

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE YOLA JUDICIAL DIVISION
HOLDEN AT YOLA
ON FRIDAYDAY, THE 14TH DAY OF OCTOBER, 2022
BEFORE HIS LORDSHIP, THE HONOURABLE
JUSTICE A. M. ANKA
JUDGE

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MUSA MUHAMMAD AUDU
PRINCIPAL EXECUTIVE OFFICER II (LIT)
FEDERAL HIGH COURT YOLA
DATE: 14/10/2022

SUIT NO: FHC/YL/CS/12/2022

BETWEEN:

MALLAM NUHU RIBADU:.....APPLICANT

AND

- | | |
|------------------------------------------------------------|-------------------|
| 1. ALL PROGRESSIVE CONGRESS (A.P.C.) | DEFENDANTS |
| 2. SENATOR AISHATU DAHIRU | |
| 3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) | |

JUDGMENT

It is once again another era of political season in our democratic system where elections are the order of the day and the only means through which political gladiators test their popularities amongst the electorates is via the ballot boxes backed by various provisions of the laws governing elections, be it Constitutional law (being the grund norm) statutes, party constitution and guidelines amongst others. The 3rd defendant (INEC) in its usual statutory functions has rolled out time for

conduct of both general and primary elections and for submission and receiving names of successful aspirants/candidates who emerged from party primaries. Against the above, political parties have scheduled time tables for conducting primary elections between various aspirants within the parties in compliance with the INEC directives and also supervisions whereby successful candidates may be presented to the general public for the general elections. The 1st defendant herein conducted its governorship primary election between the plaintiff, 2nd defendant and four (4) others and result declared on 27th May, 2022 while the 2nd defendant was returned as the successful candidate. Case was filed 9th June 2022 and having exchanged pleadings, parties were heard on the 20th July, 2022.

1ST DEFENDANT'S PRELIMINARY OBJECTION

The 1st defendant's Notice of Preliminary Objection filed 27/6/22 is pursuant to section 6(6) (A) and (B) of the Constitution (as amended) challenging the competence of the suit on the following grounds:-

1. The Honourable Court has no jurisdiction to entertain suit No. FHC/YL/12/2022 for non-joinder of necessary or proper parties and failure to exhaust the internal mechanism dispute resolution of the 1st defendant's Constitution.
2. The plaintiff has no locus standi to institute and prosecute suit No. FHC/YL/CS/12/2022.
3. The plaintiff ought not to have commenced suit No. FHC/YL/CS/12/2022 between the parties herein by originating summons but by writ of summons.

Counsel to the 1st Plaintiff Sule J. Abul sought –

1. AN ORDER of the Honourable Court upholding the 1st defendant's objection.

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paid on 08/12/22
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2. AN ORDER of the Honourable Court striking or dismissing suit No. FHC/YL/12/2022 between the parties as well as cost of filing the objection.

The preliminary objection is supported by a 10 paragraphed affidavit deposed to by Charles Ijeabuchi a litigation secretary in the law firm of Sule J. Abul & Co. and it is to the effect that the plaintiff sought and commenced the action via originating summons in which questions were raised and that as per the said suit, the plaintiff had recognized and submitted to the 1st defendant's Constitution. That plaintiff made reference to some delegates as contained in exhibit 'A' attached to the preliminary objection whom are from Lamurde L.G.A. in respect of the primary election and that exhibit 'A' alluded to a case reported to the police which is criminal in nature and connected with this suit in which plaintiff is challenging 2nd defendant's victory. It concluded that it will be in the interest of justice to uphold the objection while the plaintiff will not be prejudiced by the reliefs sought. The 1st defendant annexed the originating summons as well as the party's Constitution which were respectively marked exhibit 'A' and 'B'.

The Written Address of the learned Counsel Sule J. Abul raised issues for determination, the first of which is –

“Whether the Honourable Court is clothed with jurisdiction to entertain suit No. FHC/YL/CS/12/2022”.

Counsel in his address at pages 2 and 3 cited SPDC (Nig.) Ltd V. Anaro (2015) All FWLR Pt.802 page 1644, Hon. Abraham Adeleke & Ors V. Oyo State House of Assembly (2006) All FWLR part 319 page 862 on issue of what jurisdiction entails in adjudication. On lack of jurisdiction on non-joinder, the Court was referred to paragraph 15, 16 and 17 of the plaintiff's affidavit in support wherein the deponent in the person of

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Mallam Nuhu Ribadu deposed that when the 5 men Electoral Committee of the 1st defendant came to conduct the primary election, it was realized by the Aspirants including the plaintiff that there were two different Delegates lists. One which all Agents of the aspirants had did not contain Delegates from Lamurde L.G.A. and another which despite non-conduct of special delegates' congress in Lamurde L.G.A. surprisingly contained names of Delegates from the Local Government.

Against the above depositions, Counsel Sule J. Abul contends and submits that those delegates ought to have been joined as parties to enable them respond to the allegation of being impostors. To Counsel, the above means there was a document which was forged and persons who misrepresented themselves to be delegates both of which are criminal allegations. Cases cited and relied upon by Counsel on non-joinder of proper parties are –

1. APC V. Okorodu & Anor (2019) LPELR 47762 CA
2. Ogbonda V. Nkanginyeneme (2010) All FWLR Pt.502 page 1034.
3. APC V. Aguna & Ors. (2020) LPELR 525718 CA
4. Kalu V. Chukwumerieje (2012) 12 NWLR (Pt.315) 425 and
5. Bidu V. Haladu (2003) 14 NWLR (Pt.841) CA 024 all Court of Appeal decisions on joinder. The submission of learned Counsel therefore is that for non-joinder, this is fatal and robs the Court of jurisdiction.

Another issue raised by 1st defendant's Counsel is on lack of jurisdiction on ground of failure to exhaust the INTERNAL MECHANISM OF DISPUTE RESOLUTION. Counsel referred the Court to Article 21(b) of the 1st defendant's Constitution which is to the effect that –

“A complaint by any member of the party against a public office holder, elected or appointed, or another member or against a party

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agent or officer of the party shall be submitted to the executive committee of that party to all levels concerned which shall NOT LATER THAN 7 days of the receipt of the complaint, appoint a fact-finding or Disciplinary committee to examine the matter."

Reliance was also had to Article 21(c) (1) of the APC Constitution which states that –

"Where a member is not satisfied with the decision of any of the adjudicatory organs of the party, he or she shall have the right to appeal within 7 days of the decision to the immediate appellate body in the party as prescribed in this Constitution."

To Counsel, the plaintiff did not file a complaint in line with the law above, but rather appealed to the appeal committee and therefore a gross violation of the 1st defendant's Constitution and therefore not in compliance with the procedure for internal mechanism for Dispute Resolution. It is argued further that where a law provides for mode of doing something, that mode must be adhered to else, it shall amount to a nullity. See Nwankwo V. Yar'adua (2010) All FWLR part 534 page 1 at 24 to the effect that –

"Where a statute lays down a procedure for doing anything, no other method is to be employed in doing the thing."

See also Marwa V. Nyako (2012) All FWLR part 622 page 1621. Mbanefo V. Molokwu & Ors (2010) All FWLR part 512 to the effect that –

"A man who joins a society must abide by the will of that Association or clear out..." per Tsamiya JCA (retired).


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Against the above, Counsel submits that the failure of the plaintiff to comply with the internal mechanism of Dispute Resolution robs the Honourable Court of jurisdiction.


On issue two on locus standi, Counsel submits that by reason of non-compliance with the 1st defendant's Constitution, the plaintiff automatically ceases to be a member of the 1st defendant and thereby lacks the locus standi to institute this action and that such by Article 21 (D) (V) is an offence which leads to expelling from the party. On definition of locus standi, see Ekanem V. Reg. Trustees C.C.G.S. (2012) All FWLR part 037 page 777.

On issue three (3) on commencement of action via originating summons, Counsel submits that plaintiff's affidavit by mere seeing reveals that facts are likely to be disputed and therefore taking it out of the purviews of originating summons. See Charles & 1 Or V. Governor of Ondo State & 3 Ors (2013) All FWLR part 688 page 982 and Pam & 1 Or V. Mohammed & 1 Or (2008) All FWLR part 436 page 1868 at 1905.

Counsel therefore submits that the case at hand is not one that can be successfully commenced by way of originating summons but by a writ of summons. Reliance was had to the decision of the Apex Court in Adebayo & 2 Ors V. Peoples Democratic Party & 2 Ors (2013) All FWLR part 697 page 716 to the effect that –

“Once a trial Court discovers that the proceedings is hostile to the extent that there are disputed facts that cannot be resolved purely on affidavit evidence, then pleadings should be ordered to enable oral evidence be led by the parties.”

Finally, Counsel Sule J. Abul urged the Hon. Court to strike out or dismiss this action.


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The plaintiff's Counsel I.M. Dikko also filed their reply to the preliminary objection of the 1st defendant. Also filed is the response to the preliminary objection of the 2nd defendant's Counsel S.T. Ologunorisa (SAN).

Meanwhile the Court shall first go into and analyze the 2nd defendant's preliminary objection before going into the replies of the plaintiff's Counsel all together. It is also on record that both plaintiff and defence Counsel have made oral submissions and adumbrations before the Court in their various efforts to prove their cases. In the process, Counsel to plaintiff had undertaken to provide case laws (Law Reports) and citations made reference to in order to guide the Court in its findings. I now proceed to 2nd defendant's preliminary objection of 21st June 2022.


2ND DEFENDANT'S PRELIMINARY OBJECTION

The Preliminary Objection of the 2nd defendant dated 21st June, 2022 filed 27th of the same month pursuant to section 6(6) (b) and 285 (9) and (14) of the 1999 Constitution(Fourth Alteration No. 27) Act 2017, section 84 (14) of the Electoral Act 2022 and order 29 of the Federal High Court (Civil Procedure) Rule 2019 seeks –

1. AN ORDER dismissing or striking out the suit for want of jurisdiction.
2. And for such further orders.

The grounds are –

1. The principal complaint in the case is the alleged non-election of Lamurde L.G.A. delegates, a clear pre-primary election matter over which this Honourable Court has no jurisdiction under section 84 (14) of the Electoral Act 2022 and section 285 (14) of the 1999 Constitution.


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2. The suit is not properly constituted and is incompetent for not joining the Lamurde L.G.A. delegates who voted at the primaries as parties.
3. The suit is statute barred.
4. The suit is contentious, rancorous and containing allegations of fraud and commission of crime and cannot be heard or determined by way of originating summons.

The preliminary objections is filed by S.T. Ologunorisa (SAN) together with an address where Learned Silk raised an issue as to –

“Whether this suit is not incompetent and liable to be dismissed or struck out for want of jurisdiction”.

Learned Senior Counsel submitted that the suit is based on a tripod of contentions i.e. non-election of delegates for Lamurde L.G.A. prior to 25th May and that inspite of complaints by all contestants (including the plaintiff) the Electoral Committee saddled with the conduct of the governorship primary election slated for 26th May 2022 decided to proceed with the Delegates list given to it by 1st defendant's Headquarters.

That the second is that some delegates for the primaries were not accredited on the 26th May when the primary held and this led to over voting.

The third according to the learned Silk is that there was vote buying by agents of one of the aspirants on the day of the primaries.

It is contended that the first issue above is a complaint about what happened or transpired before the primary election as it relates to whether or not special delegates congress was held in Lamurde L.G.A. The Court was referred to paragraphs 14, 15, 16, 17 and 18 of the


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affidavit in support of the plaintiff's originating summons. Counsel submits "it is therefore a pre-primary election matter" and certainly not covered and is outside the narrow and or limited jurisdiction conferred on the Court by section 84 (14) of the Electoral Act 2022. Counsel insists the complaint does not constitute a "pre-election matter" within the meaning of section 285(14) of the Constitution which provides that –

"For the purpose of this section, pre-election matter means any suit by –

- a. An aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection of nomination of candidates for an election."

