

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 30TH DAY OF JANUARY, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/120/18

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

BARR. OMEBEH IKEUWA COLLINS.....CLAIMANT

AND

- 1. PEOPLES DEMOCRATIC PARTY (PDP)**
- 2. PRINCE UCHE SECONDUS
(NATIONAL CHAIRMAN, PDP)**
(For and behalf of the National Executive Working Committee of PDP).....**DEFENDANTS**
- 3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)**
- 4. CHIEF JOSEPH OBINNA OGBA**
- 5. CHIEF PAULINUS IGWE NWAGU**

JUDGMENT

The Claimant’s Writ of Summons, Statement of Claim and all other Originating Processes is dated and filed on the 6th day of November, 2018. It claims the following reliefs against the Defendants:

- 1. A declaration that the Claimant, having purchased, obtained and paid for the 1st Defendant’s Senatorial Expression of Interest and Nomination Forms and all necessary fees and levies to the 1st Defendant fulfilled all the requirements and conditions, screened, cleared and issued with provisional Clearance Certificate by the 1st Defendant to participate in the 1st Defendant’s Senatorial Primary election, is entitled to contest, participate, be allowed to participate and or must be given the opportunity to

contest and participate in an all inclusive Senatorial Primary Election of the 1st Defendant at which a candidate will be selected and elected by the 1st Defendant's delegates to contest the forthcoming February 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State.

2. A declaration that the screening of the Claimant by the 1st Defendant's Special Screening Committee constituted to screen Aspirants who were not screened by the State Screening Committee was an official act and function which was regularly, duly and rightly done, the Claimant having not being earlier on screened by the Ebonyi State National Assembly Aspirants Screening Committee led by Rev. Arc. Benson Ezem, who in the Senatorial Committee Report submitted to the 1st and 2nd Defendants, clearly stated that the Claimant was not screened at all, which is contained and reflected in the Ebonyi Senatorial Screening Committee Report pleaded and reproduced.
3. A declaration that the Claimant who was not and never screened by the 1st Defendant's Ebonyi State National Assembly Aspirants Screening Committee was not screened in error by the 1st Defendant's Special Screening Committee sitting in Abuja and the provisional Clearance Certificate duly, regularly and lawfully issued by the 1st Defendant to the Claimant to contest and participate in the Senatorial Primary Election of the 1st Defendant at which a Candidate will be selected and elected by the 1st Defendant's delegates to contest the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State, was not wrongly issued to the Claimant.
4. A declaration that the Provisional Clearance Certificate lawfully, regularly and duly issued to the Claimant by the 1st Defendant after the screening of the Claimant by the 1st Defendant's Special Screening Committee that screened, cleared and issued provisional Clearance Certificate to the Claimant to contest and participate in the senatorial primary Election of the 1st Defendant at which a Candidate will be selected

and elected by the 1st Defendant's delegates to contest the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State, is unassailable, irrevocable, valid and subsisting.

5. A declaration that the purported withdrawal of the provisional Clearance Certificate lawfully, duly and regularly issued to the Claimant by the 1st Defendant, through a publication and press announcement contained in Pages 22 and 23 of THIS DAY, Saturday 29 September, 2018, Newspaper issued and made by the 1st Defendant, through the 2nd Defendant, and their officers, on the illusion and allegation that the Claimant was screened in error by the 1st Defendant's Special Screening Committee sitting in Abuja and the Allegation and illusion that the Clearance Certificate issued to the Claimant was wrongly issued, without affording the Claimant a hearing, is unconstitutional; null and void for violating the Claimant's legal and constitutional right to fair hearing guaranteed by Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) as well as the African Charter on Human and People's Rights.
6. A declaration that the use of deception, impunity, arbitrary fiat or adoption of undemocratic, unconventional or illegal method by the 1st and 2nd Defendants, the 1st Defendant's Senatorial Primary Election Electoral Committee, cum returning officer(s) and their agents, to wrongfully and unjustly omit the name of the Claimant, bar, prevent and wrongfully exclude the Claimant from contesting and participating in the Senatorial Primary Election of the 1st Defendant, at which a Candidate will be selected and elected by the 1st Defendant's delegates to contest the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State, is null and void and of no effect whatsoever.
7. A declaration that any acts, omission, commission, the failure, refusal or neglect by the 1st, 2nd and 3rd Defendants, their officers and their agents to take all necessary steps to ensure that the Claimant, who is eligible to contest, participate, vote and be voted for

and who was duly screened, cleared and issued with provisional Clearance Certificate to contest and participate in the Senatorial Primary Election of the 1st Defendant, at which a Candidate will be selected and elected by the 1st Defendant's delegates to contest the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District Ebonyi State, is allowed to freely participate and/or given the opportunity to contest and participate in an all inclusive Senatorial Primary Election of the Defendant, is illegal and unconstitutional.

