

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON TUESDAY, 3RD DAY OF DECEMBER, 2019

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/1478/2019

BETWEEN

DR. JOSEPH OBI NJOKU

CLAIMANT

AND

ALL PROGRESSIVES GRAND ALLIANCE [APGA]

DEFENDANT

RULING & JUDGMENT

The claimant commenced this suit on 29/3/2019 by Originating Summons wherein he submitted the following questions for the Court's determination:

1. Whether having regards to the Constitution of the defendant, its Electoral Guidelines for Primary Elections and the general principles that govern the law of contract, the defendant is not bound to obey its constitution.
2. Whether having regards to Article 24(8a & b) of APGA Constitution 2014, the defendant's act of inviting the claimant to seek nomination via its Public Notice on its Whatsapp group does not amount to implied

waiver and or a qualification of the claimant's eligibility to contest in the party primaries.

3. Whether having regards to the act of the defendant in inviting the claimant to purchase the Expression of Interest Form and Nomination Form while his eligibility for waiver is yet to be determined by the defendant and or the subsequent act of denial of waiver by the defendant, the defendant has not by its conduct misrepresented facts to the claimant leading him to purchase the Expression of Interest Form (EOI) and the Gubernatorial aspirant Nomination Form.
4. Whether having regard to the said misrepresentation and upon the subsequent denial of the claimant's application for waiver determining his eligibility to participate in the party primaries, the claimant is not entitled to a refund of the sum of N2,000,000.00 [Two Million Naira] and N8,000,000.00 [Eight Million Naira] respectively, which he paid to the defendant viz-a-viz the provisions of Article 23[1a & b] of the APGA Electoral Guidelines for Primary Elections making the payment of the said amount non-refundable.
5. Whether having regards to the provisions of Section 285[9], 285[14] of the 1999 Constitution as amended and Section 87[9] of the Electoral Act 2010 as amended, this suit is a pre-election matter entitling the claimant to initiate his claim within 14 days as stipulated under the relevant laws.

6. Whether having regards to the whole circumstances of the case, the claimant is not entitled to damages arising from the misrepresentation of terms by the defendant.

The claimant seeks the following reliefs from the Honourable Court on the basis of an anticipated favourable resolution of these questions:

1. A declaration that the transaction between the claimant and defendant with respect to the purchase of the Expression of Interest Form and the Nomination Form for the 2018 Governorship primaries Aspirant Nomination be declared void and rescinded by this Honourable Court.
2. A declaration that the claimant is entitled to a refund of his cumulative sum of N10,000,000.00 [Ten Million Naira] expended on Expression of Interest Form and Nomination Form respectively.
3. An order of this Honourable Court directing the defendant to refund to the claimant the cumulative sum of N10,000,000.00 [Ten Million Naira] expended on Expression of Interest Form and Nomination Form respectively.
4. An order of this Honourable Court in form of general damages directing the defendant to pay to claimant the sum of N20,000,000.00 [Twenty Million Naira only].

5. An order of this Honourable Court in form of punitive damages directing the defendant to pay to claimant the sum of N30,000,000.00 [Thirty Million Naira only].
6. An order of this Honourable Court against the defendant to bear the cost of this suit in the sum N2,000,000.00 [Two Million Naira] only.

Upon being served with the Originating Summons, the defendant filed its processes in defence of the action on 10/6/2019. On the same date, defendant filed a notice of preliminary objection challenging the competence of the suit.

By Order of the Court, the preliminary objection and the Originating Summons were heard together on 17/9/2019. Peter C. Ezegamba Esq. adopted the claimant's processes while IfeanyiMbaeri Esq. adopted the defendant's processes. The Court will first give its decision on the preliminary objection. If the preliminary objection fails, the Court will then proceed to determine the merits of the Originating Summons.

RULING ON THE DEFENDANT'S PRELIMINARY OBJECTION

The grounds of the preliminary objection are:

1. From the Originating Summons filed on 29/3/2019, the complaint of the claimant in the instant suit is that he was *denied waiver by APGA* and excluded from participating in APGA Governorship primary election of Imo State.

