

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY, ABUJA
IN THE FCT ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA



VERIFYING AFFIDAVIT

I, name is Hon. Prince Casmir I. Ajulu, adult, male, Nigerian, Christian, Politician of No.1 Dr. Ezediugwu Road, Udoka Estate, Awka, Anambra State of Nigeria do hereby make oath and states as follows;

1. I am the maker of the complaint dated 16th September, 2021 and addressed to the Chief Justice Of Nigeria/
Chairman, National Judicial Council, Supreme Court, Complex, Three Arms Zone, FCT, Abuja and titled **"RE: SUIT NO. A/230/2021 BETWEEN SENATOR UGOCHUKWU UBA V. INEC & 2 ORS: COMPLAINT AGAINST JUSTICE A.O NWABUNIKE OF ANAMBRA STATE HIGH COURT, AWKA JUDICIAL DIVISION;**

COMPLAINT PURSUANT TO JUDICIAL DISCIPLINE REGULATIONS, 2017

2. I hereby verify that the facts contained in the said complaint are true and correct to the best of my knowledge.
3. I make this affidavit in goodfaith believing same to be true and correct in accordance with Oaths Act, 2004.

Deponent

Sworn at the High Court Registry Maitama,
This 23 September, 2021

HIGH COURT OF THE FCT
ABUJA
COMMISSIONER FOR OATHS
FATIMA MAS'UD
BEFORE ME

COMMISSIONER FOR OATHS
23/9/21

Fee - 700
RM 1192185
Date 23/9/20



Peoples Democratic Party (PDP)

Power to the People

Anambra State Chapter

Motto: Justice, Unity and progress

State Secretariat: No 1 Dr. Ezidiegwu Road, Udoaka Housing Estate Awka Phone Number: 08034095884

16TH SEPTEMBER, 2021

THE CHIEF JUSTICE OF NIGERIA/
CHAIRMAN, NATIONAL JUDICIAL COUNCIL
SUPREME COURT COMPLEX
THREE ARMS ZONE
FCT, ABUJA

My lord

**RE: SUIT NO. A/230/2021 BETWEEN SENATOR UGOCHUKWU UBA
V. INEC & 2 ORS:**

**COMPLAINT AGAINST JUSTICE A.O NWABUNIKE OF ANAMBRA
STATE HIGH COURT, AWKA JUDICIAL DIVISION;**

**COMPLAINT PURSUANT TO JUDICIAL DISCIPLINE REGULATIONS,
2017**

INTRODUCTION:

My name is Hon. Prince Casmir I. Ajulu, I am the State Administrative Secretary of Peoples' Democratic Party (PDP) in Anambra State. Between the 6th day of July, 2021 and 19th of July, 2021, PDP was involved in courtroom litigation at Anambra State High court, Awka Division, before Honorable Justice A.O Nwabunike (hereinafter referred to as Justice A.O Nwabunike). I attended all the court proceeding save for the proceeding of 6th July, 2021. I am conversant with the facts and circumstances of this complaint.

With reference to the foregoing subject, I write to make a formal complaint against the unbecoming and injudicious conduct exhibited by Justice A.O Nwabunike from the 6th day of July, 2021 to the 19th day of July, 2021 while he was judicially seised of Suit No. A/230/2021 between Senator Ugochukwu Uba V. INEC & 2 ors.

Justice A.O Nwabunike has breached the Code of Conduct for Judicial Officers of The Federal Republic of Nigeria, 2016. Particularly, Justice A.O Nwabunike has conducted himself contrary to Rules 3.1, 3.2, 3.3, 3.4, 3.5, 3.7 and 12.1(a) of Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, 2016. Which Rules provide inter alia thus:

- 3.1 *A Judicial Officer should be true and faithful to the Constitution and the Law, uphold the course of justice by abiding with provisions of Constitution and the Law and should acquire and maintain professional competence.*
- 3.2 *A Judicial Officer should be patient, dignified and courteous to accused persons and litigants, assessors, witnesses, legal practitioners and all others with whom he has to deal in his official capacity and should demand similar conduct of legal practitioners, his staff and others under his direction and control.*
- 3.3 *A Judicial Officer should accord to every person who is legally interested in a proceeding, or his legal representative full right to be heard according to law, and except as authorized by law, neither initiate, encourage, nor consider ex parte or other communications concerning a pending or impending proceeding.*

For the purpose of this sub-rule an "ex parte communication" is any communication involving less than all the parties who have a legal interest in the case, whether oral or written, about a pending or impending case, made to or initiated or entertained by the Judicial Officer presiding over the case.

3.4 A Judicial Officer shall ensure strict compliance with the provisions of the Constitution which require that a copy of judgment of the Superior Court of Record be given to parties in the cause within seven days of the delivery therefore.

3.5 A Judicial Officer must avoid the abuse of the power of issuing Interim injunctions, ex parte.

3.7 Judicial Officer must appear regularly for work, avoid tardiness, and maintain official hours of the Court.

12.1 A Judicial Officer should disqualify himself in a proceeding in which his impartiality may genuinely and reasonably be questioned, including but not limited to the instances where:

(a) he has a personal bias or prejudice concerning a party or personal knowledge of facts in dispute;

Flowing from the above Rules breached by Justice A.O Nwabunike, I have 12 grounds of complaint against honorable justice A.O Nwabunike and I would adumbrate on them hereunder.

COMPLAINT NO. 1

JUSTICE A.O NWABUNIKE GRANTED AN INTERIM/EXPARTE ORDER IN FAVOUR A PARTY WHO DID NOT FILE ANY MOTION ON NOTICE ALONGSIDE HIS MOTION EXPARTE.