8. A declaration that 1st Defendant's shadow and makeshift Senatorial Primary Election Purportedly held on the 2nd day of October, 2018 at Onueke, Ezza South Local Government Area, Ebonyi State, wherein the Claimant who had acquired vested interest and accrued right; obtained and paid for the 1st Defendant's Senatorial Expression of Interest and Nomination Forms; duly screened, cleared and issued with Provisional Clearance Certificate to participate and contest the Senatorial Primary Election by the 1st Defendant, who would have emerged Victorious in the Senatorial Primary Election, but the name of the Claimant was omitted; wrongfully and unjustly excluded, barred and prevented from contesting and participating in an all inclusive Senatorial Primary Election of the 1st Defendant, at which a Candidate will be selected and elected by the 1st Defendant's delegates to contest the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State, is null and void.
9. A declaration that the 1st Defendant has no Candidate and/or has No validly selected, elected or nominated Candidate that will fly the flag of the 1st Defendant; contest or stand for the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State, until the Claimant, the 4th and 5th Defendants and all persons who procured the 1st Defendant's forms, who were duly screened and cleared to participate and contest the 1st Defendant's Senatorial Primary Election, is allowed to freely participate, contest and/or given the opportunity to contest and participate in an all inclusive Senatorial Primary Election of the 1st Defendant, at which a candidate will

be selected and elected by the 1st Defendant's delegates to contest the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State.

10. An Order of Court setting aside the steps resolution, decision, publication and announcement taken and made by the 1st – 2nd Defendants, their officers and agents, contained in pages 22 and 23 of THIS DAY, Saturday 29 September, 2018, Newspaper, purportedly withdrawing the Provisional Clearance Certificate lawfully, duly and regularly issued to the Claimant by the 1st and 2nd Defendants, for being unconstitutional, null and void and for violating the Claimants legal and constitutional right to fair hearing guaranteed by Section 36 of the 1999 Constitution of the Federal Republic of Nigeria(as amended) as well as the African Charter on Human and People's Rights.
11. An order of Prohibitory Injunction restraining the 1st, 2nd and 3rd Defendants, its agents, Servants or privies from accepting and giving recognition to the 4th or 5th Defendant(s) as candidate of the 1st Defendant for the position of Senatorial Candidate of Ebonyi Central Senatorial District, Ebonyi State, UNTIL an all inclusive Senatorial Primary Election is organised, conducted and supervised by the 1st, 2nd and 3rd Defendants and their officers and all persons duly screened and cleared to participate and contest the Senatorial Primary Election, including the Claimant is freely allowed to contest and participate and/or given the opportunity to contest and participate in the 1st Defendant's Senatorial Primary Election at which a candidate will be selected and elected by the 1st Defendant's delegates to contest the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State.
12. An order of injunction compelling and directing the 1st, 2nd and 3rd Defendants and their agents to organise, conduct and supervise an all inclusive fresh, free and fair 1st Defendant's Senatorial Primary Election in Ebonyi Central Senatorial District, within Seven Days, from the date of judgment of this Court, wherein the Claimant together with the 4th and 5th Defendants, who were duly screened and cleared to contest and

participate in the 1st Defendant's Senatorial Primary Election, will be given equal treatment and opportunity to freely contest and participate in the 1st Defendant's Primary Election at which the 1st Defendants' Candidate will be selected, nominated and elected by the 1st Defendant's delegates in Ebonyi Central Senatorial District of Ebonyi State, to contest the forthcoming February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State.

13. An order of this Court directing the 1st, 2nd and 3rd Defendants to withdraw the acceptance, recognition and/or any Certificate of Return given and issued to the 4th Defendant forthwith, in the event that the 1st, 2nd and 3rd Defendants upon the filing and service of the present suit, ignored or neglected to maintain the status quo as required by law and the Rules of this Court, but rather persevered and continued to take further prejudicial actions or steps in respect of the complaints and acts complained of, the subject of the Claimant's multiple petitions, complaints and actions in this suit.
14. An order of Mandatory Injunction Compelling and Directing the 4th Defendant to remit, pay back and refund all money and funds received as salaries, wages, allowances, entitlements, bonuses etc to the Accountant General of the Federation of Nigeria and the coffers of the Federal Republic of Nigeria forthwith, in the event that the 4th Defendant was accepted and given recognition as the 1st Defendant's Candidate and/or issued with any Certificate of Return by the 1st, 2nd and 3rd Defendants and/or sworn – in or inaugurated as a Senator representing Ebonyi Central Senatorial District, Ebonyi State, after the unjust and wrongful omission of the Claimant's name and the unjust exclusion of the Claimant from participating and contesting the Senatorial Primary Election of the 1st Defendant's cum the February, 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State.