2. As admitted by the claimant in paragraphs 6, 7, 8 and 9 of his Affidavit in support of his Originating Summons, the claimant, *ab initio*, was not eligible to seek nomination as Governorship Candidate under APGA unless he obtains a waiver from the defendant.
3. As admitted by the claimant in paragraphs 15 and 17 of his supporting Affidavit, he was unable to obtain waiver from APGA and it led to his “DISQUALIFICATION TO CONTEST FOR THE GOVERNORSHIP PRIMARIES OF THE PARTY.” In other words, the claimant was *NOT AN ASPIRANT* in the Imo State Governorship primary election of the defendant.
4. Not being an Aspirant in the said primary election, the claimant has no *locus standi* to approach this Honourable Court as stipulated by section 87[9] of the Electoral Act 2010 [as amended] and interpreted by the appellate courts in a plethora of authorities now too numerous.
5. Denying waiver to the claimant and excluding him from participating in the APGA Governorship primary election are *pre-primary election complaints*. They are non-justiceable and outside the limited jurisdiction of courts to interfere in nomination disputes of political parties under section 87[9] of the Electoral Act 2010 [as amended].
6. The instant suit is manifestly and palpably incompetent. This Honourable Court has no jurisdiction to hear and determine it.

Ifeanyi Mbaeri Esq. filed a written address in support of the preliminary objection. In opposition, Osinachi C. Obi-Njoku Esq., learned counsel for the claimant, filed a written address on 19/6/2019. On 12/9/2019, Mr. Mbaeri filed a reply on points of law.

From the grounds of the preliminary objection and the submissions of both learned counsel, there are two issues for determination. These are: [i] whether the claimant has *locus standi* to institute this action; and [ii] whether the Court has jurisdiction to entertain the claimant's case.

ISSUE 1

Whether the claimant has locus standi to institute this action.

Learned counsel for the defendant/objector referred to section 87[9] of the Electoral Act 2010 [as amended], which provides:

Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court or the High Court of a State or FCT, for redress.

Ifeanyi Mbaeri Esq. argued that the said section 87[9] confers jurisdiction on the courts to hear complaints from a candidate who participated at his party's primary election and complains about the conduct of the primaries. It is

settled law as held in several cases that it is only an aspirant at the primary election that can complain or seek redress about the outcome of the primary election or the nomination or sponsorship of a candidate by a political party. A member of a political party who did not take part in the party primaries has no *locus standi* to complain about the conduct of the primaries. He relied on Eyibo v. Abia [2012] 16 NWLR [Pt. 1325] 51; Daniel v. INEC [2015] 9 NWLR [Pt. 1463] 113 and PDP v. Sylva [2012] 13 NWLR [Pt. 1316] 85.

The defendant's counsel further submitted that the above principles apply to the instant case because the claimant admitted that he did not participate in the APGA Governorship primary election in Imo State. The courts will not dabble into how a member of the party was screened or why a member was not cleared by the party to contest its primary election. Before a member of a political party is cleared, the party has the power to disqualify him/her; and the party is not answerable to anyone including the courts. He concluded that the claimant has no *locus standi* to institute this suit having failed to bring himself within the narrow confines of an aspirant under section 87[9] of the Electoral Act 2010 [as amended]. Therefore, the Court has no jurisdiction to entertain the suit.

On the other hand, learned counsel for the claimant referred to the case of Mbanefo v. Molokwu [2014] 6 NWLR [Pt. 1403] 377 to support the view that a political party has the supreme right over its affairs. The courts would not interfere unless the party has violated its own constitutional provisions. It

was submitted that this case is a complaint of the defendant's violation of its constitutional provisions to occasion a misrepresentation, which has caused the claimant damage. There exists privity of contract between the claimant and the defendant; and a party to a contract has *locus standi* to sue in respect of the contract. The case of **Ayanlowo v. Sagamu Local Government & Anor. [2016] LPELR-41936 [CA]** was referred to.

Osinachi C. Obi-Njoku Esq. further submitted that the claimant: [i] is not challenging the outcome of his application for waiver or the screening process; [ii] he is not saying that he ought to have contested the primary election; and [iii] his case is not about how he was disqualified to contest the primary election. Counsel emphasized that the suit is not premised on section 87[9] of the Electoral Act 2010 [as amended] as the claimant is not questioning or challenging the outcome of the primary election of the defendant. The claimant's counsel concluded that the claimant has *locus standi* to institute this suit; and the Court has jurisdiction to entertain the suit.

In **Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280**, it was restated that the term *locus standi* denotes the legal capacity to institute an action in a court of law. The question whether a plaintiff has the *locus standi* to sue is determinable from the totality of the averments in the statement of claim. See also the case of **Taiwo v. Adegboro [2011] 11 NWLR [Pt. 1259] 562** where the Supreme Court held that the rule about *locus standi* developed primarily to protect the courts from being used as playground by meddlesome interlopers

or busy bodies who really have no real stake or interest in the subject matter of the litigation. Where a plaintiff lacks *locus standi* to institute an action, it will rob the court of jurisdiction to entertain the suit.