To learned Senior Counsel, this is the principal complaint of the plaintiff as can be gleaned from questions for determination and the reliefs sought in the originating summons. Counsel submits that if the Court lacks jurisdiction to entertain the principal complaint it obviously lacks jurisdiction to cover other ancillary claims. See *Tukur V. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517 at page 849 to the effect that –

"The incompetence of the Court to entertain and determine the principal question is enough to nullify the whole proceedings and judgment as there is no room for half judgment..."

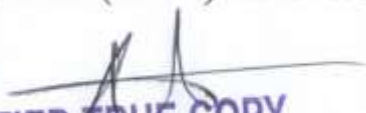
See also *PDP V. Sylva* (2012) 13 NWLR (Pt.1316) 85 *Jegede & Anor V. INEC & Ors* (2021) LPELR 5581 (SC) and host of other case laws cited by 2nd defendant's Counsel on issue of jurisdiction in order to further buttress his contention at pages 7, 8 and 9 and the consequences thereof.

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The second ground by the learned SAN is on issue of delegates from Lamurde L.G.A. whom were allowed to vote having not been elected at a congress, Counsel posed a question as to whether the Court can decide the action behind the said delegates whom according to learned SAN will inevitably be affected by the Court's decision? The above was answered by Counsel in the negative. It is further contended that in a suit seeking to throw away votes cast by these delegates the delegates are proper and necessary parties in whose absence the suit cannot be decided. Cases cited are P.D.P. V. Ezenwoka (2018) 3 NWLR (Pt.1606) 187, A.P.C. V. Uduji (2020) 2 NWLR part 1709 and other host of case laws cited at pages 9 and 10 of the address. To learned Counsel, this is not a mere issue of non-joinder. Counsel referred the Court to Jegede V. INEC (supra) wherein the Apex Court held that –

“So the contention that Governor Mai Mala Buni as governor of Yobe State has violated section 183 of the Constitution by holding the office of Acting National Chairman of the 2nd respondent is a very serious one with grave consequences for him and no doubt for the respondent as well. The judicial determination of that issue here would involve the enforcement of the Constitution against him and would certainly affect him personally as I have shown above. It would be unfair to him to try that issue in his absence without joining him as a party to the petition....”

On the third ground on statute barred, learned SAN Ologunorisa submits that the case is “Brought in Dead” (BID). In determining cause of action what is to be examined is the plaintiff's affidavits and exhibits as submitted by the 2nd defendant's Counsel. See Asaboro V. PAN Ocean OIL CORP (NIG) Ltd (2017) 7 NWLR (Pt.1583) 42 at 67 – 68. Emeka V. Chuba Ikpeazu (2017) 15 NWLR (Pt.1589) 345, Popoola Elebanjo V.


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Dawodu (2006) 15 NWLR (pt.1001) 76 and other case laws cited at page 11.

The Court was referred to paragraphs 9, 10, 11, 13, 15, 16, 17, 18, 19, 20 and 21 of the plaintiff's affidavit in support of the originating summons, more particularly paragraph 16 wherein the plaintiff deposed that –

“I know as a fact that when the 5 men Electoral Committee constituted by the 1st defendant came to conduct the primary election for the governorship of Adamawa State on 26th May, 2022 it was realized by the Aspirants including myself that there were two different Delegates lists. One is the one which all the Agents of the various aspirants had which did not contain delegates from Lamurde Local Government and another list which despite the non-conduct of special delegates congress in Lamurde Local Government, surprisingly contained names of Delegates from the Local Government.”

According to learned Silk, it is clear from the reliefs that –

- a. The issue of Lamurde L.G.A. delegates not being elected was known prior to the primary of 26th May, 2022.
- b. The two (2) delegates list of Lamurde L.G.A. were observed and but the one brought by the Electoral Committee for the purpose of the election was used on 26th May 2022 for the primary in spite of objection by the aspirants.
- c. The primary held on 26th May, 2022.
- d. Delegates were not accredited when the primary held on 26th May, 2022.
- e. There was over voting and vote buying during the primary held on 26th May.


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f. Results of the primary were announced or declared on 27th May, 2022.

Parties it was argued are bound by their depositions and exhibits. See AGALA V. OKUSIN (2010)10 NWLR (Pt.1202) 412 Okafor V. INEC (2010) 3 NWLR (Pt.1180) 1 at page 49.

Counsel insists the facts necessary to enable the plaintiff ventilate all his grievances took place before the primary and at best the part where the said delegates voted accrued during conduct of the primary on 26th May, 2022.

That allegations of non-accreditation, over voting and buying of votes allegedly took place on 26TH May, 2022 and not after 26th May. That the complaint of the plaintiff has nothing to do with the results declared on 27th May 2022. On issue of limitation law, Learned Silk cited and relied upon host of case laws at pages 15, 16, 17, 18, 19 and 20 of the address while urging the Court to sustain the said ground of objection.

On the fourth (4th) ground on contentious facts and allegations of crime, the submissions of learned SAN is that such cannot be determined by way of an originating summons. See order 3 Rules 6 and 7 of the Federal High Court (Civil Procedure) Rules 2019 on mode of commencement of actions via originating summons. To Learned Silk, this suit is not about interpretation of any enactment, will or instrument. That this case is very hostile and contentious while juxtaposing the 2nd defendant's counter-affidavit with that of the plaintiff's. see P.D.P. & Ors V. Abubakar (2007) 3 NWLR (Pt.1022) 515 at 540, Inakoju V. Adeleke (2007) 4 NWLR (pt.1718) page 430 – 432, Keyamo V. House of Assembly Lagos State (2000) 11 NRN 29 at 40 and other case laws cited.


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The case of Obasanya V. Babafemi (2000) 15 NWLR (Pt.689) 1 was also relied upon by defence Counsel per Galadima JCA (as he then was) that –

“...facts constituting an allegation of fraud by their very nature are controversial. The fraud must be established by evidence in proof. I am of the opinion that the issue of fraud has neither been properly raised in the plaintiff’s action and neither can such issue even where properly raised be tried on an originating summons as erroneously held by the learned trial Judge”.

The Court was therefore urged to hold that the plaintiff did not initiate this action by a proper initiating process and that the Court lacks jurisdiction and to dismiss or strike out the suit.

Before going to oral adumbrations of Counsel before the Court, let me first reiterate that facts from the pleadings of the plaintiff show that the result of the primaries was declared 27th May and by computation of time, same begins to run on 28th of same month. By calculation, 28th May to the time when the action was filed is 13 days. Even if calculation starts by 27th May, the action will be within time since the 14th day falls on 9th June when the suit was filed. Hence within time in line with section 285(9) of the 1999 Constitution and I so hold. That line of objection by the defence Counsel is accordingly discountenanced.

ORAL SUBMISSION OF COUNSEL ON PRELIMINARY OBJECTION

On the day of adoption of processes of parties on 20th July, 2022, the Court took both preliminary objections together the substantive action filed before it. Sule J. Abul Esq. of Counsel to the 1st defendant first adopted their preliminary objection of 27th June 2022 filed together with

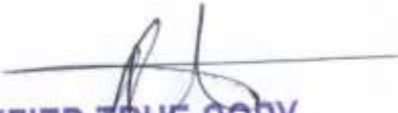
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an affidavit in support of 10 paragraphs as well as an address with 2 exhibits attached. While adumbrating before the Court, Sule J. Abul point to the depositions of the plaintiff in the Originating Summons particularly paragraphs 16, 17, 18, 19, 24 and 25 thereof and submits that the facts therein require calling of evidence and that this action cannot be determined via Originating Summons procedure considering the contentious nature of the facts. Also argued is that certain persons whom voted from Lamurde L.G.A. as delegates without being elected delegates are not made parties to the suit before the Court are necessary parties according to Counsel S.J. Abul Esq. Also that reference to 2 delegates lists by the plaintiff calls into play the issue of forgery which gives it a criminal connotation and hence cannot be determined via originating summons. The Court was therefore urged to strike out the suit on first ground of objection and to dismiss same on the 3rd ground as is contained in the preliminary objection being issue of non-joinder and locus standi respectively.

S.T. Ologunrisa for the 2nd defendant/applicant whom also filed a preliminary objection adopted same before the Court and while adumbrating submits that the principal complaint is on no election of Lamurde L.G.A. of delegates and that this Honourable lacks the jurisdiction to entertain same being statute barred. Learned Senior Counsel also towed the line of S.J. Abul in submitting that non-joinder of the said delegates affects action and that the Court cannot determine the suit in their absence.

Counsel also submits the action is statute barred on 2 grounds –

1. Every issue relating to Lamurde L.G.A. is statute barred and
2. Also every issue when the matter was filed.


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Lastly, it was contended by Ologunrisa (SAN) that the allegations are contentions and contain allegations of fraud and crime which cannot be entertained by only of Originating Summons. Counsel poised a question as to whether the Court can entertain the issue of Lamurde L.G.A. special delegates which relates to an event that occurred before May 26th primary election. Reliance was had to the Supreme Court's decision of APC V. Umar (2019) FWLR part 1675 at 565 to the effect that special delegates congress is a pre-election matter and any complaint relating to it must be done within 14 days.

S.T. Ologunrisa therefore submits that the issue started before May 26th and same is the principal claim. Reliance was had to the case of Jegede V. INEC as cited by Counsel wherein the Chairman Caretaker committee was said not to have been joined as a party and submitted that the plaintiff cannot also at this juncture seek to join the delegates from Lamurde L.G.A. as same would be outside the 14 days period. Counsel insists the whole idea of filing a further and better affidavit by the plaintiff is because the facts are rancorous.

Another point of concern to S.T. Ologunrisa is that of the new Practice Direction by the Honourable Chief Judge introduced recently wherein it provides that "Every pre-election matter 'shall' be commenced by an originating summons as specified in Form 3, 4 or 5 of the Federal High Court Rules with such variations as to the form". To Counsel, a pre-election matter cannot admit any rancorous, hostile or facts that cannot be determined within the ambit of originating summons. That any facts which the Court determines are rancorous should be struck out by the Court.


I.M. Dikko (SAN) for the plaintiff having also filed their response to the preliminary objections of the defendant while adumbrating before the Court urged the Court to discountenance the position of the two defence

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Counsel on issue of Practice Direction and that same is given interpretations to have flavour of the law. This is as regards converting originating summons to a writ where there is said to be conflict and that the present regime contrary to the former era where there is no specific rule on mode of commencement of suit relating to pre-election matters, it mandates all actions be commenced via originating summons.

As regards to issue of Lamurde L.G.A. addressed by S.T. Ologunrisa (SAN), I.M. Dikko submits that 2nd defendant's Counsel misconceived their position. That their complaint as plaintiff is not about conduct of special delegate congress which took place far back before conduct of the primaries but rather that during the process of the primaries which was the date of accrual of cause of action, people who are non-delegates from Lamurde (and that this fact all parties are at consensus that there were no delegates from Lamurde) yet emerged and participated in the conduct of the election. The Court was therefore urged to discountenance the defence Counsel's argument and to also discountenance the case of APC V. Umar (supra) cited by Ologunrisa (SAN). That APC V. Umar (supra) has been reversed by the Apex Court and is no longer the law. See INEC V. Jegede & Ors (2021) LPELR 5548 (SC). The Court was therefore urged to overrule the preliminary objections of both Counsel and to proceed to determine the substantive action on the merit. These are the oral submissions of learned Counsel for the parties. As is envogue, the Court proceeded to hear the substantive case on the merit.