IN THE ALTERNATIVE ONLY, in the event that the Court finds that it may not set-aside the steps, decision, publication and announcement taken and made by the 1st – 2nd Defendants,

their officers and agents, contained in Pages 22 and 23 of THIS DAY, Saturday 29 September, 2018, Newspaper, purportedly withdrawing the Provisional Clearance Certificate lawfully, duly and regularly issued to the Claimant by the 1st and 2nd Defendants, for being unconstitutional, null and void and for violating the Claimant's legal and Constitutional right to fair hearing guaranteed by Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as the African Charter on Human and Peoples Rights and/or in the event that the Court finds that the 1st, 2nd and 3rd Defendants and their officers will not conduct, organize and supervise a fresh or another 1st Defendant Senatorial Primary Election for the Claimant, the 4th and 5th Defendants, to choose and select a Candidate for the February, 2019 Senatorial Election in Ebonyi Central Senatorial District of Ebonyi State and/or in the event that the Court is reluctant and/or unwilling to consider or grant some and/or any and/or all the reliefs stated in the above 14 paragraphs.

The Claimant Claims as follows:

1. An Order for the sum of Forty Million, Eight Hundred and Fifty Thousand Naira (N40,850,000.00) against the 1st and 2nd Defendants, being SPECIAL DAMAGES suffered by the Claimant.

The Writ of Summons, Statement of Claim and all other Originating Processes were served on the Defendants on the 15th day of November 2018. The Defendant neglected, failed or refused to file a Defence except the 3rd Defendant (INEC) who is the nominal party.

On the 3rd of December 2018, the Claimant filed an application for final Judgment in default of appearance and defence. There is proof of service of the said Processes on the Defendants. All Defendants were served on the 3rd of December 2018. The acknowledgement of service refers. The Defendants were in addition served with a hearing notice. The Defendants

including the 3rd Defendant who entered appearance and filed a purported defence refused to react to the application for judgment by filing a Counter Affidavit.

On the 15th day of January 2019, the Claimant/Applicant moved the application for Final Judgment in favour of the Claimant/Applicant against the Defendants/Respondents. He relies on Order 10 Rule 12 & 13, Order 21 Rules 9, 10 & 11 and Order 43 (1) of the Rules of Court.

Learned Counsel rely on the Affidavit filed in support of the application. He deposed essentially that it is the impunity which led to the publication contained in Pages 22 & 23 of THIS DAY Saturday 29 September 2018 Newspaper made by the agents of the 1st and 2nd Defendants/Respondents cum the omission of his name, his wrongful and unjust exclusion and prevention from contesting and participating in an all inclusive Senatorial Primary Election of the 1st Defendant. That the subject of this Suit/Motion involves and touches on the Senatorial Election slated to hold in February 2019 and time is of essence in matters of this nature, so that a situation of helplessness or *fait accompli* will not be visited on any of the parties.

That he filed an application for abridgment of time and accelerated hearing which was granted. That the Defendants/Respondents failed to file their Memorandum of Appearance and Defence as required by the rules. That Defendants have refused to attend Court as a result of the level of impunity committed. That the Defendants have no defence to this suit. That he has suffered loss and damages and is likely to suffer more loss and damages while the 1st – 3rd Defendants continued in their acts of impunity. He prays the Court to grant the reliefs sought.

As I have earlier stated, the Defendants failed to react to this Motion. The 3rd Defendant's defence is no defence. It says the subject matter of this application is the internal affairs of

the 1st Defendant but they also failed to react to the Motion for judgment despite the service of the processes of this Court. Learned Counsel to the Claimant/Applicant also adopted his Written Address filed along with the Motion on the 3/12/18.

He raised only one issue for determination which is Whether the Claimant/Applicant is entitled to be granted the reliefs sought. He submits that all the Claimant/Applicant needs to show in order to succeed is:

- (1). That the Originating processes were duly served.
- (2). That the Defendants failed or refused to file an appearance within the time limited for entry of appearance.

Learned Counsel refers to Paragraph 3 of the Affidavit in support and the Affidavit of Service in the Courts file. He also refers to Paragraph 9, 10 & 14 of the Affidavit in support and submits that the Claimant/Applicant is entitled to Judgment. He finally urges the Court to grant the reliefs sought.