On 5th day of July, 2021, by 12:30pm one Senator Ugochukwu Uba (hereafter referred to as the plaintiff) by way of an Originating Summons, instituted suit No. A/230/2021 against Independent National Electoral Commission (INEC), Peoples' Democratic Party (PDP) and Valentine Ozigbo as 1st, 2nd and 3rd defendants respectively. The Plaintiff on the same 5th July, 2021 filed an Ex parte application. No motion on notice whatsoever was filed by the Plaintiff as at the date the ex parte application was filed. The originating summons and affidavit in support of the originating

summons are attached hereto as **EXHIBIT 1**; while the Ex parte motion, affidavit in support of ex parte motion, and written address in support thereof are all attached as **EXHIBIT 2**.

On 6th July, 2021, less than 24 hours after the Ex-parte motion was filed by the plaintiff, Justice A.O Nwabunike granted all the Ex-parte reliefs sought by plaintiff, including the prayer for an interim injunction, despite the fact that the plaintiff did not file any motion on notice with respect to the reliefs sought in the said Ex parte application. As at the 6th day of July, 2021 when Justice A.O Nwabunike granted ex parte injunction against the defendants, there was no motion on notice filed by the plaintiffs.

On 12th July, 2021 when the suit was called up in the open court, the trial judge, Justice A.O Nwabunike directed **"the parties to identify the processes they have filed in the determination of this suit and indeed every process filed by them as at today 12/07/2021"**. The Record of proceedings for 12/07/2021 (**EXHIBIT 6**) would show that the plaintiff never identified nor filed any motion on notice as at 12/7/2021.

To further buttress the fact that the plaintiff did not file any motion on notice alongside their ex parte application, Justice A.O Nwabunike tied his ex parte to the hearing and determination of the substantive suit. The proper legal procedure ought to be that an Ex parte order is tied to the hearing and determination of the motion on notice. In the enrolled ex parte order, Justice A.O Nwabunike ordered inter alia thus:

"The defendants are hereby ordered and directed to await the determination or outcome of this suit and restrained from presenting, receiving, parading or accepting any person as the Governorship candidate of the 2nd defendant's party for the Governorship election fixed for the 6th November, 2021 to elect Governor of Anambra State"

This conduct of Justice A.O Nwabunike is contrary to the provision of Order 40 Rule 3 (2) of the Anambra State High Court (Civil Procedure) Rules, 2019 which provides that **"No application for an injunction shall be made ex-parte unless the applicant files with it a motion in respect of the application"**. Order 40 Rule 1 (1) of the Anambra State

High Court (Civil Procedure) Rules, 2019 equally provides inter alia that "every motion shall be served within 5 days of filing"....

In the celebrated case of **KOTOYE V. CBN (1989) 1 NWLR (PT 98) P. 419 @ 447 PARA E-F, NNAEMEKA-AGU JSC** in his lead judgment stated thus: "...it is settled that a person who seeks an interim order *ex parte* while also applying for an interlocutory injunction files two motions, simultaneously, one *ex parte* asking for the interim order, and the other on notice applying for an interlocutory injunction. The court before whom the applications come takes the *ex parte* motion and, if satisfied that it has merit *ex facie*, grants it making the order to the date when the motion on notice shall be heard. Parties and their counsel ought not to be encouraged to file and argue a sole application *ex parte* when asking for orders which can only be properly made on notice"....

Unfortunately, Justice A.O Nwabunike ignored this time tested legal principle and granted an interim injunction against the PDP and other defendants despite the fact that no motion on notice was filed alongside the *ex parte* application. Under Rule 3.1 of Code of Conduct for Judicial Officers of The Federal Republic of Nigeria, 2016, a judicial officer is expected to "***uphold the course of justice by abiding with provisions of Constitution and the Law...***" similarly, under Rule 3.5 of Code of Conduct for Judicial Officers of The Federal Republic of Nigeria, 2016, "***a Judicial Officer must avoid the abuse of the power of issuing interim injunctions, ex parte***". Incidentally, Justice A.O Nwabunike has failed to abide by the provisions of Code of Conduct for Judicial Officers, 2016. The enrolled *ex parte* order of Justice A.O Nwabunike is attached herein as **EXHIBIT 3**.

COMPLAINT NO. 2

ABRIDGEMENT OF TIME WITHOUT THE CONSENT OF THE DEFENDANTS

Under Order 18 Rule 16 of the Anambra State High Court (Civil Procedure) Rules, 2019, the time within which a defendant to an Originating summons is to file his counter affidavit, exhibits and written address is 21 days. On the other hand, Section 99 of Sheriffs and Civil Process Act, CAP S6, LFN 2004 provides that a defendant to an originating summons shall have not less than 30 days as time frame within which the said defendant is to file his defence.

Unfortunately, Justice A.O Nwabunike on 6th of July, 2021, by virtue of his ex parte order, abridged the time within which the defendants are legally obliged to file their respective defence to mere 3 day.

The Anambra State High Court (Civil Procedure) Rules, 2019 made very detailed provisions on the mode and procedure for abridgement or extension of time. Order 45 Rule 4 of Anambra State High Court (Civil Procedure) Rules, 2019 provides that **"Parties or their legal practitioner may by themselves abridge or extend the time stipulated in this Rule for doing any act, filing any document, giving notice or taking any proceedings. Provided that any abridgement or extension so made is certified under the signature of the parties or their legal practitioners and file in the registry of the court by or on behalf of the party at whose instance it was done. Provided further that where a party or his legal practitioner refuses to grant the other an extension of time or abridgement of time an application may be made to the court by the party concerned for extension of time or abridgement of time"**

From the foregoing procedure, it is clear that a party who seeks abridgement of time must first obtain the consent his opponents, it is only where the opponent refuses to grant consent that such a party could approach court via an application by way of motion on notice. In total disregard of this procedure, Justice A.O Nwabunike made an ex parte order abridging the time of the defendants without any recourse whatsoever to the defendants and contrary to the provisions of Order 45 Rule 4 of Anambra State High Court (Civil Procedure) Rules, 2019. A judicial officer is expected to *"uphold the course of justice by abiding with provisions of Constitution and the Law..."* similarly, under Rule 3.5 of Code of Conduct

for Judicial Officers of The Federal Republic of Nigeria, 2016, "*a Judicial Officer must avoid the abuse of the power of issuing interim injunctions, ex parte*". Incidentally, Justice A.O Nwabunike has failed to abide by the provisions of the law.

