filed by the Applicants before the Court of Appeal, Abuja Judicial Division.
- 3) **AND** for such further or other order(s) as this honourable court may deem fit to make in the circumstances.



GROUNDS FOR THIS APPLICATION

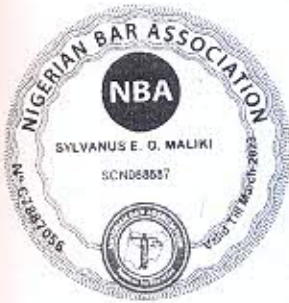
TAKE FURTHER NOTICE THAT THE GROUNDS UPON WHICH THIS APPLICATION IS BROUGHT:

- i) The Honourable trial Court delivered its decision (Judgment/Rulings) on the 21st of March, 2022, per Honourable Justice **Taiwo Obayomi Taiwo, J** of the Federal High Court, Abuja Division.
- ii) The Applicants being dissatisfied have now filed a Notice of Appeal against the above decision.
- iii) By the provisions of Sections 36, 240 and 242 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Applicants have a right of appeal.
- iv) The suit before the court leading to the judgment to be stayed or restrained from being executed and/or enforced relates to the constitutionality or otherwise of the act of the Appellant's joining another Political party after being expelled from the 1st Respondent
- v) The notice and grounds of appeal raise serious, arguable and recondite points of law before the appellate court with great chance of success at the hearing of the appeal
- vi) The Honourable Court has the power and jurisdiction to grant the instant application to preserve the res or subject matter of the pending appeal
- vii) It is in the best interest of justice to grant the instant application so as not render the decision of the Court of Appeal nugatory or be foisted with a fait accompli in the event that Applicant's pending appeal succeeds



- viii) The refusal of this application will infringe on the Applicant's right of appeal and right to fair hearing before the Court of Appeal as enshrined in the 1999 Constitution;
- ix) The balance of convenience is in favour of the grant of this application
- x) There are special and/or exceptional circumstances in favour of the Applicants grant of this application
- xi) It is in the best interest of justice, fair hearing and the law to grant the instant application.

Dated this 21st day of March, 2022.



Malikie

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

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

Clement Onwuewunor, SAN

Benson Igbanoi, Esq.

Lady Josephine Mike Ozekhome, LLM,

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 Iluobeltua, Esq.

Oluchi Vivian Uche (Miss)

Azubuike Solomon, Esq.

Osilama Mike Ozekhome, Esq.

Adadu Obandeh, Esq.

Destiny E. Odianoson, Esq.

Dixon C. Odili, Esq.

Aisosa Ogboro (Miss).

Oshomha Mike Ozekhome, Esq.



Oghenetejiri Ruth Djegbada, (Miss)
Mike Ozekhome's Chambers,
Counsel to the Defendants/
Applicants, Ukwe Court,
Plot 2215, Nile Street,
Opposite Maitama Police Station,
Maitama, Abuja,
08035550444, 08022266688
Email: ozekmike@yahoo.com
ozekmike@nigerianbar.ng

FOR SERVICE ON:

1. Plaintiff/ Respondent

PEOPLES DEMOCRATIC PARTY (PDP)

C/O it's Counsel

Emmanuel C. Ukala Esq, SAN

S.I Ameh SAN

D.C DENWIGWE SAN

K.C.O NJEMANZE SAN

O.J ONOJA SAN

Edward Obiokor, Esq.

M.S Agwu, Esq.

O.J Iheko (Miss)

Okechukwu Omeodu , Esq.

Reginald W.B Nnwoka, Esq.

(Plaintiff's counsel)

E.C Ukala & Company

No. 18 Thomas Sankara Street,

Asokoro, Abuja.

08033097583

Email:lawyerukala@gmail.com

2. The 1st Respondent,

Independent National Electoral Commission (INEC)

INEC Headquarters,

Plot 436 Zambezi Crescent, Maitama Abuja.



3. **The 2nd Respondent,**
The speaker of the House of Representatives,
National Assembly of the Federation of Nigeria,
3Arms Zone, FCT, Abuja.