Now, in this action commenced by Originating Summons, what determines whether the claimant has *locus standi* to institute the action are the questions for determination, the reliefs sought and the affidavit in support of the action.

From the claimant's affidavit in support of the Originating Summons, the claimant's case is that he decided to contest for the gubernatorial position of Imo State under the platform of the defendant. It was a requirement of the defendant's Constitution that persons who are not its financial members for a period of 18 months could not seek nomination except a waiver is granted by the defendant. He was not a financial member of the defendant for a period of 18 months; so, he applied to the defendant for waiver. While waiting for the outcome of his application for waiver, the defendant, about 29/8/2018, via its Whatsapp group number +2348035728302 issued a public notice inviting him and other gubernatorial contenders to purchase and return expression of interest form and nomination form between 4th and 11th September, 2018.

The claimant further stated that this representation led him to believe that he was eligible to seek nomination. He relied on the representation and paid the total sum of N10 million to the defendant for the purchase of the Expression of Interest and Nomination Forms. Thereafter, the defendant published a list

where it denied him waiver and made him ineligible to seek nomination. This action seeks rescission of the transaction on the ground of misrepresentation; a refund of money paid to the defendant; and award of damages.

From the above facts, the claimant is not challenging: [i] defendant's refusal to grant his application for waiver to contest the Imo State governorship primaries; or [ii] the outcome of the governorship primary election of the defendant; or [iii] sponsorship or nomination of candidate by the defendant in the general election. As rightly stated by the defence counsel, the claimant raised issues of breach of contract and misrepresentation in the questions for determination and his reliefs. In simple terms, the claimant's case is that the public notice issued by the defendant about 29/8/2018 made him to believe that he was qualified to contest the governorship primary election. Since he did not contest the primary election because the defendant did not grant his application for waiver, he claims a refund of N10 million being the cost of the forms he purchased to contest the primary election and other reliefs.

The decision of the Court is that section 87[9] of the Electoral Act 2010 [as amended] and the cases cited by the defendant's counsel are not applicable to the present case. The claimant has *locus standi* to bring this suit, which is predicated on the allegation of misrepresentation and breach of the terms and conditions in the defendant's Constitution; and in which the claimant seeks a refund of the total sum of N10 million he paid to defendant, general damages and punitive damages.

ISSUE 2

Whether the Court has jurisdiction to entertain the claimant's case.

The defendant's counsel stated that the complaint of the claimant is denial of waiver and exclusion from contesting the primary election. These complaints are pre-primary election complaints and domestic affairs of the defendant, which are non-justiceable. It was submitted that the claimant's complaint preceded the conduct of the Imo State governorship primary election of the defendant and is therefore a pre-primary complaint. He relied on the case of **PDP v. Sylva [supra]** to support the submission that sponsorship/nomination of a candidate by a political party is a pre-primary election affair of the party, which no court has jurisdiction to question.

Mr. Ifeanyi Mbaeri conceded that this suit is not a pre-election matter within the meaning of "*pre-election matter*" in section 285[14] of the 1999 Constitution [as amended], which must be filed within 14 days from the date the cause of action arose. However, he posited that the suit is a pre-election complaint instituted after the holding of the 2019 Governorship election of Imo State held on 9/3/2019. In election related matters including pre-election cases, time is of the essence. Where an election has already taken place, a High Court ceases to have jurisdiction over a pre-election matter except the suit relating thereto was instituted prior to the holding of the election or declaration of result. He referred to the cases of **Salim v. CPC [2013] 6 NWLR [Pt. 1351]**

501and Wambai v. Donatus [2014] LPELR-23303 [SC]. Based on the above principle, it was submitted that this suit is belated as pre-election matters must be filed before the holding of the general election.

In his reply on points of law, Mr. Mbaeri retracted his submission that this suit *“is not a pre-election matter within the meaning of ‘pre-election matter’ under section 285[14] of the 1999 Constitution [as amended].”* He submitted that the current trend emanating from decisions of the appellate courts in 2019 is that all nomination complaints before the general election fall under pre-election matters that must be filed within 14 days after the cause of action arose. He relied on APC v. Umar & Ors. [2019] 8 NWLR [Pt. 1675] 564. It was argued that since the claimant became aware of his disqualification to contest the governorship primary election of Imo State on 3/10/2018, as he stated in his affidavit in support of the Originating Summons, he was under obligation to commence the suit within 14 days from 3/10/2018. Therefore, the institution of the suit on 29/3/2019 rendered it statute barred.