May I seek to address the issue of the Practice Direction for pre-election matters 2022 issued by the Chief Judge Federal High Court dated 28th June 2022 particularly in regards to mode of commencement of Action at paragraph 4(1) by Originating summons. To S.T. Ologunrisa (SAN) a pre-election matter cannot admit of any rancorous hostile facts that


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cannot be determined within the ambit of originating summons and that any facts which the Court determines are contentious should be struck out.

With all due respect to learned Senior Advocate, authorities are legion as to where facts are contentious, the Court may order parties to file pleadings in order to take evidences of witnesses or rather the Court can order that the affidavit metamorphose into pleadings and witnesses thereof summoned to appear and be cross-examined by parties. See *Aluko & Anor V. C.O.P & Ors* (2016) LPELR 41342 (CA). See also *Mark V. Eke* (1997) 1 NWLR (pt.529) 501 at 522.

However one might want to argue that election matters are sui generis and that the current action which is a pre-election matter is guided by the Practice Direction of the Honourable Court and therefore not the same with ordinary civil cases. Meanwhile Fundamental Rights cases are also sui generis, usually determined via originating summons procedure without the need to call witnesses. But there are instances where fundamental rights cases are also commenced via writs for example the case of *Abulhamid V. Akar* (2006) LPELR 24 (SC) is one of such instances. Also to mention is the case of *Aluko* (supra) where the Court of Appeal despite the suit being a fundamental rights action tried via Originating Summons procedure held that –

“It is pertinent to point out that the conflict must be irreconcilable in the affidavit and counter affidavit, from the standpoint of the learned trial judge and not Counsel, before recourse to oral evidence would be necessary. In other words, where the learned trial judge can resolve the conflict in the affidavit evidence, there would be no need for oral evidence. It is worthy of note that there will always be conflict in affidavit and counter affidavit, otherwise the parties will not come to Court in the first place. Therefore

recourse to oral evidence must only be had when the trial judge finds that he cannot resolve the conflict in the affidavit and counter affidavit”.

From the above, the decision of the Court shows that even in fundamental right cases which are also sui generis, the Court can resort to writs as a means of commencement. However, the dilemma here is the provisions of the practice direction which appears to be in conflict with various decisions of the penultimate and the Apex Court as regards the powers or discretion of the Court to order for pleadings in the event of conflicts in affidavits of parties before the Court. However, this is not a forum meant to challenge the authority of the Chief Judge to enact such laws (Practice Direction), nor is any of the parties seeking to nullify such provisions. Meanwhile, it is left for the Court in this case to determine whether there are irreconcilable conflicts in the affidavit of parties before even taking a decision as to whether it can resolve the issues via affidavit or via writ. This the Court must resort to the affidavit of parties filed before it in order to ascertain.

Another issue the Court would like to address is as to the provisions of section 285 (8) of the 1999 Constitution (as amended) which provides viz –

“Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the tribunal or Court in any pre-election matter in the competence of the petition itself is raised by a party, the tribunal or Court shall suspend its ruling and deliver it at the stage of final judgment.”

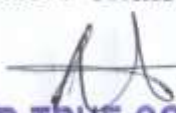
Here we are now faced with a preliminary objection of defence Counsel particularly Sule J. Abul challenging the mode of commencement of the action via originating summons. The question is, how then does the

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Court suspend its decision in the current circumstances so as to wait until final judgment? The issue is where the Court is perhaps of the opinion and in agreement with the preliminary objection of the defence Counsel that the mode of commencement via originating summons is wrong, the Court must as a consequence declare such procedure wrong and to therefore order parties to file pleadings so as to adopt a writ as a mode of commencement. The Court in the circumstance cannot therefore be seen to wait until final judgment in order to rule and determine whether the mode of commencement is wrong or right. I have on the other hand observed that the 2022 Practice Direction has made provisions under INTERLOCUTORY APPLICATIONS in Rule 7(3)'s proviso. It states thus –

“Pursuant to the provisions of section 285 (8) of the Constitution of the FRN 1999 (as amended) ruling in preliminary objection and other interlocutory issues touching on the jurisdiction of the Court shall be suspended and delivered at the stage of final judgment; PROVIDED THAT where the objection relates to service of originating processes, the Court shall satisfy itself that parties have been properly served before proceeding to determine the substantive suit”.

The above provision has in my view aggravated my fear on the applicability of the provisions of section 285 (8) of the 1999 Constitution on certain instances or circumstances which the Court may likely find itself. The Rule 7's proviso have given the Court a leaway to deviate from the provisions of section 285 (8) of the Constitution when the preliminary objection touches on service of processes, especially the originating processes. This in my view means that there are certain preliminary objections that cannot be put to hold as regards the rulings till final judgment. And one of such instances in my view is a preliminary objection challenging mode of commencement of action.


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This I believe is the dilemma envisaged in the provisions of section 285 (8) (supra) requiring Courts to withhold any ruling until final judgment, just like the dilemma posed by the provisions of the Practice Direction 2022 requiring only Originating Summons as the sole commencement mode in pre-election matters. Agreed, there are substantive and procedural jurisdictions of the Court. Meanwhile there are procedural jurisdiction which when not complied with leads to lack of jurisdiction at all substantially e.g. non service of Originating Processes. The dilemma and confusion posed by the two provisions above of the Constitution and Practice Direction are unimaginable. For future references, the legislature is therefore advised to take a second look at the provisions of section 285 (8) of the Constitution so as to modify or amend same in order to be accommodative of the realities on ground viz a viz the observation of the law made above in order to avoid a judicial/legislative conundrum.

Meanwhile the Court shall act in line with the extant laws as cited by the parties in this case in order to resolve the current disputes. The only mode of commencement of the pre-election matters is as provided by the Practice Direction 2022 and the word 'shall' depicting mandatory provisions is provided therein.

Let me now take the issue of Lamurde Local Government special congress which according to Ologunorisa (SAN) took place before the conduct of the primary election and as to whether this Honourable Court can entertain same being statute barred. Learned SAN relied on APC V. Umar (supra) to the effect that special delegate's congress is a pre-election matter. To counter the above submissions, Learned Senior Advocate I.M. Dikko for the plaintiff cited and relied upon the latest decisions of the same Apex Court in APC V. Dele Moses & 10 Ors. (2021) 14 NWLR (pt.1796) 278, page 319; Aguma V. APC & 2 Ors.

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(2021) 14 NWLR (pt.1796) 351 page 406; PDP & Ors V. Munari (2021) LPELR 56(6) (CA).

Let me take one of the above decisions of the Apex Court particularly the case of APC V. Moses (supra) viz a viz, the contentions of both learned SAN's as to the nature of the suit on issue of congresses with particular reference to Lamurde Local Government Area in this case. The Apex Court in determining the Appeal considered the provisions of section 285 (14) (a) – (c) of the 1999 Constitution as per meaning of “pre-election matter” and held thus –

“Section 285(14) (a) – (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which defines what a pre-election matter is, speaks of aspirants who complain about the conduct of party primaries in respect of the selection or nomination of candidates for an election, aspirants who challenge actions, decisions or activities of INEC, in respect of their participation in an election; and political parties that challenge actions, decisions or activities of INEC in respect of nominations of candidates for an election, timetable for an election, registration of voters and other activities in respect of preparation for an election. This definition does not admit of congresses that may or may not one day lead to an election...In the circumstance of the instant case. The suit filed at the trial Court was not a pre-election matter.”

From the above decision of the summit Court, the issue of special congress as rightly submitted by I.M. Dikko (SAN) is not a pre-election matter as categorically and unequivocally held by the Supreme Court. It is trite law that where there are two conflicting decisions of either the penultimate or Apex Court, the trial Court ought to comply with and abide by the latest in this case being that of APC V. Moses (supra) which by implication supersedes that of APC V. Umar (supra). Hence the position taken by Ologunorisa (SAN) that special delegates congress

being a pre-election matter and therefore affected by section 285 (9) and thereby rendering the suit statute barred is misconceived and accordingly discountenanced. Meanwhile I have taken a look at the processes filed by the plaintiff Mallam Nuhu Ribadu and the submissions of the plaintiff's Counsel I.M. Dikko before the Court and I agree that the complaint of the plaintiff is not about special delegates congress which took place as far back before the conduct of the primary election of May 2022 but rather their complaint is that it was during the course of the primary election, (the date of accrual of cause of action) that persons whom ought not to have been allowed to vote taking into cognizance they were not delegates and are not supposed to have participated, yet emerged and were allowed to partake and vote (most of whom are from Lamurde Local Government where special congress is alleged not to have taken place and ordinarily ought not to be allowed to vote). That is the crux of the complaint against the persons from Lamurde Local Government and not that their special congress if any is challenged in this action.


To cap it all, the plaintiff maintains no such congress took place before the primary in Lamurde Local Government. The Court cannot be seen to take the submission of Counsel Ologunorisa in place of evidence or pleadings before the Court. This is the more reason why I believe the plaintiff pleaded that the parties were in possession of a delegate list which does not contain people from Lamurde Local Government for the reason that the Local Government had no delegates from the onset. Having therefore another list containing alleged delegates from Lamurde is a surprise to the plaintiff as I comprehend from the facts deposed to in the affidavit in support. From the exhibits attached to the further affidavit and affidavit in support i.e. exhibits "F, H, J1 and K1" evidence therein reveals as contended by I.M. Dikko (SAN) that there were two delegates lists and that no delegate emerged from the Lamurde L.G.A. as

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pleaded by the plaintiff. See also exhibit N-N20 showing absence of Lamurde L.G.A. delegates. It is trite law that documents speak for themselves.

On the issue of statute barred, the defence Counsel insists the primary election took place on 26th May 2002 and that filing the action on 9th June violates section 285 (9) of the Constitution on limitation period of 14 days. I have gone through the affidavit in support of the Originating Summons filed by the plaintiff and the facts disclosed that the primary election took place as I earlier observed on 26th May, while the result declared on 27th May. At the risk of repetition, by mere calculation either from 27th May when the result was declared or from 28th May 2022 up to 9th June 2022 when the action was filed by the plaintiff herein, the plaintiff is still within time as provided under section 285 (9) of the 1999 Constitution for filing of pre-election matters within 14 days. The plaintiff suit therefore is not affected by the limitation law and I so hold.

I have heard the 1st defendant's Counsel's submissions that having two delegates list as raised by the plaintiff is an issue of forgery. I have read the plaintiff's pleadings and no where did the plaintiff allege forgery of delegates list. The plaintiff deposed that they were surprised despite having delegates list which all aspirants had and which does not contain any delegates from Lamurde that another list was brought to their attention which contains alleged delegates from Lamurde. No issue of forgery was raised in this instance in my view so as to give the pleading a semblance of criminal allegations requiring proof beyond reasonable doubt as Counsel Sule J. Abul wants the Court to impugn. Even by the decision in Obasanya's case cited by S.T. Ologunorisa, issue of fraud must be properly raised by a party. This in my view is not an issue of fraud and I so hold.


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With regards to the submissions of S.T. Ologunorisa that pre-election matters cannot admit any rancorous or hostile proceedings, the decision of the Court of Appeal in *Aluko & Anor V. C.O.P.* (supra) is that –

“It is pertinent to point out that the conflict must be irreconcilable in the affidavit and counter-affidavit from the stand point of the learned trial Judge and not Counsel....where trial Judge can resolve the conflict in the affidavit evidence, there would be no need for oral evidence.”