4. **The 3rd Respondent,**
The Clerk of the National Assembly of the Federation of Nigeria,
3Arms Zone, FCT, Abuja.

5. **The 26th Defendant/Respondent,**
ALL PROGRESSIVES CONGRESS (APC)
40 Blantyre Street,
Off Adetokunbo Ademola Street,
Wuse II, Abuja, FCT



**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO: FHC/ABJ/CS/976/2021

**BETWEEN
PEOPLES DEMOCRATIC PARTY
PLAINTIFF/RESPONDENT**

AND

- 1) **INDEPENDENT NATIONAL COMMISSION (INEC)**
- 2) **THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
NATIONAL ASSEMBLY OF THE FEDERATION OF NIGERIA**
- 3) **THE CLERK OF THE NATIONAL ASSEMBLY OF THE
FEDERATION OF NIGERIA**
- 4) **THE HOUSE OF ASSEMBLY FOR CROSS RIVER STATE**
- 5) **THE CLERK OF THE HOUSE OF ASSEMBLY FOR CROSS
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DEFENDANTS/
APPLICANTS**
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- 23) **HON. EDWARD AJANG**



- 24) HON. CHRIS NJA-MBU OGAR
- 25) HON. MARIAM AKWAJI
- 26) ALL PROGRESSIVES CONGRESS



AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

I, **Usman Salihu, Muslim, Male, Nigerian citizen of Ukwe Court, Plot 2215, Cadastral Zone, Nile Street, Opposite Divisional Police Headquarters, Maitama, FCT Abuja** do make oath and states as follows:

- 1) That I am a Litigation Secretary in the law firm of Mike Ozekhome's Chambers, of counsel to Defendants/Applicants.
- 2) That by virtue of my position aforesaid I am conversant with the facts deposed herein except as may be stated otherwise.
- 3) That I have the consent of my employer Chief Mike Ozekhome, SAN, and that of the Defendants/Applicants on whose behalf this suit is instituted, to depose to this affidavit.
- 4) That at a conference meeting held on this case at our office, **Ukwe Court, Plot 2215, Cadastral Zone, Nile Street, Opp. Divisional Police Headquarters, Maitama, FCT Abuja**, on **Monday, the 21st day of March, 2022**, at about **3.50pm**, I was informed by Chief Mike Ozekhome, SAN, the lead counsel in the law firm of Mike Ozekhome's Chambers, of counsel to the Defendants/Applicants and especially the Defendants/Applicants of the following facts and I verily believe him to be true as follows:
 - a) That the Honourable trial Court delivered its decision (Judgment/Rulings) on the **21st of March, 2022**, per Honourable Justice **Taiwo Obayomi Taiwo**, of the Federal High Court, Abuja Division;
 - b) That by the provisions of Sections 36, 240 and 242 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Applicants have a right of appeal;
 - c) That the Applicants have now filed a Notice of Appeal against the above decision (Judgment/rulings). A copy of the Notice of Appeal is herewith attached and marked **exhibit 1**;



- d) That the suit before the court leading to the judgment to be stayed or restrained from being executed and/or enforced relates to the constitutionality or otherwise of the act of joining another political part after being expelled from the Plaintiff;
 - e) That the notice and grounds of appeal raise serious, arguable and recondite points of law before the appellate court with great chance of success at the hearing of the appeal;
 - f) That the Honourable Court has the power and jurisdiction to grant the instant application to preserve the res or subject matter of the pending appeal;
 - g) That the Defendants/Applicants are desirous of prosecuting the appeal and undertake to diligently and expeditiously prosecute their appeal without delay and their counsel has applied for the Certified True Copy (CTC) of the judgment and made an application for compilation of the record of appeal. A copy of the letter of application for the CTC of judgment as well as the application for compilation and transmission of record of appeal are annexed and marked as **exhibit 2**;
 - h) That it is in the best interest of justice to grant the instant application so as not render the decision of the Court of Appeal nugatory or be foisted a fait accompli in the event that Applicant's pending appeal succeeds;
 - i) That the refusal of this application will infringe on the Applicant's right of appeal and right to fair hearing before the Court of Appeal enshrined in the 1999 Constitution;
 - j) That the balance of convenience is in favour of the grant of this application;
 - k) That there are special and/or exceptional circumstances in favour of the grant of this application;
- 5) It is in the best interest of justice, fair hearing and the law to grant the instant application.