For his part, claimant’s counsel submitted that this suit is not a pre-election matter but an action premised on breach of contractual obligation and misrepresentation of contractual terms. On the argument that time is of essence in a pre-election or election related matter, it was submitted that this suit is not an election related matter. Osinachi C. Obi-Njoku Esq. urged the Court to hold that it has jurisdiction to entertain this suit.

In Aguguo v. PDP & Ors. [2013] LPELR-22052 [CA], it was held that the guide in the determination of jurisdiction of a court is the subject matter of the claim as endorsed in the statement of claim or in the originating summons. It is a fundamental principle of law that it is the claim of the plaintiff [or claimant] that determines the jurisdiction of a court to determine the suit. I have already set out the claims of the claimant and a summary of the facts in support of the claims.

The cases relied upon by learned defence counsel relate to matters where the claimant challenged his disqualification to contest the primary election; or the conduct/outcome of the primary election of a political party; or substitution of a candidate for election. The facts and claims in the said suits are different from the present case where the claimant's reliefs are based on the allegation of misrepresentation and breach of terms and conditions in the defendant's Constitution. I reiterate my decision that this case is not a pre-primary matter or a pre-election matter which ought to be instituted before the conduct of the general election. Similarly, this case is not a pre-election matter within the meaning of "*pre-election matter*" under section 285[14] of the 1999 Constitution [as amended], which must be commenced within 14 days from the date the cause of action arose.

Having resolved Issue Nos. 1 & 2 against the defendants, the preliminary objection lacks merit. It is accordingly dismissed.

JUDGMENT IN THE ORIGINATING SUMMONS

I have already set out the questions for determination and the claimant's reliefs. Claimant filed a 24-paragraph affidavit in support of the Originating Summons; attached thereto are Exhibits A-M. Peter C. Ezegamba Esq. filed a written address. In opposition, Felix C. Chukwu, a legal practitioner in the office of the National Legal Adviser of the defendant, filed a 20-paragraph counter affidavit on 10/6/2019; attached thereto are Exhibits APGA 1, 2 & 3. Ifeanyi Mbaeri Esq. filed a written address with the counter affidavit. On 19/6/2019, the claimant filed a 16-paragraph further affidavit together with the reply on points of law filed by Osinachi C. Obi-Njoku Esq.

Affidavit evidence of the parties:

In his affidavit, the claimant stated that:

- i. He became a member of the defendant sometime in January, 2018 and complied with all the defendant's requirements in line with its Constitution and its Electoral Guidelines for party elections including the payment of party dues. The APGA Constitution 2014 [as amended] and APGA Electoral Guidelines for Primary Election 2018 are Exhibits C & D respectively.
- ii. In 2018, he made a decision to contest for the gubernatorial position of Imo State under the platform of the defendant in the general elections held in March, 2019.

- iii. It is a requirement of the defendant's Constitution that only financial members who have been in the Party for a period of not less than 18 months shall be eligible to seek nomination; and financial members for a period less than 18 months who wish to seek nomination shall apply for waiver i.e. the defendant's permission to seek nomination.
- iv. He applied for waiver after complying with defendant's constitutional requirements on waiver including back-payment of membership dues. His application for waiver dated 24/8/2018 is Exhibit E.
- v. While awaiting the outcome of his waiver application, the defendant on 29/8/2018, via its Whatsapp group number +2348035728302 issued a public notice [Exhibit F] inviting him and other gubernatorial contenders to purchase Expression of Interest Form and Nomination Form.
- vi. In the public notice, the defendant fixed a timeline of 4th to 11th of September, 2018 for purchase and return of the Expression of Interest and Nomination Forms.
- vii. He purchased and returned the Expression of Interest Form for N2 million Naira and the Party Nomination Form for N8 million within the stipulated timeline stated in the public notice. The payment receipt is Exhibit G.
- viii. Having successfully sought nomination, he began to make preparations and consultations to contest the gubernatorial primaries of the Party.