Moreover the Electoral Act 2022 section 137 provides –

“It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged.”

By the above law, the trial Court can be able to and has the powers to determine any action in election related matters without the need to hear any oral evidences where there are sufficient documentary evidence to determine the suit before it. The question then is, what precisely are the issues in contention between the parties which defendants insist are rancorous or disputed. They are as I believe issues on delegates list i.e. being two lists, the issue of over voting, the issue of delegates from Lamurde who ought not to participate and the issue of vote buying. These issues in my view I believe ought to be determined in the substantive action so as to prove if at all they are established or not before the Court. Where an issue cannot be established same shall be discountenanced at the end of judgment.

Let me now take the issue of non-joinder of the persons whom are said to have participated in the conduct of the primaries and alleged not to have been elected by congress. The contention of both defence Counsel

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is that they ought to be parties before the Court. The question is what makes a person a necessary party in an action before the Court and can the non-joinder of the persons from Lamurde L.G.A. affect the substance of the action? The Supreme Court in SIFAX (NIG.) LTD & ORS V. MIGFO (NIG.) LTD & ANOR (2015) LPELR 49735 (SC) held that –

“It is trite in law that a necessary party is one who is not only interested in the subject matter of the proceedings, but whom in his absence the proceedings cannot fairly and judiciously be decided. That is to say that the question to be settled in an action between the existing parties must be properly settled unless the necessary party to the particular claim is joined.”

Before going further, let me first pose these questions i.e. –

“Whether this action cannot be fairly and judiciously decided in the absence of the persons from Lamurde L.G.A. who participated in the primary election?”

“Does the plaintiff have any claim or cause of action against the purported delegates from Lamurde L.G.A. so as to make them necessary parties, the effect of which their non-joinder may affect the action?”

In my view, the determination of the above question in the positive will take the consequences of holding that even in a general election where a candidate challenges votes casted by voters as illegal or unlawful, at a particular polling unit or polling booths, all the electorates thereof must as of necessity be made parties to the election petition at the election tribunal no matter their numbers or figures in the register of voters. Joinder of an unaccredited voter to an action whose vote is challenged either in a pre-election or post-election dispute whose only duty or function in the entire transaction is to cast vote would in my view make

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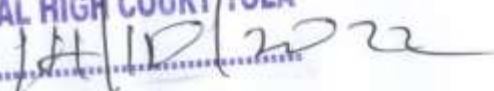
a mockery of the entire system. I do not therefore see how this suit cannot be fairly and judiciously determined in the absence of purported delegates from Lamurde L.G.A. whose participation is challenged by the plaintiff and I so hold. I also hold that the plaintiff does not have any cause of action against the said persons who participated in the said primary election whose non-joinder would not in my view affect the outcome of this action or its proper determination. Moreover the same Apex Court in *Azubuike V. PDP & Ors* (2014) LPELR 22258 (SC) held that –

“A necessary party is one who being closely connected to a law suit should be included in the case if feasible, but whose absence will not require dismissal of the proceedings.”

In any event, the decision of the Court is that the purported delegates are not necessary parties and I so hold. The Court of Appeal again in *Guda & Ors. V. Kitta* (1999) LPELR 13095 (CA) held that –

“Where there is no complaint against a party the non-joinder of that party will not affect the proper determination of the issues joined.” Per Olanaja JCA.

The complaint of the plaintiff before this Court is against the political party APC who organized the primary election with the alleged disputed delegates from the Lamurde L.G.A., the INEC who supervised the primary election and the person returned as duly elected whom the Court shall and do regard as the only necessary parties whose conduct is questioned viz a viz the provisions of laws considering primary elections of parties. The defence Counsel cannot be seen to cite authorities before the Court e.g. *Jegade’s case* (supra) where chairman of a caretaker committee was said not to have been joined in the suit as a party and equate same with the current suit where only electorates were not joined.



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On this same issue I do recall that Sule J. Abul argued before the Court that certain persons whom voted from Lamurde L.G.A. as delegates “without being elected delegates are not made parties to the suit.”

The Irony in this submission of defence Counsel is that while their pleading deny any unknown delegates from Lamurde L.G.A., the submissions of Counsel seems to have admitted that there were indeed persons whom voted without being initially elected at a special congress prior to the primary elections. This I believe is the more reason why I.M. Dikko (SAN) pressed home his point that parties are ad idem on various issues he raised in the plaintiff's depositions in the affidavit in support of the Originating Summons.

On the issue of locus standi argued by Sule J. Abul, he hinged his submissions on the fact that the plaintiff did not resort to the internal mechanisms on dispute resolution before approaching the Honourable Court and that hence the plaintiff had violated Article 21 (b) and (c) of the 1st defendant's Constitution and that by reason of the non-compliance with their constitution (supra), the plaintiff automatically ceases to be a member of the 1st defendant and thereby lacks the locus to institute the action. That by Article 2 (d) (c) such is an offence which leads to expulsion from the party.

Let me first mention here that there is no any record of expulsion of Mallam Nuhu Ribadu in line with Article 21 (d) (v) before the Court. Secondly, this Court had previously in the case of Hon. Lawal Abubakar Garba V. APC, Abdurauf Modibo and INEC suit NO.FHC/YL/CS/5/2019 of 6/3/19 upheld by the Court of Appeal Yola Divisio in suit No. CA/YL/49/2019 per Bayero JCA of 6th May, 2019 and also upheld by the Supreme Court in suit SC/535/2019 (consolidated) per Galumje JSC, I queried as follows –


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“The question to ask is, in the event of filing of a petition or appeal meant to be determined within 14 days after filing the appeal within the first 7 days, what time does the complainant have to file his pre-election matter before the Honourable Court to seek redress after the appeal panel or committee must have made its own findings so as not to contravene section 285 (9) of the 1999 Constitution on limitation period of filing not later than 14 days?”

I once again cite the case of *Ukachukwu V. PDP* (2014) 4 SCNJ part 11 at 477 per Kekere Ekun JSC wherein my lord held that –

“The literal interpretation of section 87(9) of the Electoral Act is that an Aspirant has a right to complain where provisions of the Electoral Act or the Guidelines of a political party have not been complied with in the selection or nomination of a candidate for election. He may exercise the right to seek redress notwithstanding the provisions of the said Act or rules of a political party. In other words, no provision of the Electoral Act or any rule of a political party can take away this right.”

The failure to resort to any dispute resolution mechanism which provides more than 14 days meant to resolve petitions considering the Constitution provides the same 14 days within which to file an action is nonstarter. In any case the plaintiff had actually approached the APPEAL COMMITTEE in an effort to resolve their differences as shown in the exhibits attached by the plaintiff in their affidavit in support and further affidavit.

Thirdly the fact that the plaintiff as alleged has refused to approach the appeal committee or any panel whatsoever even if believed cannot strip the plaintiff of locus standi. What gives the plaintiff locus standi is his participation as an ASPIRANT as contained in the Electoral Act 2022 and section 285(14) of 1999 Constitution and not the party's


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Constitution and I so hold. The line of objection on Locus Standi is accordingly discountenanced. Even where the plaintiff had been expelled from the party for not approaching any committee at all, the fact that he was an aspirant at the election in the primaries and was therefore a member and participated as an 'Aspirant' provides the plaintiff with the necessary locus and I so hold. From the circumstances of all that I have said on this issue of preliminary objections of the defendants herein, my take is that the preliminary objection by Sule J. Abul Esq. and learned Senior Advocate S.T. Ologunorisa for the 1st & 2nd defendants challenging Court's jurisdiction are unsubstantiated and same are discountenanced and accordingly dismissed. I shall proceed to substantive action.



HON. JUSTICE. A.M. ANKA
JUDGE

14TH OCTOBER, 2022.

ORIGINATING SUMMONS

The Originating Summons filed by the plaintiff herein Mallam Nuhu Ribadu seeks the following questions for determination before the Honourable Court viz:-

1. Whether upon a combined construction and application of section 224 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 84 (1), (2), (5) (b) of the Electoral Act 2022, Article 20.3 and 20.4 (iii) (e), (iv) of the Constitution of the All Progressive Congress (APC), and paragraphs 22 (iii) (i) of the Guidelines for the Nomination of candidate for the 2023 General


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Election, the 1st defendant could be said to have conducted a valid primary election for the Governorship of Adamawa State on the 27th May, 2022.

2. Whether upon a combined construction and application of section 224 of the Constitution of the Federal Republic of Nigeria (as amended), section 84 (1) (2) , (5) (b) of the Electoral Act 2011, Article 20.3 and 20.4 (iii) (e), (iv) of the Constitution of the All Progressive Congress (APC) and paragraphs 22 (iii) (1) of the Guidelines for the Nomination of candidates for the 2023 General Election, the primary election conducted by the 1st defendant for the Governorship of Adamawa State on the 27th May, 2022 is not vitiated by over voting?

While urging the Court to answer the above two posers, the Plaintiff Mallam Nuhu Ribadu seeks the following reliefs –

1. A DECLARATION that the primary election conducted by the 1st defendant for the Governorship of Adamawa State on the 27th May, 2022 was not validly conducted in accordance with the provisions of section 224 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 84 (1), (2), (5) (b) of the Electoral Act 2022, Articles 20.3 and 20.4 (iii) (e), (iv) of the Constitution of the APC and paragraph 22 (iii) (1) of the Guidelines for the Nomination of candidates for the 2023 General Elections to warrant the declaration and Return of the 2nd Defendant as the winner of the said primary election.
2. A DECLARATION that the primary election conducted by 1st defendant for the Governorship of Adamawa State on the 27th day of May 2022 was violated by over voting therefore the 2nd defendant did not score the majority of valid votes cast during the said election.


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3. AN ORDER of this Honourable Court nullifying the primary election conducted by the 1st defendant for the governorship of Adamawa State conducted on the 27th May 2022 as same was violated by over voting and that the 2nd defendant did not score the valid votes cast during the said election.
4. AN ORDER of this Honourable Court restraining the 1st defendant from presenting or submitting to the 3rd defendant the name of the 2nd defendant as the Governorship candidate of the 1st defendant for the 2023 general election for the Governorship primary election conducted by the 1st defendant on the 27th May, 2022 which primary election was violated by over voting, as the 2nd defendant therefore did not score the valid votes cast during the said election.
5. AN ORDER of this Honourable Court compelling and or directing the 1st defendant to conduct fresh primary elections for the Governorship of Adamawa State for the nomination of its candidate for the 2023 general election in compliance with section 224 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 84 (1), (2), (5) (b) of the Electoral Act 2022, Articles 20.3 and 20.4 (iii) (e) (iv) of the Constitution of the APC, and paragraphs 22 (iii) (1) of the Guidelines for the Nomination of candidates for the 2023 general elections.