COMPLAINT NO. 3

REFUSAL OF JUSTICE A.O NWABUNIKE TO STAY PROCEEDING AND AWAIT OUTCOME OF APPLICATION FOR TRANSFER MADE TO CHIEF JUDGE OF ANAMBRA STATE

On 16th day of July, 2021, in the course of proceedings before Justice A.O Nwabunike, the attention of the court was drawn to the application for transfer made to the Chief Judge of Anambra State. The Plaintiff's lead counsel- B.E.I Nwofor Esq. alongside the lead counsel to 1st defendant- S. Nwigboke Esq. and lead counsel to 3rd defendant- Alex Ejesieme, SAN all admitted that they were served with the application for transfer made to the Chief Judge of the State. The court proceedings with respect to this suit commenced at 2:15pm on the said 16th July, 2021.

Most unfortunately, the trial judge- Justice A.O Nwabunike failed to acknowledge this fact in the courts record and recorded the exact opposite. In the courts record of proceedings Justice A.O Nwabunike stated thus: ***"After the ruling on above application, counsel informed the court that it filed or wrote a letter of transfer to the Hon. The Chief Judge of the State.***

Upon search from the court's record, the Honourable court finds it not being in its records and none of the parties admitted be so served an therefore overrules and discountenances it as gimmick to frustrate the courts proceedings"

Most unfortunately, the recordings made by Justice A.O Nwabunike as reproduced above is incorrect (to put it mildly). This is because the said application for transfer made to the Chief Judge of Anambra State was contained in the courts casefile/record yet the trial judge feigned ignorance

and pretended that the said application was not in the court's file. Again, as at the said date and time when the proceedings was ongoing, all parties had already been served with the Application for transfer made to the Chief Judge of Anambra State and the court bailiff duly deposed to an affidavit of service to this effect. The CTC of the application for transfer made to the Chief Judge of Anambra State which is in the courts file is attached herein as **EXHIBIT 4** while the court bailiff's affidavit of service of the Application for transfer made to the Chief Judge of Anambra State are attached as **EXHIBITS 5A, 5B, 5C** respectively. The Record of proceedings for 6th to 19th July, 2021 is attached as **EXHIBIT 6**

The only reason why Justice A.O Nwabunike ignored the application for transfer made to the Chief Judge of Anambra State and pretended not to see it in the court's file is because Justice A.O Nwabunike was unduly anxious and overzealous to conclude the case by all means possible and to enter judgment in favour of the plaintiff. If Justice A.O Nwabunike had reckoned with the Application for transfer made to the Chief Judge of Anambra State, he would have automatically stayed all proceedings and awaited the outcome of the Application for transfer made to the Chief Judge of Anambra State. By virtue of Order 38 Rule 7 (1) of Anambra State High Court (Civil Procedure) Rules, 2019. **"An application for transfer under rules 1,2 and 4 operates, from the date thereof, as a stay of proceedings in the High Court or the Magistrate Court where the suit was pending and renders any proceedings after such date in such court null and void"**.

Notwithstanding the strong wording of Order 38 Rule 7 (1) Anambra State High Court (Civil Procedure) Rules, 2019, Justice A.O Nwabunike refused to stay proceedings in the light of the Application for Transfer made to the Chief Judge of Anambra State, but instead chose to adamantly proceed and conduct illegal and void proceeding without any regard to the application for transfer that was made to the Chief Judge of Anambra State.

By his own conduct, the neutrality of Justice A.O Nwabunike to impartially conduct the proceedings was impugned. Under Rule 12(1) (a) of Code of Conduct for Judicial Officers of The Federal Republic of Nigeria, 2016, "A

Judicial Officer should disqualify himself in a proceeding in which his impartiality may genuinely and reasonably be questioned, including but not limited to the instances where:

(a) he has a personal bias or prejudice concerning a party or personal knowledge of facts in dispute"

Similarly, Under Rule 3.1 of Code of Conduct for Judicial Officers of The Federal Republic of Nigeria, 2016, a judicial officer is expected to "uphold the course of justice by abiding with provisions of Constitution and the Law..." Incidentally, Justice A.O Nwabunike has failed to abide by the provisions of the law and refused to recuse himself when it became obvious that his impartiality was called to question.

COMPLAINT NO. 4

CONDUCTING LEGAL PROCEEDINGS AT NIGHT AND IN LITERAL DARKNESS

On 16th July, 2021 Justice A.O Nwabunike at about 2:15 pm directed every other counsel in court other than counsel in Suit No. A/230/2021 to take adjournment dates for their cases. Thereupon, Suit No. A/230/2021 was called up on record. The hearing of the suit lingered from 2:15pm till about 8:35 pm in the night! In the course of the proceedings, at about 6pm the court house electricity generator was turned off signifying that the Anambra State judiciary headquarters has closed its business for the day; Justice A.O Nwabunike overzealously continued with proceedings despite the fact that the court room was beginning to grow dark. There was persistent plea from counsel to 3rd defendant, Alex Ejiesieme, SAN who intermittently informed the court that it is getting dark and visibility had dropped to almost zero in the court room and pleaded for an adjournment. Justice A.O Nwabunike promptly fished out his android phone and used his phone torch light to carry on and continue with the hearing of the case, he equally mandated all counsel in court to switch on the torch lights in their phones. Justice A.O Nwabunike had earlier instructed every non-lawyer in

court to completely turn off their phones in apprehension that the litigants may secretly record the bizarre night drama that was unfolding in the sacred palace of justice.