6) That I depose to this affidavit in good faith, conscientiously believing the same to be true and correct and in accordance with the Oaths Act, LFN 2004.

.....
Deponent

Sworn to at the Federal High Court Registry, Abuja
This 2nd day of March.....2022.

BEFORE ME

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA
21 MAR 2022
I.I. AWAN
SIGN.....



EXHIBIT 1

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

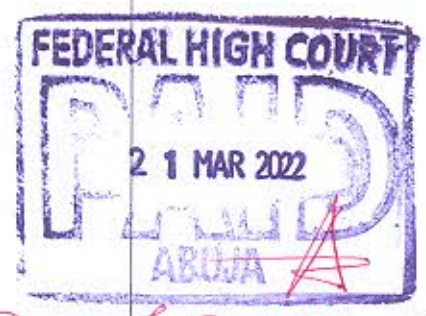


**APPEAL NO: CA/A/ /2022
SUIT NO: FHC/ABJ/CS/976/2021**

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
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- 21. HON. CHRIS NJA-MBU OGAR
- 22. HON. MARIAM AKWAJI

APPELLANTS



280634525201

AND

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

RESPONDENTS

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 held 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 arose 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. BELLO, (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.

Mattiywame



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

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

Clement Onwuewunor, 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 Iluobelitua, Esq.

Oluchi Vivian Uche (Miss)

Azubuike Solomon, Esq.

Michael Eseose Aburime Esq.

Osamuade Moses Ogbomo Esq.

Osilama Mike Ozekhome, Esq.

Adadu Obandeh, Esq.

Destiny E. Odianoson, Esq.

Dixon C. Odili, Esq.

Aisosa Ogboro (Miss).

Oshomha Mike Ozekhome, Esq.

Oghenetajiri Ruth Djegbada, (Miss)

Mike Ozekhome's Chambers,

Counsel to the Appellants,

Ukwe Court,

Plot 2215, Nile Street,

Opposite Maitama Police Station,

Maitama, Abuja,

08035550444, 08022266688

Email: ozekmike@yahoo.com

ozekmike@nigerianbar.ng

FOR SERVICE ON:

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

OR

C/O HER Counsel
Emmanuel C. Ukala Esq, SAN
S.I Ameh, SAN
D.C DENWIGWE, SAN
K.C.O NJEMANZE, SAN
O.J ONOJA, SAN
Edward Obiokor, Esq.
M.S Agwu, Esq.
O.J Iheko (Miss)
Okechukwu Omeodu, Esq.
Reginald W.B Nnwoka, Esq.
(Plaintiff's counsel)
E.C Ukala & Company
No. 18 Thomas Sankara Street,
Asokoro, Abuja.
08033097583
Email: lawyerukala@gmail.com

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.

Mike Ozekhome's Chambers

Legal Practitioners and Notaries Public

HEAD CHAMBERS, ABUJA (FCT):

UKWE COURT, Plot 2215, Cadastral Zone, Nile Street, Opposite Maitama Divisional Police Station, Maitama, Abuja, FCT. Tel: 08182728782, 08035550444; 08022266688; 08094777755; 08098898888; 08129444555; 09055553368.

E-mail: ozekmike@yahoo.com; mikeozekhomeschambers@yahoo.com; mikeozekhomeschambers@gmail.com

Website: www.mikeozekhomeschambers.com

21st March, 2022.

The Deputy Chief Registrar,
Federal High Court,
Federal Capital Territory,
Abuja.

EXHIBIT 2



Dear Sir,

SUIT NO: FHC/ABJ/CS/976/2021
PEOPLES DEMOCRATIC PARTY VS. INDEPENDENT
NATIONAL ELECTORAL COMMISSION & 25 ORS:

APPLICATION FOR CERTIFIED TRUE COPY OF
JUDGMENT

We are counsel to the 4th and 25th Defendants/Appellants' in the above mentioned case before his Lordship, Honourable Justice TAIWO J, of the Federal High Court, No. 7, Abuja wherein judgement has been delivered.