The originating summons is supported by a 28 paragraph affidavit deposed to by the plaintiff himself, a card carrying member of the 1st defendant's party and also a candidate as well as runner up at the primary election. Para-phrasing the contents of the affidavit, the deponent Mallam Nuhu Ribadu deposed that before the date meant for the primary election, Local Government congresses were conducted by special congress committee for the selection of delegates who were to vote or rather participate in the governorship primary of the 1st defendant and that that of Lamurde Local

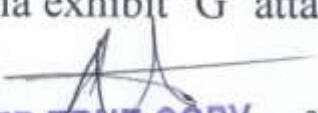
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Government was not conducted and there was therefore no special delegates elected to participate the scheduled primary election of the 1st defendant. That when the 5 men Electoral Committee constituted by the 1st defendant came to conduct the primary election on 26th May, 2022, it was realized that there were two different Delegate lists, one which all the agents of the various aspirants had which did not contain Delegates from Lamurde Local Government and another list which despite the non-conduct of special Delegate congress in the said Lamurde L.G.A. surprisingly contained names of delegates from the said Local Government. Despite protest, the electoral committee insisted and conducted the election with the list which included delegates from Lamurde. Also deposed is that the committee allowed delegates whom have not been accredited to vote at the election and that same was characterized by votes buying specifically by agents of the 2nd defendant who were given (sic) money to delegates. The result declared on 27th May 2022 contain over-voting exceeding the total number of votes accredited to vote viz –

| | | |
|----------------------------|---|--------|
| a. Total No. of voters | - | 1, 130 |
| b. No of accredited voters | - | 1009 |
| c. Total votes cast | - | 1, 011 |
| d. Valid votes | - | 975 |
| e. Invalid votes | - | 36 |


Despite clear case of over-voting according to the plaintiff, the 5 men committee proceeded to declare the 2nd defendant (Senator Aishatu Dahiru Ahmed) as the winner of the primary election while also issuing a report tagged “REPORT OF THE APC GOVERNORSHIP PRIMARIES COMMITTEE”. The plaintiff therefore proceeded to complain/petitioned the Appeal Committee constituted by the 1st defendant herein via exhibit ‘G’ attached to the affidavit and that despite


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finding merit in the petition, the said 3 man committee refused to recommend or order the conduct of fresh primary election. See exhibit 'H' attached to the affidavit in support of the originating summons. The plaintiff at paragraph 25 proceeded to quote the Appeal Committees' finding viz –


“It is confirmed by INEC and all the party agents present at the venue of the election that there was no Ad-Hoc delegates list for Lamurde Local Government Area. Therefore, INEC has advised against the accreditation of delegates from the Local Government Area and their participation in election exercise. The Appeal Committee hereby recommends that the National Working Committee (NWC) consults the legal department of the party on the effect of this discrepancy to the total votes cast as well as the effects of their exclusion from the voting exercise. On the issue of over-voting, the official result sheet clearly indicates the discrepancies between the total votes cast and the total accredited voters for the primary election. The committee has observed over voting by two (2) votes. Section 51(1) – (4) of the Electoral Act generally talks about over voting and leaves INEC with option as to discretion including substantial compliance with the Act. The Appeal Committee (NWC) therefore advice the National Working Committee to exercise its discretion with respect to the discrepancies observed taking into account the likely litigation that may emerge pursuant to this flaw.”

The plaintiff also attached the report of the INEC which monitored the said election and was marked exhibit 'I' wherein it (INEC) recommended that the list containing the delegates from Lamurde L.G.A. ought not to have been used during the conduct of the primaries.


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Accompanying the affidavit in support is a 21 paged address of the learned Senior Advocate I.M. Dikko dated 8th day of June 2022 wherein Counsel reiterated the issues already posed for determination in this judgment earlier outlined. Of importance to mention as argued by the Learned Silk is that Local Government congresses were conducted by the special congress committee in Adamawa State and that the mandate of these delegates who emerged from the congresses was primarily to elect an Aspirant in the primary election of the 1st defendant for the governorship of Adamawa State slated for 26th May 2022 and concluded on 27th of same month. It is submitted that Lamurde L.G.A. had no special delegates consequence upon the non-conduct of any congress at the Local Government. This, the plaintiff's Counsel submits all the parties including the 2nd defendant are at consensus before the Court.

All entreaties from all including INEC who advised against using the list containing delegates from Lamurde fell on deaf ears as submitted by the learned Silk and that even the 3 man panel of the Appeal Committee by their Report acknowledged there was no special congress conducted at Lamurde L.G.A. By exhibit 'E' attached, the Court was referred to the result declared wherein there is obvious over-voting. The Court was referred to paragraph 22 (iii) of the Guidelines for nomination of candidates for the 2023 General Election marked exhibit 'C'. The votes cast which is 1, 011 and the number of accredited voters which is 1, 009 indisputably shows as argued by the learned Silk that there was over voting which clearly negates the purport and essence of democratic conduct of the elective party primaries. The consequences of over voting as argued by learned Silk I.M. Dikko will naturally lead to cancellation of the voting exercise as held in the Supreme Court decision of APC V. KARFI (2017) LPELR 47024 (SC) page 13-14 paragraph F-C wherein the Apex Court held that –


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“It is beyond doubt that over voting is serious electoral malpractice which should not be treated with levity. Any proven case of over-voting in an election should render such election void....”

Consequent upon the above, the plaintiff seeks their reliefs as contained in the originating summons.

The 1st & 2nd defendants on the other hand filed counter-affidavit to the originating summons of the plaintiff. 1st defendant's counter affidavit was filed 6th July 2022 while that of 2nd defendant filed 13/7/22. The two deponents therein for the 1st & 2nd defendants Usman Isa Manujo and Senator Aishatu Dahiru both denied the depositions of the plaintiff. Both Counsel to the defendants while adopting their processes made oral submissions in adumbration. I have read the counter affidavit of the 2nd defendant where at paragraph 24 is to the effect that –

“The National Working Committee to the 1st defendant upon receipt of the Appeal Committee sat and took a final decision on the issue of the Adamawa Governorship primaries on 30th June 2022 dismissing every allegations of over voting and affirming my victory...”

The 2nd defendant relied therefore on exhibit “3” attached. First, with all due respect at the time the National working committee sat in exhibit ‘3’ (supra) this suit has already been filed and is therefore subjudice. Secondly, the National Working Committee cannot be seen to overrule the party's guidelines and Constitution by wave of hand and also over and above the Appeal Committee's findings which heard the parties and their petitions and complaints. The party Constitution and the guidelines made by the 1st defendant must both be obeyed by the party members. The provisions of guidelines at paragraph 26(j) provides that –

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“No member shall vote for more than one aspirant and where the votes cast exceed the number of accredited voters, the election shall be declared void...and the exercise may be repeated.”

By the guidelines above provided by 1st defendant, it provides for repetition of election and not for the defendants to choose to deduct any amount of votes cast as is done in the general elections and to declare substantial compliance. This is not applicable in primary elections as the Apex Court held in APC V. Karfi (supra). Parties must obey their Constitution and Guidelines or there shall be consequences. Whether these procedures shall be repeated by the party shall be determined by this Honourable Court at the end of the judgment. The counter-affidavit of the 3rd defendant (INEC) did not controvert the position taken by the plaintiff being the umpire meant to monitor the primaries. See counter-affidavit of 13th July 2022 by Abdulmajid Dahir Arabi. I have read the address of the 3rd defendant's Counsel filed by Ahmed Mohammed Esq. wherein Counsel at paragraph 4.8 submits while citing the case of Hope Uzodinma V. Osita Izunaso (No.2) (2011) 17 NWLR part 1275 page 30 that they do not intend to join issues raised by the plaintiff considering the admonition of the Apex Court to the 3rd respondent in the above case. See also A.G.F. & Ors V. Alhaji Atiku Abubakar & Ors 32 NSCQR 1 at 174 – 175.

Counsel urged the Court to hold that the 3rd defendant (INEC) has discharged its Constitutional and statutory function of monitoring the primaries. However it appears INEC misconstrued the admonition of the Apex Court. The Court did not hold that INEC should not comment on the truth of what they observed that transpired at the primaries. The deposition of INEC in the affidavit are not helpful and are certainly useless.


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ORAL ADUMBRATION OF COUNSEL ON SUBSTATIVE CASE

The Plaintiff filed the Originating summons of 9th June 2022 seeking the reliefs as contained therein at page 1 – 3 and supported by a 28 paragraph affidavit deposed to by the plaintiff himself Mallam Nuhu Ribadu and annexed therewith are exhibits A – I, Learned Senior Advocate I.M. Dikko adopted the processes before the Court and while adumbrating reiterated that during the conduct of the election, the 2nd defendant and his agents were involved in vote buying specifically issuing monies to delegates participating in the said election. Reliance was had to the exhibits attached. The 1st and 2nd defendants counter-affidavit having been deemed served on the 20th June 2022 (the date of hearing), and the plaintiff's further affidavit in response having also been deemed properly filed and served based on the consequential order of the Court of the same 20th July, the Learned SAN placed reliance on the said affidavits (both) as well as exhibit J1 to Q attached to the further affidavit in response to 1st defendant's affidavit and also the 15 paragraph further affidavit in response to 2nd defendant's counter-affidavit, and the exhibits 'J1 to Q' also attached to the said further affidavit. Learned Senior Advocate submits that the gravamen of their claims are –

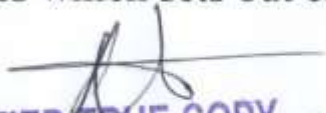
1. Vote buying
2. Illegal permission or allowance given to the purported delegates from Lamurde Local Government to participate in the primary election.
3. The manifest case of over-voting.

The Court was referred to exhibit E, F, G, H and I which are the result of the election, report of the Appeal Committee, Petition by the plaintiff to the Appeal Committee and the Report of the Election Monitoring by the 3rd defendant (INEC). Learned Counsel also referred the Court to the

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C.T.C. of the processes attached to the further affidavit which to Counsel were not initially certified at the time of filing the originating processes. The Court was referred particularly to exhibits 'J1 and J2' by I.M. Dikko (SAN) to buttress the contention that there is consensus by parties who responded to his petition at the committee and that the defendants did not deny over-voting but that their defence was that if the two (2) votes are removed, the 2nd defendant would emerge the winner. Also ad idem as argued by I.M. Dikko (SAN) is that there are no delegates from Lamurde Local Government and that people that emerged were not supposed to partake in the elections. Exhibits "P and Q" were also referred to by the plaintiff which are attached to the further affidavit meant to show that agents of the 2nd defendants were engaged in vote buying. Learned SAN I.M. Dikko insists their joker in this suit is the case of APC V. Karfi (supra) which is impari materia with the current suit on over voting which according to Counsel the defendants can never avoid. That the same provision of the Guidelines interpreted in the case of APC (supra) are the same in the current suit. The Court was further referred to exhibit 'B' attached by the 1st defendant also. Learned silk submits that all authorities cited by the defence Counsel are in respect to election petition and not pre-election matters. The Court was also referred to the duly certified documents exhibit "J1" and the receipt evidencing the payment of certification marked "J2" in compliance with section 104 of the Evidence Act 2011. The Court was urged to hold that there is a classical case of over-voting.

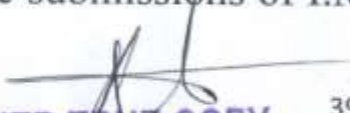
Sule J. Abul of Counsel to the 1st defendant also adopted their 15 paragraph counter-affidavit by Usman Isa Manajo as well as the exhibits attached therewith together with the address of 5/7/2022. Counsel referred the Court to the case of Yahaya & Anor. V. Dankwambo & Ors. Cited in the address which sets out elements of over-voting viz –


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1. The plaintiff must tender register of voters (in this case register of delegates).
2. Annex statement of result (which he has done in this case).
3. Relate each of the document to the specific area of his case and
4. He must show that the figure representing the over voting if removed would result in the victory of the petitioner.

To Counsel Sule J. Abul mathematical computation becomes very crucial especially by reason of the 4th requirement above. That the plaintiff alleged over voting of "just" two votes. That 2nd defendant had 430 votes while plaintiff had 288. That even if 100 votes were removed from the 2nd defendant's votes, she will still win. As regards the submission of the learned SAN in paragraph 2.13 of their reply on points of law wherein the learned SAN contends the law applies to only general election, Counsel Sule J. Abul contends otherwise while referring the Court to section 152 of the Electoral Act 2022. That election includes primaries and the issue of over voting can only be proved or upheld in line with the case of Yahaya V. Dankwambo (supra). On exhibits "P and Q" on criminal trials of persons alleged to be agents on the 2nd defendant, Counsel submits 2nd defendant is not a party to the case as exhibited and that even if she were a party and one of the defendant admits to the crime, the admission only binds the party who admitted. The Court was therefore urged to dismiss the action with cost.