Section 36 (1) of the 1999 Constitution of Nigeria provides that **"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court"**...(Emphasis are mine)

The conduct of legal proceedings at night and in literal darkness as done by Justice A.O Nwabunike is unreasonable. Night hour under the shadows of darkness is not a reasonable time within which to conduct legal proceedings.

In *Effiom V State* (1995) 1 NWLR PT 373 the Supreme Court posited that **"a reasonable time is such a length of time as may be fairly, properly and reasonably be allowed or required, having regard to the nature of the subject matter and also to the attending circumstances."**

Rule 3.7 of the Code of Conduct for Judicial Officers provide inter alia thus: ***"Judicial Officer must appear regularly for work, avoid tardiness, and maintain official hours of the Court"*** (Emphasis are mine) by conducting legal proceedings at night and in under the shadows of darkness, it is submitted that Justice A.O Nwabunike did not maintain the official hours of the court.

COMPLAINT NO. 5

REFUSAL TO GRANT TIME/OPPORTUNITY TO DEFENDANTS TO FILE THEIR RESPONSE TO MOTION.

The record of proceeding of 16th of July, 2021 (**EXHIBIT 6**) shows that on the said date, Motion No. A/616m/2021 was served 3rd defendant's counsel on the same date of 16th July, 2021.

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COMPLAINT NO. 5

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The record of proceeding of 16th of July, 2021 (**EXHIBIT 6**) shows that on the said date, Motion No. A/616m/2021 was served 3rd defendant's counsel on the same date of 16th July, 2021.

Order 40 Rule 1 (4) of the Anambra State High Court (Civil Procedure) Rules, 2019 a respondent to a motion shall have 7 days within which to file his response to a motion. Despite the fact that Justice A.O Nwabunike by his ex parte order of 6th July, 2021 (**EXHIBIT 3**) abridged the defendant's time from 21 days to merely 3 day, the trial judge- Justice A.O Nwabunike did not grant any time for the defendants to file their defense/response to the motion that was served on them. The trial judge permitted the Applicant to move his motion in disregard of the fact that the 3rd respondent counsel was served that same day and has not yet filed his response to the motion and was desirous of filing a response thereto.

Similarly, another motion bearing Motion No. A/629m/2021 was filed on 16th July, 2021 being the date of the proceedings in question. The said motion was served on all defendants the same date (16/7/2021). Apparently this Motion No. A/629m/2021 was not yet ripe for hearing because under Order 40 Rule 5 of the Anambra State High Court (Civil Procedure) Rules, 2019, "**...there must be at least 2 clear das between the service of all processes in respect of a motion and the day named in the motion for hearing**". All processes with respect to this motion No. A/629m/2021 have not yet been served because the defendants were yet to file any counter affidavit or written address on the said motion. From the records of court, (**EXHIBIT 6**) Counsel for 3rd defendant specifically pleaded for at least 24 hours to enable him file his response to the motion that was served on him on the same date. Most unfortunately, the trial court refused to oblige the defendants but instead went ahead to hear the said motion without according fair hearing to the defendants.

Under Rule 3.3 of Code of Conduct for Judicial Officers, "**A Judicial Officer should accord to every person who is legally interested in a proceeding, or his legal representative full right to be heard according to law**"... , most unfortunately, Justice A.O Nwabunike failed to abide by this code.

COMPLAINT NO. 6

**JUDICIAL RASCALITY: FAILURE TO ABIDE BY THE TIME TESTED
JUDICIAL PRECEDENT ESTABLISHED BY THE SUPREME COURT**

Justice A.O Nwabunike at the height of his judicial impertinence refused to abide by the principle of stare decisis and vehemently refused to abide by the earlier decisions of the Supreme Court but instead chose a new bizarre course for himself. For instance, in his judgment delivered on 19th July, 2021 (**EXHIBIT 8**), Justice A.O Nwabunike *suo motu* redefined the concept of "Aspirant" as it relates to elective political offices in Nigeria. According to his lordship:

"Section 156 of the Electoral Act, supra, defines "Aspirant" as follows:- "aspirant" means a person who aspires or seeks or strives to contest an election to a political office....

"Now, the Honourable Court looking at the plaintiffs claims in the originating summons as well as the questions for determination and affidavit in support of the originating summons, the first question to ask is whether the plaintiff qualifies as an "aspirant" within the definition of that word in section 156 of the Electoral Act, supra? The honourable court has no doubt whatsoever in its mind that the plaintiff is an aspirant within the definition of the term an aspirant in Section 156 of the Electoral Act. Having regard to his depositions in paragraphs 3,5,22,23,24,25,26 and 27 of the affidavit in support of the Originating summons, read together with Exhibit A,A1, A2 and A3 exhibited to the affidavit. Those paragraphs and those exhibits clearly show that the plaintiff aspires, seeks, or strives to contest the election to the office of Governor of Anambra State in the election fixed to hold on 6th November, 2021"

Curiously Justice A.O Nwabunike did not cite any judicial authority in support the novel judicial interpretation which he ascribed to the term "Aspirant"

Notwithstanding the above, the attention of the trial court- Justice A.O Nwabunike was drawn to the judicial interpretation that had already been given to the term "Aspirant" by the Supreme Court in a wide array of

cases. In the Written address in support of their preliminary objection, the 3rd defendant referred the trial court to the judicial interpretation of the term "Aspirant" as elucidated by the Supreme Court in *Eze V. INEC* (2019) 1 NWLR PT 1652 P. 1 @ 24 Para E- H where the Supreme Court defined the term "Aspirant" thus:

"An Aspirant is a person who contested the primary election of his party. He must be someone who actually participated in the primary election he is challenging. See *PDP V Sylva* (2012) 13 NWLR (Pt.1316) 85 @ 126 A-E; *Lado V. CPC* (2011) 18 NWLR (Pt 1279) 689; *Shinkafi V. Yari* (2016) 7NWLR (Pt 1511) 340..."