We hereby apply for the certified true copy of the said judgment to enable the 4th to 25th Defendants/Appellants ventilate their constitutional right of appeal.

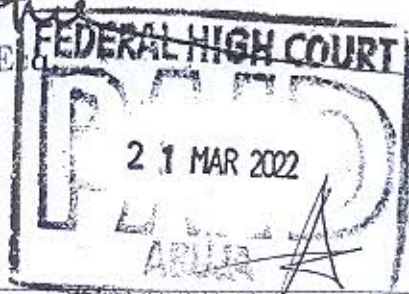
We undertake to bear the incidental expenses for the production of same.

Thank you,

2508 34528209

Yours faithfully,


Maliki Sylvanus, Esq.
Senior Counsel



Legal Practitioners: Chief Mike A. A. Ozekhome, N.Y., OFR, FCTA, LL.D., LL.D., LL.M., D.A., Hon.Dr., JD, LL.M., Hon.Judge IC, LL.M., LL.B (Hons), B.L., KSM, F.A.S., FNMI, ADVISOR, F.I.M.N., F.R.A., F.O.M.C., FNIER, F.I.B.A.P.F.P.O.N., F.I.A.R.S.A., F.I.R.D., F.C.I.F.I., F.M.I.C. (Chief Counsel) (Retired) of Chambers of
Honour A. Igbarua, LL.B (Hons), B.L. (Associate Partner); Lady Josephine E. M. Ozekhome (Chief Clerk), L.S.M., LL.B (Hons), LL.M. (Advocacy) (Partner)

Godwin I. Iyabari, LL.B (Hons) LL (Deputy Head of Chambers); Amachi O. Feyisayo, LL.B (Hons), B.L.; Maliki Sylvanus, Esq. (Senior Counsel); Hon. Justice J. I. Iyabari, LL.B (Hons); B.L.; Justin Osoegwanyi, LL.B (Hons) B.L.; Chukwu Y. Iyabari, LL.B (Hons) LL (Hons) LL (Hons) B.L.; Jeffrey Osoegwanyi, LL.B (Hons) LL (Hons) B.L.; Solomon A. Iyabari, LL.B (Hons) LL (Hons) B.L.; Raji Babajide, LL.B (Hons) LL (Hons) B.L. (Deputy Head of Chambers); L.L.M. (Advocacy) (Partner); Amachi O. Feyisayo, LL.B (Hons), B.L.

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO: FHC/ABJ/CS/976/2021

BETWEEN

PEOPLES DEMOCRATIC PARTY

PLAINTIFF/RESPONDENT

AND

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

**DEFENDANTS/
APPLICANTS**



**APPELLANTS/APPLICANTS' WRITTEN ADDRESS IN SUPPORT OF
THE MOTION ON NOTICE**

1.0. **INTRODUCTION**

1.1 This is a Motion on Notice brought pursuant to sections 6 (6), 36 (1), 242 and 243 of the Constitution of the Federal Republic of Nigeria, 1999, As Amended; Order 32 Rules 2 and 4 of Federal High Court (Civil Procedure Rules) 2019 and under the inherent jurisdiction of the Honourable Court.

1.2 The application is praying for the following reliefs as contained on the motion paper thus:

- 1) **AN ORDER** of this honourable court staying the execution of the Judgment delivered on the **21st of March, 2022**, by honourable Justice **Taiwo Obayomi Taiwo**, of the Federal High Court, Abuja, by the Respondents whether by themselves, agents, servants and/or privies howsoever called, from executing or further executing, enforcing or further enforcing or in any manner whatsoever giving effect to the said Judgment, pending the hearing and final determination of the appeal filed by the Applicants before the Court of Appeal, Abuja Judicial Division.
- 2) **AN ORDER** of injunction of this Honourable Court restraining the Respondents whether by themselves, agents, servants and/or privies howsoever called, from executing or further executing, enforcing or further enforcing or in any manner whatsoever giving effect to the Judgment delivered on the **21st of March, 2022**, by honourable Justice **Taiwo Obayomi Taiwo**, of the Federal High Court, Abuja pending the hearing and final determination of the appeal filed by the Applicants before the Court of Appeal, Abuja Judicial Division.
- 3) **AND** for such further or other order(s) as this honourable court may deem fit to make in the circumstances.