S.T. Ologunrisa (SAN) also adopted their processes for the 2nd defendant of 13 July 2022 of 32 paragraphs counter-affidavit deposed by 2nd defendant herself. A written address attached was also adopted by the learned silk as well as the 3 exhibits. The Court was referred to the issues raised by the plaintiff as which guides the proceedings being that of delegates from Lamurde Local Government. Learned Silk objected vehemently to the submissions of I.M. Dikko (SAN) wherein Mr. Dikko


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professed that parties are in agreement as regards delegates from Lamurde Local Government. The Court was referred to the paragraphs 9, 10 and 11 of the 2nd defendant's counter-affidavit wherein the deponent deposed that special congress was held months before the primary election. On illegal permission or allowance of the purported delegates to participate in the primary election, learned (SAN) Ologunorisa submits these facts constituting the illegality preceded May 26th 2022 and that to that extent the issue remains statute barred. That whether the case of Umar is overruled or not, the plaintiff ought to have taken steps to challenge the illegality of not conducting the congress. The Court was referred to the case of 'Jegede' and that of 'Umar' as cited in the address of the defence Counsel.

On issue of vote buying being criminal offences, learned Silk submits same must be proved beyond reasonable doubt and that originating summons is not appropriate mode. That the plaintiff's Counsel knew that he did not do the needful when they filed their originating processes and they now came back to file their further affidavit introducing new facts and new exhibits. That the question is whether these "new facts" were not brought 14 days after cause of action and not caught by the constitutional provisions limiting time within which to file any suit in pre-election matters. Paragraphs 11, 12 and 13 were referred to as totally new facts and that exhibits attached to the further affidavit (certified) are not the same with the ones initially filed with the originating summons and are not certified. The case of Olajumoke V. Akeredolu appeal No. CA/ABJ/66/2021 delivered 22nd March 2021 was relied upon by the 2nd defence Counsel to the effect that new facts cannot be introduced outside the 14 days otherwise same would amount to an amendment. See also APC V. Marafa (2020) 6 NWLR part 1721 at 383 learned SAN Ologunorisa conceded however that the new Practice Direction made by the Chief Judge (2022) allows for

amendment but that same is not open ended rule. Learned SAN posed a question to the Court as to how they are going to react to the new facts allegedly introduced by the plaintiff and as to whether their right to fair hearing will not be breached.

On over voting, Counsel insists there is no distinction in pre-election and general elections and that any distinction is a fallacy. Learned SAN urged the Court not to apply the case of APC V. Karfi (supra). That the figures of over voting if subtracted, the plaintiff will yet loose. The case of Awuse V. Odili was cited to the effect that there must be substantial non-compliance. That the delegates in Lamurde are 50 and that even if removed the 2nd defendant will still win. Finally on the people alleged to be arrested, learned Silk submits they are deemed innocent under law.

I.M. Dikko (SAN) on points of law referred the Court to the case of Yahaya V. Dankwambo (supra) cited by Ologunorisa (SAN) and submits that he was in the said matter and that the requirement of over voting established was presented on interpretation of the Electoral Act 2010 and the schedule therein.

As regards filing of further affidavit or amendment, the Court was referred to section 122 (2) (m) of the Evidence Act on judicial notice of processes filed and for the Court to determine new facts were not introduced and nor was the plaintiff seeking any amendment. That the documents the plaintiff certified are the same documents initially filed. Case relied upon is AMCON V. NICON Investment Ltd. (2022) LPELR 57520 (CA) I.M. Dikko submitted that if the defence Counsel has any issues with their further affidavit all the defendants have to do is to file a further counter-affidavit. Reliance was once again had to the decision in APC V. Karfi while also submitting that the authority of Dankwambo interprets guidelines in general election while that of Karfi (supra) interprets Guidelines in primary elections. Learned Silk lastly expressed

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confidence that they have established at least one of their grounds out of the three (3) grounds.

Let me first tackle the issue of the CTC of the documents subsequently filed by the Learned Senior Counsel to the plaintiff I.M. Dikko which learned SAN Ologunorisa made a heavy weather out of. That the plaintiff having not done the needful has now filed the CTC and thereby introducing new facts and new exhibits. The questions to determine is whether –

1. The plaintiff has the right to file a further affidavit in response to a counter-affidavit?
2. Whether the plaintiff's has the right to file the CTC of the same documents which were earlier not certified?

On the second issue above, the authority of *Tabik Investment Ltd & Anor. V. CTB* (2011) LPELR 1331 (SC) Rhodes Vivor JSC held viz –

"The Court of Appeal set aside the judgment of the trial Court because exhibit A, B1, B2 and B3 public documents were not paid for. This is correct, but rejecting the documents is rather harsh. The learned trial judge ought to have ordered Counsel to ensure that the said documents are paid for, and after payment the trial continues. There is a good deal of authority that Courts must strive to do substantial justice rather than relying on technicality to defeat justice....for the above and more detailed reasoning on the leading judgment, the applicants should pay the fees required, thereafter trial should proceed."

From the above decision of the Apex Court, even where documents were not initially certified, the learned trial Court is admonished to allow for such certification subsequently which I believe the learned Senior Advocate I.M. Dikko in this case has done. Hence the certification of

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the documents albeit subsequently is in line with the Apex Court's decision and therefore in line with the law. The issue therefore raised by Olagunorisa (SAN) is accordingly discountenanced.

On the first issue above, on introduction of new facts, I refer learned SAN to the Practice Direction 2022 Order 4 Rule 5 which states thus –

“An applicant on whom a Respondent serves a defence, if the need arises shall serve a reply on that Respondent within 3 days of such service.”

By the law above, the applicant/plaintiff has the right to file a reply to the defendant's counter-affidavit. Depicting that the defendant's right to fair hearing will be violated as submitted by Olugunorisa (SAN) when the plaintiff is given opportunity to file a reply is in my view of no moment. Whether the further affidavit of the plaintiff contains new facts as argued by Olugunorisa (SAN) is left for the Court to determine while making its findings in this judgment. Hence the filing of the further affidavit by the plaintiff is justified. I have noticed the defence Counsel cited the case of Olajumoke V. Akeredolu (supra) delivered 22nd March 2021 while submitting that new facts cannot be introduced outside the 14 days allowed by law otherwise same would amount to an amendment. I have read the authority cited, a Court of Appeal decision per Datti Yahaya JCA, let me first state that the facts in the case reveal that the plaintiff who filed action, a pre-election matter at the trial Court against ONDO STATE GOVERNOR sought and amended the Originating Summons by substituting name of “Oluwarotimi Akeredolu” as a party. This the trial Court subsequently held to be in contravention of section 285 (9) of the 1999 Constitution upon a subsequent preliminary objection filed by the defence Counsel. On appeal to the Court of Appeal, what I observed in the case is that the Court of Appeal did not answer the first issue for determination as to whether the

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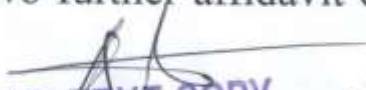
substitution of “Ondo State Governor” with that of “Akeredolu Oluwarotimi” violates section 285 (9) (supra) when it held at page 42 of the judgment viz –

“In this vein therefore, issue No.1 is no longer a live issue...”

The Court of Appeal determined the suit on appeal on “whether the learned trial Federal High Court was right not to have decided the substantive matter, for this noble Court to have the benefit of an Appellate Review?”

It therefore follows that the submission of Counsel to the 2nd defendant that the Court of Appeal held that “new facts cannot be introduced outside the 14 days otherwise same would amount to an amendment” is misconceived. The Court of Appeal in Akeredolu’s case has neither upheld the trial Court’s decision on the issue of whether the action therein is statute barred nor upturned same considering it held the said issue is academic.

It is interesting to note that Mr. Ologunorisa (SAN) conceded the Practice Direction 2022 allows for amendment but that it should not be open ended. The question is whether the filing of the further affidavit can be termed an amendment. By the Practice Direction Order 4 thereof it makes specific provision for reply to a defendant’s counter-affidavit at Rule (5) thereof, and an amendment separately in rule (7). It therefore follows that a Reply to a defendant’s counter-affidavit cannot be equated with an “Amendment” even by the provisions of the law above. At the risk of repetition however, the Court shall in this judgment determine if the facts in the further affidavit are new facts as alleged by defence Counsel S.T. Ologunorisa (SAN). Before deciding such issue, the Court has to take a look at the initial affidavit of the plaintiff and juxtapose same with the two further affidavit of the plaintiff filed against the two


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counter-affidavits of the defendants herein. Let me now analyze the two further affidavits of the plaintiff.

PLAINTIFF'S FURTHER AFFIDAVITS

In response to the 1st defendant's counter-affidavit, the plaintiff Mallam Nuhu Ribadu deposed to a further affidavit of 13 paragraphs dated 18th July 2022 wherein he deposed that he had now attached the CTC of the APC GOVERNORSHIP PRIMARIES COMMITTEE, APPEAL COMMITTEE REPORT OF THE APC GOVERNORSHIP PRIMARIES COMMITTEE AND CTC OF THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) REPORT for the APC governorship primaries committee marked exhibits J1, J2, K1, K2 as well as L1 and L2 respectively. See paragraphs 5, 6 and 7 of the further affidavit. Also deposed and referred to is the INEC letter of 25th May 2022 tagged NOMINATION OF CANDIDATES addresses to various political parties wherein it reiterated that only delegates who emerged from congress are allowed to participate at the primary election marked exhibit 'M'. Attached also is the CTC of the list of Delegates who emerged from the various Local Government Areas of Adamawa State for APC which has no Lamurde Local Government Area and the receipt of payment of the certification and marked N1 and N20. The plaintiff also attached the affidavit in support of the originating summons filed by the Director of Campaign Organization of the primary election for the 2nd defendant (as alleged) in the Fundamental Rights action instituted before the Honourable Court in suit No. FHC/YL/CS/10/2022 between Hon. Sini Zira & 4 Ors V. EFCC which according to the plaintiff confirms the Agents of the 2nd defendant in relation to the allegation of vote buying. The CTC of the suit (supra) and the affidavit in support were marked exhibit 'P'. The CID of the Nigerian Police, Adamawa State Command's Report dated 27th May

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2022 with reference No. AR: 3000/ADS/X/D1/Vol..18/122 confirming the arrest and prosecution of the same Hon. Sini Zira and 4 Ors in connection of vote buying was attached also and marked exhibit 'Q'.

I have also gone through the further Affidavit of the plaintiff in Response to the 2nd defendants counter-affidavit. The further affidavit is of 15 paragraphs dated 18th July 2022. The content of paragraph 1 to 8 thereof are in semblance with the further affidavit against the 1st defendant's counter-affidavit already analyzed above with the same exhibits attached i.e. exhibit J1, J2, K1, K2, L1, L2 and M. Likewise attached are the same exhibits N1 – N20 with exhibit 'Q'; which is the letter of 30th May, 2022 written on behalf of 2nd defendant to the Appeal Committee where no mention was made of delegates from Lamurde Local Government as a result of special congress. The Fundamental Right suit earlier mentioned was also made reference to together with the annexed CTC of the Originating Summons and the affidavit in support between Hon. Sini Zira & 4 Ors V. EFCC (supra) and lastly the CID's Report from the state Command Adamawa State. The plaintiff at paragraph 13 lastly deposed that exhibit 1 attached to the 2nd defendant's counter-affidavit is generated and doctored as exhibit 'B' in the 1st defendant's counter-affidavit reflects the concession by the 2nd defendant that there was over voting.