The trial judge- Justice A.O Nwabunike failed to give any consideration to the position of the Supreme Court in this regard. Certainly there is no known judicial interpretation in support of this strange position taken by Justice A.O Nwabunike.

When the judgment of Justice A.O Nwabunike went on Appeal (In Appeal No. CA/AW/223/2021), the President of the Court of Appeal, Monica B. Dongban-Mensem PCA clearly indicted Justice A.O Nwabunike for his judicial rascality. In the words of the Noble President of the Court of Appeal at page 50 and 61 of his lordship's judgment (**EXHIBIT 12**) held inter alia thus:

Page 50:

"...The learned trial court ought to have declined jurisdiction to entertain the matter. A careful look at both the judgment from the learned trial court and that of Adeniyi (J) reveals that both learned judges are well aware of the provisions of the law and the findings of the Apex Court on the issues raised . it is curious that they both chose to disregard the principle of *stare decisis* in their decisions" ...

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"...The trial court in its determination of the question of *locus standi* was bound by the decision of the Apex court and should have followed them, same having been brought to his notice by learned silk for the Appellant. It cannot be gainsaid that the trial court, being at the lower rung of the judicial ladder than

the Apex court, which is at the topmost rung of the judicial ladder, is bound to follow the decision of the latter based on the age long and vital doctrine of *stare decisis* on the pain of sanction"

The Supreme Court had also held that a trial "court has a duty to consider all authorities relied on by parties"... See *Brittania -U (Nig) Ltd v. Seplat Pet. Dev. Co. Ltd* (2016) 4 NWLR (Pt 1503) 541 SC . The preliminary objection filed by the 3rd defendant is attached as **EXHIBIT 7** while the Judgment of Justice A.O Nwabunike delivered on 19th July, 2021 is attached as **EXHIBIT 8**

COMPLAINT NO 7

JUSTICE A.O NWABUNIKE BREACH AND DESECRATED THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

Justice A.O Nwabunike in his Judgment (**EXHIBIT 8**), despite holding that the suit of the plaintiff does not seek to interpret the judgment of a court of co-ordinate jurisdiction, still went ahead to interpret and **enforce** the judgment of Justice O.A Adeniyi of FCT High Court contrary to the Constitution of the Federal Republic of Nigeria and all known judicial ethics.

On one hand, Justice A.O Nwabunike held thus: "The honourable court has carefully considered all the grounds of objection and is of the humble view that the present suit as it is constituted is not seeking for an interpretation or construction of a court judgment"

On the other hand, the trial judge- Justice A.O Nwabunike went ahead to enforce the judgment of court of coordinate jurisdiction and held inter alia in his judgment thus:

"In effect the issues set out in the Originating summons of the plaintiff as filed are found in favour of the plaintiff for being in obedience to the order of the court as regards the conduct of the Governorship primaries in Anambra State.... The plaintiff has established his case having followed the existing Order of the FCT High Court; their action is valid. Accordingly the plaintiff is

granted the reliefs as sought in this suit as hereunder declared and ordered by this Honourable Court": ...

From another dimension, Justice A.O Nwabunike interpreted and reviewed the judgment of court of coordinate jurisdiction when he held thus:

"What is the life order in the judgment ie. The Exhibit C1 and C2 in the originating summons and Exhibit A in the further affidavits filed by the plaintiff. The said Order 5 in the said FCT High court Judgment reads thus:

"the 1st defendant (ie PDP which is the 2nd defendant herein) is hereby ordered and compelled, that during the conduct of all elections in Anambra State to henceforth adopt, employ, recognize and use only the list of already inaugurated party officers and delegates that emerged from the Anambra PDP congresses conducted on 28/11/2017 and 1/12/2017 validated by Senator Grace Bent Ward Congress

The wordings of the order are in simple language and with no ambiguity and does not require or call for interpretation and indeed that is not the gravamen of this suit. The question in the suit is between the parallel congresses or election of the candidate of the 2nd Defendant which of them conforms with the pending or life order of the FCT High Court now subject of Appeal at the Court of Appeal, Abuja Division.

The 2nd Defendant knowing the importance of disobedience to the order of court and the consequences of its disobedience took judicial steps to procure order for stay of its execution by the court that issued it...

The Plaintiff by their showing in their affidavit complied with the said judgment order hence their reliance on it in instituting this suit".

However, in the appeal that was subsequently filed against the perverse judgment of Justice A.O Nwabunike, In Appeal No. CA/AW/223/2021, the President of the Court of Appeal, Monica B. Dongban-Mensem PCA wasted

no time in making a judicial finding to the effect that Justice A.O Nwabunike breached the Constitution of the Federal Republic of Nigeria by interpreting and enforcing the judgment of a court of coordinate jurisdiction. In the words of the Noble President of the Court of Appeal at page 55 of his lordship's judgment (**EXHIBIT 12**) held thus:

"It is apt to declare that the Awka High Court Coram Nwabunike (J) acted at large and in total disregard of the Constitution of the Federal Republic of Nigeria in assuming jurisdiction over a court of coordinate jurisdiction. Section 287 (1) – (3) of the Constitution is very clear. Of For ease of reference, the said provision of the Constitution is hereby reproduced anon;

Section 287

(1) The decisions of the Supreme court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the supreme Court.

(2) The decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Court of Appeal.

(3) The decisions of the Federal High Court, the National Industrial Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, the National Industrial Court, a High Court and those other courts, respectively. (Emphasis supplied)

Thus nowhere in these provisions is a court of coordinate jurisdiction conferred with the powers to review nor execute the decision of a court of coordinate jurisdiction. Once a High court has made a pronouncement, three situations come into play; execution, stay of execution or appeal and the Procedures are well spelt out in legislations and the Rules of court . there is no room for another court of coordinate

jurisdiction to interpret, nor execute the judgment of another court."