***TAKE FURTHER NOTICE THAT THE GROUNDS UPON WHICH
THIS APPLICATION IS BROUGHT:***



- i) The Honourable trial Court delivered its decision (Judgment/Rulings) on the 21st of March, 2022, per Honourable Justice **Taiwo Obayomi Taiwo, J** of the Federal High Court, Abuja Division.
- ii) The Applicants being dissatisfied have now filed a Notice of Appeal against the above decision.
- iii) By the provisions of Sections 36, 240 and 242 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Applicants have a right of appeal.
- iv) The suit before the court leading to the judgment to be stayed or restrained from being executed and/or enforced relates to the constitutionality or otherwise of the act of the Appellant's joining another Political party after being expelled from the 1st Respondent
- v) The notice and grounds of appeal raise serious, arguable and recondite points of law before the appellate court with great chance of success at the hearing of the appeal
- vi) The Honourable Court has the power and jurisdiction to grant the instant application to preserve the res or subject matter of the pending appeal
- vii) It is in the best interest of justice to grant the instant application so as not render the decision of the Court of Appeal nugatory or be foisted with a fait accompli in the event that Applicant's pending appeal succeeds
- viii) The refusal of this application will infringe on the Applicant's right of appeal and right to fair hearing before the Court of Appeal as enshrined in the 1999 Constitution;
- ix) The balance of convenience is in favour of the grant of this application



x) There are special and/or exceptional circumstances in favour of the Applicants grant of this application

xi) It is in the best interest of justice, fair hearing and the law to grant the instant application.

1.3 The motion is supported by a 6-paragraph affidavit deposed to by the **Usman Salihu**, a litigation secretary in the office of counsel to the Defendants/Applicants. Attached to the affidavit are two (2) exhibits. The Applicants place reliance on all the depositions in the affidavit and the exhibits attached.

1.4 **BACKGROUND FACTS**

The facts relevant to this application are as contained the affidavit in support of the instant application.

2.0 **ISSUE FOR DETERMINATION**

It is humbly submitted that although there might be other subsidiary issues, the only issue calling for determination in this application is:

Whether or not this is an appropriate case for the Honourable Court to exercise its discretion to grant the orders being sought?

3.0 **ARGUMENT OF ISSUE**

3.1 We humbly submit that this sole issue deals with the propriety or the exercise of the discretion of my lord in favour of the Applicants in granting an application of this nature. The objective of a request for injunction pending appeal is the same as an application for stay of execution. See: **OKOYA vs. SANTILLI (1990) 2 NWLR (PT. 131) 172 @ 225**

3.2 The law is settled as provided in section 240 of the Constitution of the Federal Republic of Nigeria, 1999 that:

“240” “Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal



High Court, the High Court of the Federal Capital Territory Abuja, High Court of a State ... or other Tribunal as may be prescribed by an Act of the National Assembly.”

3.3 Again, **Order 32 Rules 2 and 4** of the Federal High Court (Civil Procedure) Rules, 2019 provides thus:

‘Order 32, Rule 2’ – The Court shall have power to make or refuse an order for stay of execution or of a proceeding subject to such condition as shall appear just including the deposit in Court of any money adjudged due to any party in the judgment appealed to or from.

‘Order 32, Rule 4(1)’ – An application for stay of proceedings or execution shall be regarded as an urgent matter.

3.4 Therefore, it is apparent, that the right of the Applicant to appeal as of right is guaranteed under the above provision of the constitution, the Federal High Court (Civil Procedure) Rules, 2019.

3.5 Be that as it may, we submit that the issue of grant or otherwise of an order of injunction and an order for stay of execution pending appeal is a call at the exercise of the discretionary power of court. It is thus the law that where a court is called upon to exercise its discretion, such must be exercised judicially and judiciously. See: **GADI V. MALE (SUPRA) @ PAGE 275 PARA B- C,**

3.6 While the requirement to be satisfied by an Applicant for grant of an order of injunction and an order of stay of execution pending appeal is not exhaustive, our courts have, in a plethora of cases, laid down some settled principles of law and what an Applicant must satisfy in order to be entitled to same.