In the plaintiff's response of 15th July, 2022 attached to the further affidavit, the learned SAN I.M. Dikko submits that contrary to 1st defendant's submissions on Delegates list, the plaintiff's contention is that the list from Lamurde has nothing to do with criminal allegation.

On proof of vote buying and that criminal allegations requirement of law is not proof beyond every shadow of doubt. See Yahaya Umar V. FRN (2016) LPELR 4-910 (CA) page 24 – 25, Bello Shurumo V. State (2010) 3069 (SC) and other host of case laws cited by the learned SAN to

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buttress his contentions. Reference was further made to section 84 of the Electoral Act 2022 which makes it mandatory that only delegates who emerged from special congress conducted by political party are eligible to participate and cast their votes for political party aspirants during primary elections. The plaintiff's Counsel referred the Court to exhibit 'M; attached to the further affidavit and also exhibits J1 and K1. Wherein evidence reveals no delegates emerged from Lamurde during the conduct of the primaries. See also exhibit N1 – N20 series proving the same issue on Lamurde and the case of Dr. G.S. Obo V. Commissioner of Education Bendel State & Anor. (2001) LPELR 2187 cited by the Learned Senior Advocate I.M. Dikko at page 8 of the reply that what has been agreed to by parties means there is no issue in dispute. The plaintiff's Counsel referred the Court to the submissions of 1st defendant's Counsel in their address at paragraphs 3.29 – 3.2.11 where Sule J. Abul submits that "OVER VOTING IS JUST BY 2 VOTES and therefore not fatal". The Court was urged to discountenance the position as well as the authorities cited by the 1st defence Counsel meant for General Elections regulated by the Electoral Act and Regulations issued by INEC in contradistinction to primary elections guided by Constitution of the APC and Guidelines. Reference was further made to Article 26(j) of the 1st defendant's Guidelines which provision was interpreted in APC V. Karfi supra).

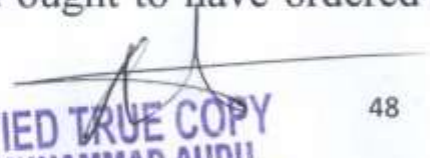
As regards the 2nd defendant's submissions, learned SAN I.M. Dikko referred the Court to the authorities (case laws) cited by 2nd defendant's Counsel in their address and once again reiterated and cited the case of Yahaya Umar V. FRN (supra) and other case laws cited in response to 1st defendant's address earlier analyzed. Also cited again is section 84 of the Electoral Act on emergence of delegates by special congress. That 2nd defendant cannot be arguing that the delegates from Lamurde who participated are only 50 in number. The Court was urged to

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discountenance the case of BADAN V. ADAMU cited by 2nd defendant on non-substantiality of compliance. Counsel therefore once again distinguished the authorities applicable to General elections with that applicable to primary election while citing Article 26(j) of Exhibit 'B' attached to the Affidavit in support of the originating summons.

Now, having analyzed the further affidavits above viz a viz the initial affidavit of the plaintiff, the facts in all affidavits relates to over voting, allowance of persons from Lamurde Local Government to vote at the primaries and lastly vote buying. I therefore see nothing new introduced by the plaintiff in his further affidavits filed against the defendants' counter-affidavit so as to amount to an amendment as argued by Olagunorisa (SAN). The argument therefore by the learned Senior Advocate that the further affidavits contain new facts is accordingly discountenanced.

Let me advert my mind to the issue of CTC of the documents attached to the further affidavit of the plaintiff which were previously not certified. The documents are REPORT OF THE APC GOVERNORSHIP PRIMARIES COMMITTEE (exhibit 'F' in the Originating Summons) now exhibit "J1" in the further affidavit and APPEAL COMMITTEE REPORT OF THE APC PRIMARIES COMMITTEE (exhibit 'H' in the Originating Summons) now exhibit 'K1' in the further affidavit. The above two documents emanate from the office of the 1st defendant in particular from the Directorate of Organization of the APC. I had earlier ruled on the regularity of the said documents having been subsequently certified with evidence of payment as contained in the decision of Rhodes Vivor JSC. Another case law on the point also is Uwua Udo V. The State (2016) LPELR 40421 (SC) a Supreme Court's decision to the effect that the lower Court was wrong to have expunged the uncertified documents and ought to have ordered the plaintiff to pay the necessary



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fees. However what is at the back of my mind is whether some of these documents can be regarded as public documents requiring certification? The documents i.e. various committee reports emanating from the APC party are not in my view public documents within the meaning of same in the Evidence Act requiring any certification considering they are neither –

- a. Documents forming acts or records of the acts of -
 - i. Sovereign authority
 - ii. of official bodies and tribunals
 - iii. of public officers, legislative, judicial and executive, and
- b. Public records kept in Nigeria of private documents.

These committee's reports of the APC as a party (which in my view cannot be equated with public office) nor is any public officer employed in same cannot be termed public documents within the contemplation of Evidence Act desiring or rather requiring any certification. The argument therefore by Olagunorisa (SAN) on the documents subsequently certified is of no moment. The documents are from a private organization which happens to be a political party whose employees are not public officers required by the Evidence Act to certify any public document and I so hold. To further buttress the point, the Court of Appeal in *Jukok Int'l Ltd. V. Diamond Bank* (2016) 6 NWLR part 1507 page 55 at 72 held that –

"... copies of public documents attached to an affidavit as exhibit need not be Certified True Copies because the documents already form a part of the evidence adduced by the deponent before the Court and are available for the Court to use once it is satisfied that they are credible. Furthermore, such documents need not be


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Certified True Copies where the contents of the documents are not in dispute..."

From the circumstance of this action, the documents attached shall be reckoned with in the judgment and are certainly admissible.

Let me take the main issues as provided by the plaintiff in this case. first is issue of having 2 delegates list which the defendants denied that there was no any other list or that congress took place in all Local Government Areas in Adamawa State as averred by the 2nd defendant Senator Aishatu Dahiru Ahmed in paragraph 9 of her counter-affidavit of 13th July 2022 unlike what the plaintiff alleged that there was no any congress in Lamurde Local Government Area which could not have provided delegates. Before going to documentary evidences on this issue, it is important to peruse through the counter-affidavit of 2nd defendant at paragraph 12 (c) (d) and (e) which states thus –

- c. The Agent of the plaintiff protested that the said delegates list was different from the one they had and that the one made available to them by the Electoral Committee contained names of delegates from Lamurde Local Government.
- d. "Their contention was that the 1st defendant did not organize special delegate's congress in the said Lamurde Local Government Area as required by the 1st defendant's Constitution and the Guidelines".
- e. "That the Electoral Committee insisted on using the Delegates list given to them by the National Working Committee of the 1st defendant for the conduct of the said primary election".

The above certainly indicate even from the averment of the 2nd defendant herself that there was an issue of a list which was protested by


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the plaintiff and his agents pertaining to persons from Lamurde Local Government.

The 2nd defendant deposed at paragraph 13 further that –

“Contrary to paragraph 17 of the affidavit in support of the originating summons, the insistence of the Electoral Committee to conduct the said primary election using the delegates list consisting of the names of the delegates from Lamurde Local Government Area of Adamawa State was in compliance with the 1st defendant’s Constitution and the Guidelines for the nomination of candidate for the 2023 general election”.

Meanwhile the plaintiff via their exhibit ‘M’ attached to the further affidavit which they relied on provides in the letter which learned SAN I.M. Dikko said was issued to all parties that –

“The commission hereby draws the attention of all political parties to the provision of section 84 (1) of the Electoral Act 2022 which requires as follows –

- 1. A political party seeking to nominate candidates for election under this Act shall hold primaries for aspirants to all elective positions which shall be monitored by the Commission.*
- 2. In line with this provision, the commission shall in monitoring primaries only recognize delegates that emerged from congress duly monitored by the commission.”*

The above letter is from the commission (INEC) to all political parties. Let me make it categorically clear at this juncture that the document is a CTC. Secondly, the above document dated 25th May 2022 has been filed and attached to the further affidavit and no any further counter affidavit was deposed to by the 1st and 2nd defendants to controvert the

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deposition nor the said document. To support the deposition of the plaintiff that there was no any delegate from Lamurde Local Government, the plaintiff attached exhibit 'H' which is the APPEAL COMMITTEE REPORT in the affidavit in support of the Originating Summons and further attached same as exhibit K and K1 with proof of payment of certification which I consider irrelevant considering same is not a public document. In exhibit 'H' the Committee Report states –

"It is confirmed both by INEC and all the party agents present at the venue of the election that there was no Ad-Hoc delegates list for Lamurde Local Government Area. Therefore INEC has advised against the accreditation of delegates from the Local Government Area and their participation in the election."

See also the contents of exhibit 'K1'. By exhibit J1 also the GOVERNORSHIP PRIMARIES COMMITTEE REPORT OF THE APC marked exhibit 'F' in the initial affidavit of 9th June and also 'J1' on the further affidavit, the committee headed by Alh. Gambo Lawan with 4 other members stated that –

"We arrived at the venue at 3pm as planned to a mammoth crowd of delegates. We immediately commenced accreditation but immediately realized that there were 2 delegates list....the difference between these two lists was that the other one which the Aspirants' agents all had did not have Delegates from Lamurde Local Government Area on it."

These are all documents from the 1st defendant's party APC. Interestingly, the 1st defendant's deponent Usman Isa Manujo the Chairman of the 1st defendant in Yola South L.G.A. cleverly omitted to controvert the plaintiff's paragraph 22 of the affidavit in support of 9th June 2022. The 1st defendant only deposed in paragraph 10 of their

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counter-affidavit of 6th July 2022 while skipping or rather refusing to controvert paragraph 22 of the plaintiff that –

“That I equally deny the depositions in paragraph 20, 21, 23 and 24 of the plaintiff’s affidavit...”

It therefore follows that the content of the APC Governorship Primary Election Committee Report relied by Mallam Nuhu Ribadu having not been controverted by the maker i.e. 1st defendant party, is true to the extent that there was actually 2 delegates lists. The defendants cannot therefore be heard to deny that fact. As far as the Court is concerned, there is no need to order for any witnesses as far as the documentary evidence reveal the truth of the allegations on the non-existence of delegates from Lamurde.

Secondly, on issue of over voting, the documentary evidence before the Court for example the exhibit ‘E’ which shows number of Accredited voters to 1009 while total votes cast being 1011 is also evidence of the over voting as alleged by the plaintiff herein. In my view “total number of votes cast can never be over and above “*Accredited Voters*” save the result will be over voting”.

By exhibit ‘H’ once again, the APPEAL COMMITTEE FOUND as follows at paragraph 2 of the recommendations viz –

“On the issue of over voting, the official result sheet clearly indicates the discrepancies between the total votes cast and the total accredited voters for the primary election. The committee has observed over voting by two (2) votes.”