In the case of Egbuchu v. Continental Merchant Bank PLC (2016) NWLR (Pt 1513) P 192 @ p.212, para. B the Supreme Court made it abundantly clear that **"The Constitution of a country is the supreme law of the land and commands absolute obedience"**. Most unfortunately, Justice A.O Nwabunike chose to disobey the constitution by interpreting and enforcing the judgment of a court of coordinate jurisdiction.

In Covalent Oil and Gas Services Ltd V Eco Bank (2021) 10 NWLR (Pt.1784) P. 252 @ P. 281, para. D, the Court of Appeal held that: **"A court cannot sit on appeal over its own judgment or review the judgment of a court of coordinate jurisdiction"** [Akporue v. Okei (1973) 12 SC 137; Waghoreghor v. Agenghen (1974) 1 SC 1; Koden v. Shidon (1998) 10 NWLR (Pt. 571) 662 referred to.]

Despite the legal principle that prohibits Courts from interpreting the judgment of courts of coordinate jurisdiction Justice A.O Nwabunike went ahead to review and interpret the judgment of O.A Adeniyi J of FCT High Court and also refused to abide by the doctrine of stare decisis.

By virtue of Rue 3.1 of Code of Conduct for Judicial Officers, **"A Judicial Officer should be true and faithful to the Constitution and the Law, uphold the course of justice by abiding with provisions of Constitution and the Law and should acquire and maintain professional competence"**.

By perversely interpreting and enforcing the judgment of a court of coordinate jurisdiction, Justice A.O Nwabunike has breach and desecrated Section 287(3) of 1999 Constitution of the Federal Republic of Nigeria (As amended); a Constitution which he swore to uphold and has equally demonstrated that he lacks the professional competence expected of a judicial officer.

COMPLAINT NO. 8

REFUSAL TO CONSIDER THE DEFENSE OF THE DEFENDANTS

In his determination to do the bidding of the plaintiff, the trial judge, Justice A.O Nwabunike failed to give any iota of consideration to the defence/counter affidavit/exhibits proffered by the defendants in their defense to the originating summons.

The judgment of Justice A.O Nwabunike (**EXHIBIT 8**) spanned into 46 pages. Justice A.O Nwabunike devoted the first 16 pages of the said judgment (**EXHIBIT 8**) in analyzing the case of the plaintiff, the judge positively identified all the exhibits tendered by the plaintiff and quoted verbatim long paragraphs from the affidavit in support of the plaintiff's originating summons. Most unfortunately, no mention was made of any of the exhibits tendered by the defendants. Even the counter affidavit of the 3rd defendant was not considered in any material respect. The trial judge-Justice A.O Nwabunike completely ignored and failed to consider any of the material facts in the counter affidavit of the 2nd and 3rd defendants the judge also failed to evaluate the exhibits tendered by the 2nd and 3rd defendants.

With every sense of respect, the judgment of Justice A.O Nwabunike is grossly perverse and was made in bad faith. from the wordings of the judgment, it is clear that the judge was already predetermined to enter judgment for the plaintiff.

According to the court in the case of *Ikonne V Ezieme* 2106, NWLR (Part 1259) p 536 @ P. 558, paras. D-G **"A perverse finding is one which ignores the facts or evidence before the court, and when considered as a whole amounts to a miscarriage of justice. A finding is perverse if it is not borne out of the evidence before the court"**. Justice A.O Nwabunike ignored the defence of the defendants and the exhibits tendered by the defendants; he failed and refused to evaluate and consider them.

In *Dantata Jnr. V. Mohammed* (2012) 14 NWLR (Pt. 1319) P. 122 the court of Appeal held that **"A trial court has a duty to consider all evidence adduced before it. In the instant case, the trial court was obliged**

and duty bound to consider the evidence of all sides in the case concerning every material issue. That duty was not performed as most of the evidence and issues submitted for determination were ignored by the trial court”...

Similarly, in UBA PLC v. BTL LTD (2006) 19 NWLR (Pt. 1013) P. 61 the Supreme Court held thus: **“Documentary evidence tendered by a defendant constitutes an integral part of the defence of the defendant; a trial court and the appellate courts have a duty to carefully consider them.”**....

By virtue of 3.3 of Code of Conduct for Judicial Officers, **“A Judicial Officer should accord to every person who is legally interested in a proceeding, or his legal representative full right to be heard according to law”**. Most unfortunately, Justice A.O Nwabunike failed to abide by this code.

COMPLAINT NO 9

JUSTICE A.O NWABUNIKE PREVENTED AND BARRED THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) FROM PERFORMING ITS CONSTITUTIONAL DUTY.

On 6th of July, 2021 when Justice A.O Nwabunike granted his interim injunction, (as per **EXHIBIT 3**) he ordered thus: **“The defendants are hereby ordered and directed to await the determination or outcome of this suit and restrained from presenting, receiving, parading or accepting any person as the Governorship candidate of the 2nd defendant’s party for the Governorship election fixed for the 6th November, 2021 to elect Governor of Anambra State”**

By virtue of this interim injunction, INEC as the 1st defendant was barred, restrained and prevented from accepting the candidate of the PDP for the forthcoming governorship election of Anambra State scheduled for 6th November, 2021.

Section 87(10) of the Electoral Act, 2010 (As amended 2015) provides that: **“Nothing in this section shall empower the court to stop the**

holding of primaries or general election or the process thereof under this Act pending the determination of a suit" (emphasis supplied)

By this statutory provision, the trial court is deprived of jurisdiction to make any order restraining an electoral process pending the determination of a suit. Accepting/recognizing candidates by INEC is part of an electoral process

Notwithstanding the above, Justice A.O Nwabunike by virtue of his interim injunction, restrained INEC from continuing with a particular aspect in the electoral process.