A) SPECIAL CIRCUMSTANCES MUST BE SHOWN

It is humbly submitted that an applicant seeking for an order of stay of execution must show special or exceptional circumstances. See **JOSIEN HOLDINGS LTD. V. LORNAMEAD (1995) 1 NWLR**



(Pt. 371) 254 @ 266 – 267; VINCENT STANDARD TRADING CO. LTD. V. XTODENS TRADING CO. (NIG.) LTD. (1993) 5 NWLR (Pt. 296) 675 @ 686.

B) GROUNDS OF APPEAL AND STAY

- i. It is humbly submitted that where grounds of appeal exist as in this case suggesting a substantial issue of law to be decided on the appeal and where either side may have a decision in his favour, a stay will be granted. See: **JOSIEN HOLDINGS LTD. V. LORNAMEAD (1995) 1 NWLR (Pt. 371) 254 @ 264 PER. KUTIGI JSC** as he then was.
- ii. Where from the grounds of appeal filed there is likely chance that the appeal might succeed or the grounds of appeal raise substantial point of law. Procedural or substantive, the court usually leans in favour of granting the application. See: **JOSIEN HOLDINGS LTD. V. LORNAMEND (1995) 1 NWLR (Pt. 371) 254 @ 264 per Wali JSC; WEMA BANK PLC v. BALOGUN (1999) 7 NWLR (Pt. 610) 251.**
- iii. The Appellant/Applicant is thus entitled to demonstrate that his appeal has merit. Thus, it is clear that the grounds of appeal in this instant case, that bother on substantial point of law (challenge on the jurisdiction of the court and constitutionality or otherwise of the act of joining another political party after being expelled from the Plaintiff in the exercise of their right to freedom of association and assembly; on their own qualify as an exceptional circumstance.
- iv. It is also our humble submission that categories of exceptional circumstance are not exhaustive. See **MOBIL PRODUCING NIG. UNLIMITED v. MONOKPO 2001 18 NWLR (Pt. 744) 212 @239 – 240.**

C) OTHER EXCEPTIONAL CIRCUMSTANCES IN THIS CASE

- i. It is our humble submission that the affidavit in support of the application contain several exceptional circumstances while this application should be granted and include as follows:



- ii. The balance of convenience is in support of the grant of the application. See Paragraph 4 of the affidavit in support of the motion on notice.
- iii. The res or subject matter might have been disposed of or tampered with before the final determination of the appeal if the instant application is not granted. See Paragraphs 10-32 of the affidavit in support.
- iv. We humbly submit this is an appropriate case for the court to intervene by the grant of the orders sought and to answer the issue in favour of Applicant. Categories of Exceptional circumstances are not exhaustive. See: **MOBIL v. MONOKPO (2001) 24 WRN 169 @ 185.**

D) PRINCIPLES GOVERNING GRANT OF STAY OF EXECUTION

- i. We humbly submit that the following principles should guide the court in applications for stay of execution:
 - a. The Courts have an unimpeded discretion to grant or refuse a stay. In this, like in all other instances of discretion, the Court is bound to exercise that discretion both judicially as well as judiciously and not erratically.
 - b. A discretion to grant or refuse a stay must take into account the competing rights of the parties to justice. A discretion that is biased in favour of an applicant for a stay but does not adequately take into account the respondent's equal right to justice is a discretion that has not been judicially exercised.
 - c. A winning plaintiff or party has a right to the fruits of his judgment and the courts will not make a practice at the instance of an unsuccessful litigant of depriving a successful one of the fruits of the judgment in his favour until a further appeal is determined.
 - d. An unsuccessful litigant applying for a stay must show "special circumstances" or "exceptional circumstances" eloquently pleading that the balance of justice is obviously weighed in favour of a stay.