The 1st, 2nd, 4th and 5th Defendants filed no defence. The 3rd (nominal party) Defendant purportedly filed a Defence which is not a Defence. There is proof of service of the Originating Processes in the Court's file. There is also proof of service of the Motion for Summary Judgment and hearing notice in the Court's file. The Defendants/Respondents neglected, failed and or refused to enter appearance and enter their Defence.

I have also read and considered the Written Address as adopted by Claimants Counsel in respect of jurisdiction. Without belabouring the issue, there is no doubt that this Court has jurisdiction to entertain this matter and I so hold.

Order 21 Rule 9, 10 States:

“9 “In all actions than those in the preceding rules of this Order, if the Defendant makes default in filling a defence, the Claimant may apply to the Court for Judgment and such Judgment shall be given upon the Statement of Claim as the Court shall consider the Claimant to be entitled to

“10. Where in any such action as provided in rule 9 of this order, there are several Defendants, if one of such Defendants makes such default, the Claimant may apply for Judgment against the Defendant and proceed against the other Defendants”.

IN PROVOST LAGOS STATE COLLEGE OF EDUCATION & ORS VS DR KOLAWOLE EDUN (2004) 2 SCNJ 155 at 169, the Supreme Court held:

“Where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always seized of the matter to act on such unchallenged evidence before it.”

ALSO in INEGBEDION VS. SELO-OJEMEN & ANOR (2013)LPELR-19769 SC, the Supreme Court held:

“It is trite law that any unchallenged and uncontradicted fact in an Affidavit remains undisputed and is deemed admitted by the adversary and the Court will so hold. It is also the law that any such unchallenged and uncontradicted fact which are deemed admitted in the Affidavit are capable of proving and supporting the Applicant relying on such facts, it has been held that the Affidavit evidence which is said to be unchallenged must necessarily be cogent and strong enough to sustain the case of the Applicant”.

See also OGOEJEOFO VS. OGOEJEOFO (2006) 1 SC 113.

From the record of the Court, and attached to the Claimants processes are:

1. Copy of PDP membership card and voters card.

2. Clearance Certificates issued to the Claimant at the ward, local government zonal and state levels of the PDP.
3. Senatorial Nomination form and receipts.
4. The PDP Party Primaries Screening Exercise brief form.
5. Copy of the Senatorial Screening Report.
6. The PDP Provisional Clearance Certificate.
7. Copy of Pages 22 and 23 of This Day Newspaper of 29/09/18 etc.

I am of the view and I so hold that the facts contained in the Affidavit and Statement of Claim are cogent and strong enough to sustain the case of the Claimant/Applicant.

In the circumstance, Judgment is entered in favour of the Claimant/Applicant against the Defendants as follows:

1. It is hereby declared that the Claimant having purchased the 1st Defendant's Senatorial Expression of Interest and Nomination Form with all necessary fees and levies paid and having been issued with the 1st Defendant's Provisional Clearance Certificate, is entitled to contest, participate in an all inclusive Senatorial Primary Election of the 1st Defendant to produce a candidate to contest the forthcoming February 2019 Senatorial Election of Ebonyi Central Senatorial District, Ebonyi State.
2. It is further declared that the Provisional Clearance Certificate duly and lawfully issued by the 1st Defendant to the Claimant to participate in the Senatorial Primary Election of the 1st Defendant was legally and lawfully issued and therefore valid and subsisting.
3. The purported withdrawal of the Provisional Clearance Certificate duly and lawfully issued to the Claimant by the 1st Defendant through the publication in THIS DAY

NEWSPAPER of Saturday, 29th September, 2018 at Pages 22 and 23, without according the Claimant a hearing is a breach of Claimant's Constitutional Right to Fair Hearing.

4. The act, omission, commission, failure and/or refusal by the 1st, 2nd and 3rd Defendants, their officers and agents to ensure Claimant's participation in the said Ebonyi Central Senatorial District Primary Election of Ebonyi State is illegal and unconstitutional.

5. Consequently, the 1st Defendant's Senatorial Primary Election of Ebonyi Central Senatorial District purportedly held on the 2nd of October 2018 at Onueke, Ezza South Local Government Area, Ebonyi State without the participation of the Claimant is hereby declared null and void.

6. The 1st, 2nd and 3rd Defendants are hereby ordered to conduct a fresh, free and all inclusive Ebonyi Central Senatorial Primary Election within SEVEN (7) DAYS from now.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)
30/01/19