By virtue of Rule 3.1 "A Judicial Officer should be true and faithful to the Constitution and the Law, uphold the course of justice by abiding with provisions of Constitution and the Law and should acquire and maintain professional competence".

By restraining INEC from its constitutional duties pending the hearing and determination of the suit contrary to the express provisions of Section 87(10) of the Electoral Act, 2010 (As amended 2015), Justice A.O Nwabunike acted in utter disregard to Constitution and the Electoral Act and in defiance to the Code of Conduct for Judicial Officers

COMPLAINT NO. 10

INORDINATE HURRY TO CONCLUDE PROCEEDINGS IN FAVOR OF THE PLAINTIFF

The suit of the plaintiff was filed on 5th of July, and within a space of 10 working days, Justice A.O Nwabunike had concluded trial and rendered perverse judgment in favor of the plaintiff. In his bid to hurriedly render favourable judgment to the plaintiff, Justice A.O Nwabunike conducted the hearing of the originating summons in the night and in darkness under the shadows of his android phone torchlight. The judge equally refused to grant adjournment as requested by counsel to 2nd defendant.

On 12/7/2021 after the conclusion of preliminary hearing in court, the suit was adjourned to 14/7/2021; shortly thereafter, the attention trial judge-justice A.O Nwabunike was drawn to the Application for transfer made to the Administrative Judge, thereupon the court ordered that this letter operated as a stay of proceedings and adjourned *sine die* to await the outcome of the Application for transfer made to the Administrative Judge pursuant to Order 38 Rule 7 (1) of Anambra State High Court (Civil Procedure) Rules, 2019. (This must not be confused with the other Application for transfer subsequently made to the Chief Judge of Anambra State referred to in complaint No. 3 above). The earlier adjourned date of 14/7/2021 was therefore overtaken by events. Surprisingly on the 15/7/2021 the bailiff of court acting under the apparent instruction of Justice A.O Nwabunike issued a text message to all counsel in the matter to the effect that the suit is slated for the next day 16/7/2021. The length of the notice/hearing notice via text message was less than 24 hours.

On 16/7/2021 when the matter was called up, the counsel for 2nd defendant was absent in court due to the fact that the notice for hearing was very short and he was unable to secure an air ticket to travel down from FCT Abuja down to Awka, Anambra State. The 2nd defendant caused an adjournment letter to be written to this effect. Most unfortunately, Justice A.O Nwabunike refused to accede to this request for adjournment and proceeded with the hearing of the substantive suit in the absence of counsel to 2nd Defendant. Justice A.O Nwabunike conducted the proceedings late into the night and in darkness all in his bid to deliver a predetermined judgment in favor of the plaintiff. The Affidavits of service of hearing notice on all counsel is attached as **EXHIBIT 9A, 9B, 9C, and 9D** respectively. These affidavits of service all clearly show that the length of notice granted by the court was less than 24 hours despite the fact that none of the counsel was based in Anambra State. As a matter of fact all the defense counsels are based in FCT, Abuja. The letter of adjournment written by counsel to 2nd defendant is attached as **EXHIBIT 10**.

Barely 3 days after the night time proceedings conducted by Justice A.O Nwabunike, precisely on 19th July, 2021, judgment was predictably delivered in favour of the plaintiff wherein the case of the plaintiff was upheld hook, line and sinker.

Under Section 285 (10) of the 1999 Constitution (4th Alteration Act, 2017) **"A court in every pre election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit"**. Since Justice A.O Nwabunike had 180 days from the 5th of July, 2021 when the suit was filed, what then is the rationale behind the ultrasonic speed with which the trial judge proceeded to unduly determine the suit within 14 days (10 working days actually).

As aptly stated by the Supreme Court in *Obasi V State* (2021) 4 NWLR (Pt.1766) P. 242 :

"it is the desire of all involved in the administration of justice to uphold principle which states that justice delayed is justice denied. However, it is equally unacceptable to encourage or to do injustice in an attempt at speedy dispensation of justice. Justice may be slow sometimes but it will surely arrive at its destination. Justice delayed is justice denied. The reverse is equally disturbing. Justice rushed is a travesty of justice and a threat to the fabric that binds civilized society together. The balance is what the law seeks when justice is to be administered..."

By virtue of Rule 3.2 of Code of Conduct for Judicial officers, **"A Judicial Officer should be patient, dignified and courteous"....**

By virtue of Rule 3.3 of Code of Conduct for Judicial Officers, **"A Judicial Officer should accord to every person who is legally interested in a proceeding, or his legal representative full right to be heard according to law, and except as authorized by law, neither initiate, encourage, nor consider ex parte or other communications concerning a pending or impending proceeding.**

For the purpose of this sub-rule an "ex parte communication" is any communication involving less than all the parties who have a legal interest in the case, whether oral or written, about a pending or impending case, made to or initiated or entertained by the Judicial Officer presiding over the case.

Having exhibited hurried impatience and conducting part of the legal proceedings in the absence of the 2nd defendant and their counsel, Justice A.O Nwabunike breached Rules 3.2 and 3.3 of Code of Conduct for Judicial officers.

COMPLAINT NO. 11

JUSTICE A.O NWABUNIKE IN HIS DISPLAY OF JUDICIAL INCOMPETENCE AIDED AND ABETTED A COMPLICIT PARTY TO REAP THE FRUITS OF ILLICIT FORUM SHOPPING

Every law student in Nigeria knows that the issue of jurisdiction is the threshold of every suit. A trial conducted in the absence of jurisdiction amounts to an exercise in futility. The plaintiff in the suit before Justice A,O Nwabunike was complicit in the illicit act of "forum shopping". The same counsel to the plaintiff- B.E.I Nwofor Esq. had earlier approached the FCT High Court in Suit No. FCT/HC/CV/774/2021 Between Samuel Anyakorah V. PDP & 2 Ors. over a cause of action that originated in Anambra State; the said plaintiff's counsel obtained a court order from the FCT High Court presided over by Justice O.A Adeniyi and shortly thereafter filed another suit in Anambra State High Court before Justice A.O Nwabunike seeking to interpret the earlier judgment obtained from the FCT High court. Unfortunately, Justice A.O Nwabunike willfully acceded to the gimmicks of the plaintiff and his counsel and granted all the bizarre reliefs sought by them.