The above again shows evidence of over voting. It appeared as submitted by I.M. Dikko that the parties are ad idem, in that the political party had found that there is over voting and the defendant’s Counsel


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seems to submit that if the two votes were removed or even 100 votes, the 2nd defendant will still win. This, the committee recommended that the INEC has an option as to discretion where there is substantial compliance with the Act. With all due respect to the learned Counsel for both defendants. There is a difference between over voting in general elections and over voting in primary election. The Act provides where there is substantial compliance with the Act in the general election; the INEC can make a return of the elected candidate. Meanwhile what governs this primary election is the party Constitution and guidelines which the Apex Court in APC V. Karfi (supra) had already interpreted as submitted by the plaintiff's Counsel. In the above case, the Apex Court on political parties and party members to be bound by their Constitution held that –

“Learned Counsel for the appellant had argued that the 1st appellant did not breach any rule of natural justice when it decided to ignore the 12 invalid votes and adopt the 3rd applicant as its candidate in the election. But is there any part of its Constitution and/or guidelines which allowed the 1st applicant to ignore the excess votes....NO such provision was made known to this Court.”

Over voting whether of two (2), one (1) or even half vote is still an over voting. This Court is not in a position to subject itself to the calculation suggested by the defence Counsel both in Court to extract the numbers reflecting over voting and to declare the 2nd defendant still leading as to do so would be going against the Apex Court's decision in APC V. Karfi (supra) and same may amount to judicial rascality or perhaps impertinence and insubordination.

The last issue then is the issue of vote buying. Often times I hear men of God and various different preachers of both Muslim and Christian faiths advising and recommending their wards to receive monies from


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politicians during the time of election when these politicians approach them while in their efforts and campaigns soliciting for votes. The clerics often times tell their subjects –

“It is your money just receive your share and vote your conscience.”

Perhaps there were no provision outlawing these types of offers, acceptances and invitations to treat. The Electoral Act 2022 now outlaws any vote buying and have criminalized same in line with the provisions of section 121 (1) and (2) and section 127 (a) and (b) on bribery, conspiracy and undue influence. Reference to the above in this case, the plaintiff alleged vote buying by the 2nd defendant and her agents in line with paragraph 19 where he said and I quote –

“That the election was characterized by votes buying specifically by the Agents of the 2nd defendants who were given (sic) money to delegates.”

Against the above, the 2nd defendant denied the allegations at her paragraph 15 and 16 of the counter-affidavit. To buttress this allegations further, the plaintiff supplied evidence of a case filed before the Court and attached to the further and better affidavits of 18th July 2022. The case is between Hon. Sini Zira & 4 Ors V. EFCC suit No. FHC.YL/CS/10/2022 wherein the applicants filed a fundamental right suit having been arrested by the Economic and Financial Crimes Commission for offences involving bribery, conspiracy, undue influence, money laundering under section 121 (a) (b) (c), section 127 (a) and (b) of Electoral Act and section 161 of the Money Laundering Act 2011. See also the POLICE INVESTIGATION REPORT of 27th May 2022 marked exhibit ‘Q’ to the further and better affidavit. The Certified True Copy of the suit filed by the applicant is attached and marked exhibit ‘P’ to the further and better affidavit. In the said


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affidavit of the fundamental rights in FHC/YL/CS/10/22 the deponent Sadiq Abdulbaqi Esq. deposed at paragraph 3(b) that –

- (b) “The 1st Applicant is director of Senator Aishatu Binani Dahiru campaign organization group also known as Binani Campaign Network.”
- (d) “That the 2nd Applicant donated the sum of N28, 500, 000.00 to the campaign group for the purpose of supporting the campaign of Senator Aishatu Binani Dahiru.”

Paraphrasing the entire affidavit shows that the applicant claim the monies found with them is for the campaign and support of the 2nd defendant herein. The applicants however are undergoing trial at the Chief Magistrate Court having subsequently been granted bail.

The further and better affidavit of the plaintiff have not however been controverted by the defendants herein. The 2nd defendant’s Counsel was of the view that filing of these evidence are new facts. However, I have earlier pointed out that the plaintiff in his paragraph 19 of the initial affidavit of 9th June 2022 pleaded these facts. There is therefore nothing new deposed in the further and better affidavit. The plaintiff by Practice Direction 2022 has the right to file a reply to the defendant’s counter-affidavit. See Order 4 Rule (5) of the Practice Direction 2022. In any case the offence committed allegedly by the then applicants in FHC/YL/CS/10/2022 is subjudice before the Chief Magistrate Court. The 2nd defendant is not accused in the Magistrate Court. I have read exhibit 2 attached to the 2nd defendant’s counter-affidavit, the letter of SAM OLAGUNORISA (SAN) wherein same was addressed to the All Progressive Congress of 30th May 2022, a reply to the petition presented to the Governorship Appeal Committee, wherein Counsel states that the 2nd defendant did not authorized anyone to induce or buy vote and that


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no one was induced and no vote was bought otherwise as Counsel puts it "what are their names and where are they?"

The plaintiff in proving these vote buyers exist put in FHC/YL/CS/10/22 as evidence of the alleged vote buyers.

Meanwhile this issue involves crime which must be proved beyond reasonable doubt as is the position of the law. And where even the culprits or suspect admit to the offences same is admissible only against the maker. It will amount to a travesty of justice and a great violation of all known rules of evidence to indict or convict a defendant based on a confession of a co-defendant. However this is pre-election matter meant to be determined within 6 months. The criminal matter is yet subjudice before the Magistrate Court. By the authority of the case of Veritas Insurance Co. Ltd. V. Citi Trust Investment (1993) 3 NWLR (Pt.218) 349 however, the rule in Smith V. Selwyn (1914) 3 KB 98 is considered anachronistic and no longer applicable in the Nigerian Justice system having also been abolished by the Criminal Justice Act 1967 of England. My point here is, the Civil and Criminal proceedings involving the same parties can be simultaneously prosecuted. In proving allegations of crime, the decision of the Court of Appeal in Obasanya V. Babafemi (supra) is that facts constituting allegations of fraud even if properly raised cannot be tried via originating summons. By definition, 'fraud' consists of bribery and corruption as well as misappropriation. My point is the issue of the vote buying cannot be established via Originating Summons without calling oral evidence which the plaintiff chose not provide.

From my findings in this case therefore, my holding is that there is non-compliance with the Constitution of the 1st defendant as well as the Electoral Act 2022 and party guidelines whereby persons who are not supposed to have voted in the primary elections were allowed to vote i.e.

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delegates from Lamurde Local Government whom were not suppose to have voted at the primaries. Also proved is the clear evidence of over voting as established by plaintiff herein which evidence I do believe against that of the defendants' deponents who insists there was compliance with their guidelines and the Constitution. By the decision of the Apex Court in APC V. Karfi (supra) the Court held –

“There is no doubt that over voting is a serious electoral malpractice which should not be treated with levity. Any case of over voting in an election should render such election void.”

By the provisions of section 85 (5) of the Electoral Act 2022 it provides that –

“A political party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outlined.

(b) In the case of nominations to the position of a governorship candidate, the political party shall where it intends to sponsor candidates hold a special congress in the state capital or any other place within the state with delegates voting for aspirants of their choice at the congress...” Underlining is mine for emphasis.

By paragraph 22 (iii) of the APC Guidelines it provides thus –

“The five (5) elected state delegates shall be the DELEGATES to vote to nominate the Governorship candidate of the party as prescribed in section 84(5) (b) (i) (ii) of the Electoral Act 2022 as amended.”

The provisions of the Electoral Act and Guidelines above provide unequivocally that DELEGATES shall vote at the election. In this case, persons whom are said not to be delegates appeared at the primary election representing Lamurde Local Government whom were not certified accredited delegates and were allowed to vote by the 1st

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defendant's committee for the Governorship election on 27th May, 2022 ~~had~~ ^{and} thereby violated the provisions of the Electoral Act 2022 and the party guidelines and Constitution of the party as well. The resultant consequences of these actions and decisions of the committee might have perhaps brought about the over voting already established before the Honourable Court. These are clear violations of the Act, party constitution and guidelines in toto.


In the case of Salihu V. Oshiomole (No.1) (2021) NWLR (Pt.1778) 237 the Court held –

“Constitution and Guidelines are made by members of political parties to regulate the conduct of their affairs and those of their members. Once made and agreed upon, constitutions and guidelines become binding on the respective political parties and their members. A political party is duty bound to obey its Constitution and guidelines...”

In Ibrahim V. APC (No.1) (2019) 16 NWLR (Pt.1699) 444 SC the Apex Court held –

“A political party is obligated not only to comply with the Electoral Act, but also with its own Constitution and its guidelines for the nomination of its candidates. It is the only measure to enforce internal democracy and checkmate impunity.”

Last but not the least; I have come across the recent decision of the Apex Court in Emmanuel Andy Uba V. Moghalu Appeal No. SC/CV/240/2022 delivered 26th April 2022 also cited (2022) LPELR 57876 (SC) wherein the Court nullified the primary of the APC for non-compliance with the provisions of the guidelines and declared that the party had no candidate in the governorship election. Okoro JSC in APC V. Karfi held –


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“The era of recklessness and impunity by political parties is over, it is an aspect of corruption for a political party to disobey its constitution and guidelines in order to impose candidates on the electorate. The Court has taken a firm stand that this must stop. It is in the interest of our nation that political parties observe internal democracy for smooth running of our democratic process”

The Supreme Court again in *Mato V. Hembe* (2017) LPELR 42765 (SC) held that –


“The only way our democratic dispensation can work effectively is where an aspirant for political office who is qualified to contest an election is given an even playing field. The failure of internal democracy within our political parties right from the grassroots level eventually leads to instability in the entire political system.”

I apply the two above decisions of the Supreme Court without any hesitation in the current action *Mutatis Mutandis* (with necessary changes). The 1st defendant as a political party has been careless in the conduct of its affairs and by the decisions above, the primaries is considered void.

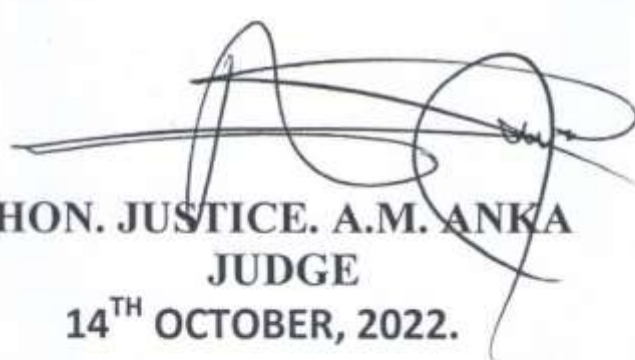
Lastly, the main unavoidable repercussion in this entire political transaction between the parties is as provided in the new/novel section 84 (13) of the Electoral Act 2022 viz –

“WHERE A POLITICAL PARTY FAILS TO COMPLY WITH THE PROVISIONS OF THE ACT IN THE CONDUCT OF ITS PRIMARIES, ITS CANDIDATE FOR ELECTION SHALL NOT BE INCLUDED FOR THE PARTICULAR POSITION IN ISSUE.”


I therefore hold that there is manifest over voting proved before me coupled with the irregularities, violation of Electoral Act 2022, party


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Constitution and Guidelines, the consequences of which leads to the irresistible conclusion that the 1st defendant shall not be able to field any candidate in the upcoming general election and I so hold. In conclusion and as regards the question for determination posed by the plaintiff herein, I answer the first question in the negative. As regards the second question for determination I hold that the primary elections conducted by the 1st defendant for the governorship of Adamawa state on 27th May, 2022 is invalid and the return thereof of the 2nd defendant Senator Aishatu Dahiru Ahmed as the winner of the primary election is accordingly voided having not scored majority of lawful/valid votes cast at the election and is hereby restrained from parading herself as the candidate of the 1st defendant. The 5th order sought for a fresh primary election is hereby refused the applicant. This is the judgment of the Court. All parties have a right of appeal.



HON. JUSTICE. A.M. ANKA
JUDGE
14TH OCTOBER, 2022.



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