- ii. What will constitute these “special” or “exceptional” circumstances will no doubt vary from case to case. By and large, such circumstances will involve a consideration of some collateral circumstances and perhaps in some cases inherent matters which may, unless the order for stay is granted, destroy the subject matter of the proceedings or foist upon the court, especially the Court of Appeal, a situation of complete helplessness or render nugatory any order or orders of the Court of Appeal or paralyze, in one way or the other, the exercise by the litigant of his constitutional right of appeal or generally provide a situation in which whatever happens to the case, and in particular even if the appellant succeeds in the Court of Appeal, there could be no return to the *status quo*. Worthy of note is the constitutional right of appeal and the recondite grounds of law including jurisdiction of the Honourable Court which are the various weighty factors which must be considered in favour of the grant of this application.

The appellate court in **CBN V. KRAUS THOMPSON ORG LTD (2007) 7 NWLR (Pt765) 139 at 156 per Galadima J.C.A** held thus:

“I have given very careful consideration to the grounds. I am satisfied that they raise substantial issues of law. The paragraphs of the affidavit in support of this application are as well explicable. The facts deposed to above clearly constitute special circumstances to warrant the bringing of this application before this court straight. The appeal of the Appellant raises serious legal issues. The grounds challenge the ruling of the lower court made on 2/3/2000. In the interest of justice the execution of the order of the court below, ought to



be stayed pending the determination of the appeal filed to this court.”

Oguntade JCA in *A.E.S.S. LTD V. AINA ADESEUN & SONS LTD* (1993) 5 NWLR (Pt293) 377 at 382, held:

“I have examined the grounds of appeal against the facts deposed to by the Defendant/Applicant and I am satisfied that the appeal is at least arguable. See *Balogun v. Balogun* (1969) 1 All NLR 349. Where grounds of appeal filed raise a substantial point of law in an area where the law is to some extent *recondite*, this may be regarded as a special and exceptional circumstance justifying the grant of an order staying execution.”(Underlining, Bolding & emphasis supplied).

His Lordship Akintan J.C.A held similarly, in *A.E.S.S. V. AINA ADESEUN & SONS LTD* (*supra*) at pg 384 thus:

“One of the conditions that must exist before a stay of executing any judgment is granted is that an Applicant must show that the grounds of appeal show substantial issue of law to be decided on the appeal in an area in which the law is to some extent *recondite* and where either side may have a decision in his favour ... on appeal, this may amount to special or exceptional circumstances justifying a stay. See also *Ejidike v. Akunyili* (1990) 5 NWLR (pt 152) 584 at 569. (Underlining, Bolding & emphasis supplied).

- iii. It is humbly submitted that the Defendants/Applicants have satisfied the conditions laid down in the above case. The



supporting grounds upon which the appeal is filed, raise some recondite and substantial issues of law that border on the jurisdiction of the trial court to entertain the matter.

- iv. The above satisfies the requirement that the onus is on the party applying for a stay pending appeal to satisfy the court that in the peculiar circumstances of his case a refusal of a stay would be unjust and inequitable.
- v. The chances of the applicants on appeal are important. If the chances are virtually nil, then a stay may be refused. The chances of this appeal succeeding are very high in the circumstances of this case. The challenge on the jurisdiction of the court, constitutionality of the act of joining another political party after being expelled from the plaintiff which is a novel point having not been determined before in the light of the facts of the case. Therefore, there are high chances of success of the appeal.
- vi. The nature of the subject matter in dispute, whether maintaining the *status quo* until a final determination of the appeal in the case will meet the justice of the case.
- vii. Whether if the appeal succeeds, the applicant will not be able to reap the benefits of the judgment on appeal.
- viii. Each case is to be considered on its own merit. See **M. O. KANU V. FBN PLC (1998) 11 NWLR (Pt. 572) 116 C. A.**
- ix. In some cases appeal can operate as stay of execution. See: **REGENCY COUNCIL OF OLOTA V. SODEINDE (1998) 6 NWLR (Pt. 552) 72 C. A.**
- x. It is our humble submission that this application, the affidavit together with documentary evidence in support has demonstrated exceptional circumstances why this application should be granted.
- xi. As earlier submitted, the same principles apply to the grant of an injunction pending appeal. While it is admitted that the court