Justice A.O Nwabunike has already been indicted by the Court of Appeal when his perverse judgment was appealed against in Appeal No CA/AW/223/2021 wherein Sankey JCA at Pages 9 and 11 of his lordship's judgment reprimanded Justice A.O Nwabunike thus:

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"Finally, it is not out of place, but rather timely at this stage to issue a word of admonition to counsel and trial courts alike on the deplorable practice of forum shopping which is fact becoming a canker-worm that is threatening the rule of law and the democratic process of our country"....

"The facts of this case reveals a classic case of forum shopping wherein the same party, in respect of a cause of action which arose in Anambra State, chose to proceed all the way to the FCT High Court to file an action. Upon succeeding in his claim before the FCT High Court, he casually strolled to another court of his choosing, this time the High Court of Anambra State, where the actual cause of action arose in the first place, to file another action seeking to compel obedience with, or to give teeth to the judgment of the FCT High Court (since declared a nullity). By acceding to the claim of the 1st respondent, the High Court of Anambra State endowed upon the FCT High Court extra territorial jurisdiction, a jurisdiction which it did not possess. These actions, which clearly amounted to forum shopping, is strongly deprecated by this court as it is not within the province of counsel or parties to go about picking and choosing which court and in what jurisdiction they would most probably receive favourable decision.

In the same vein, a judge of a court of law worth his salt, should not allow himself to be used in this manner for any purpose. A judge should not pretend to be ignorant of the extent of the territorial, as well as the subject matter jurisdiction of the court over which he presides. For if he is ignorant of the law then he is not worthy of the office he occupies".

By virtue of Rule 3.1 of the Code of Conduct for Judicial Officers "***A Judicial Officer should be true and faithful to the Constitution and the Law, uphold the course of justice by abiding with provisions of Constitution and the Law and should acquire and maintain professional competence***".

Unfortunately, Justice A.O Nwabunike failed to live by the above provision. He exhibited judicial incompetence, failed to uphold the course of justice and was unfaithful to the law of our land.

COMPLAINT NO 12

JUDGMENT READ IN OPEN COURT WAS AT VARIANCE WITH COPY OF THE JUDGMENT DELIVERED TO PARTIES.

Perhaps it was an error, or indeed borne out of mischief, the fact remains that the judgment delivered by Justice A.O Nwabunike in open court is at variance with what is contained in the copy that was eventually made available to the parties 5 days after the judgment was delivered. For instance, In open court, Justice A.O Nwabunike awarded cost of N10,000,000.00 (Ten Million Naira) against the defendants but in his judgment made available to the parties, it was only restricted to the 2nd and 3rd defendants. The audio recording of the said judgment would be attached as **EXHIBIT 11**.

WITNESSES:

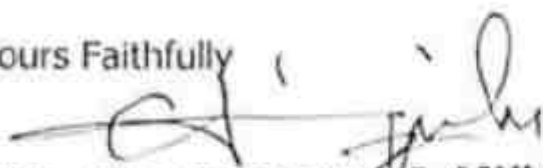
I would testify in proof of the facts contained in this petition. I already have made a sworn deposition. I also have 10 witnesses who were present in court between 6th July, 2021 and 19th July 2021. At this point I would not reveal their identities, if the need arises, they can be summoned with a subpoena to attend before the NJC to testify.

CONCLUSION

In the final analysis, from the 12 grounds of complaint made above, it is clear that Justice A.O Nwabunike is mischievous, partial, obstinate, incompetent and lacks the proper decorum expected of a judicial officer. From a dispassionate review of the judgment of Justice A.O Nwabunike, one can safely conclude that Justice A.O Nwabunike was overtly compromised in favor of the plaintiff. Expectedly, the Court of Appeal has promptly dismissed the judgment of Justice A.O Nwabunike in Appeal No. CA/AW/223/2021. The said Court of Appeal judgment delivered on 3rd September, 2021 is attached as **EXHIBIT 12**. The likes of Justice A.O Nwabunike are not a fit and proper person who ought to have been elevated to the bench in the first place. The National Judicial Council is most respectfully urged to mete out on Justice A.O Nwabunike the highest

degree of sanction reserved for judicial officer who pollute the streams of justice in Nigeria.

Yours Faithfully



HON. PRINCE CASMIR I. AJULU

PHONE: 0803672 8012

Encl.:

The originating summons and affidavit in support of the originating summons
EXHIBIT 1

Ex parte motion, affidavit in support of ex parte motion, and written address in support thereof
EXHIBIT 2

Enrolled ex parte order **EXHIBIT 3.**

The CTC of the application for transfer made to the Chief Judge of Anambra State
EXHIBIT 4

3 affidavit of service of the Application for transfer made to the Chief Judge of Anambra State
EXHIBITS 5A, 5B, 5C respectively

The Record of proceedings for 6th to 19th July, 2021 **EXHIBIT 6**

The preliminary objection filed by the 3rd respondent **EXHIBIT 7**

Judgment of Justice A.O Nwabunike **EXHIBIT 8**

4 Affidavits of service of hearing notice **EXHIBIT 9A, 9B, 9C, and 9D** respectively.

The letter of adjournment written by counsel to 2nd defendant **EXHIBIT 10.**

The audio recording **EXHIBIT 11**

Court of Appeal judgment CA/AW/223/2021 **EXHIBIT 12.**