- ix. The defendant issued a public notice [Exhibit H], inviting all aspirants [members that have purchased its forms] for screening from 20/9/2018 to 21/9/2018 at its National Secretariat. In the public notice, the Party promised to set up an Appeal Panel, in line with the provisions of its Electoral Guidelines, to determine appeals arising from the screening.
- x. He participated in the screening. Surprisingly, around 3/10/2018, the Party published a list [Exhibit I] on its said Whatsapp group number where he was listed among aspirants disqualified from participating in the Party gubernatorial primary election on the ground that his waiver application was not granted.
- xi. Contrary to its promise in the public notice, the defendant failed to set up an Appeal Panel to determine the purported denial of his waiver application in line with its Electoral Guidelines.
- xii. He wrote a letter of protest on 3/10/2019 [Exhibit J] addressed to the Chairman of the defendant where he expressed his displeasure and protested his shabby disqualification. The Party Chairman never replied the said letter till date.
- xiii. On 22/1/2019, his lawyers [Messrs P. C. Ezegamba & Co.] wrote a letter to defendant [Exhibit K] seeking a refund of the sum of N10,000,000.00 which he paid for the purchase of the Expression of Interest Form and Nomination Form.

- xiv. He entered into an agreement with Messrs P. C. Ezegamba & Co. to pay N2 million as professional fees to represent him in this suit. The letter of engagement dated 22/1/2019 is Exhibit L.
- xv. He has complied with the provisions of the Evidence Act with respect to conditions for tendering electronically generated evidence; the Certificate of Compliance is Exhibit M.

In the counter affidavit, Barrister Felix C. Chukwu stated as follows:

- i. The claimant, being ineligible to contest APGA primary election, having been in the Party for a period of less than 18 months, applied for waiver to enable him take part in the primary election of the defendant. The claimant's application for waiver dated 24/8/2018 with an endorsement stating "*Waiver not granted*" is Exhibit APGA 1.
- ii. The defendant issued a public notice inviting suitably qualified persons to purchase the Party's Expression of Interest Form and Nomination Form. The public notice titled: *PROVISIONAL TIMETABLE/SCHEDULE OF ACTIVITIES FOR 2018 PRIMARY ELECTIONS* issued on 5/9/2018 is Exhibit APGA 2. The public notice was published in the DAILY SUN Newspaper of 5/9/2018, which is Exhibit APGA 3.
- iii. It is not correct that defendant issued the Public Notice via WhatsApp. The WhatsApp Group printout attached by the claimant as "*Exhibit F*" from its name and heading: "*IMO APGA SOCIAL MEDIA*" did not

emanate from the National Secretariat of the defendant in Abuja. Imo State Chapter of APGA merely rebroadcast the contents of the public notice in its social media handles.

- iv. The National Executive of the defendant was responsible for organizing primary elections and issuing public notices concerning same, not State Chapters of the defendant.
- v. Defendant also stipulated in the said public notice under Clause [f] that:

“The Party reserves the right and discretion to issue Expression of Interest and Nomination Forms to credible and eligible Aspirants, any time, before the scheduled primary elections.”
- vi. The said Clause [f] was inserted for intending aspirants still awaiting defendant’s decision on their waiver applications, like the claimant. The said Clause [f] is also for last minute aspirants that may approach the defendant to seek its ticket after losing the primary elections of the 2 major political parties, the APC and PDP.
- vii. The claimant herein is aware of Clause [f] above in the defendant’s public notice. In his “Exhibit F”, claimant deliberately left out the page containing Clause [f] in an attempt to hoodwink this Honourable Court.
- viii. The claimant was at liberty to wait for the defendant’s decision on his waiver application before purchasing the Expression of Interest and Nomination Forms, but he did not.

- ix. The screening of intending Governorship aspirants who purchased Expression of Interest and Nomination Forms, for the time being, took place on 21/9/2018 in Abuja. The screening was to be a continuous process until the primary election, in line with the said Clause [f].
- x. The claimant appeared before the Governorship Screening Committee on 21/9/2018. His screening was successful but his clearance to participate in the Governorship primary election still depended on him obtaining waiver of the National Working Committee as stipulated by Article 24[8] of APGA Constitution.
- xi. On 30/9/2018, the National Working Committee released its decision on the waiver applications. The claimant's application for waiver was refused. Article 24[8][b] of APGA Constitution 2014 [as amended] made it clear that grant or denial of waiver is at the discretion of the National Working Committee of APGA only. It is not subject to any appeal.
- xii. Clause [d] of the defendant's public notice and Article 23[1][a] and [b] of the APGA Electoral Guidelines for Primary Election 2018 stipulated that all payments are "*non-refundable*".

In the claimant's further affidavit, he deposed as follows:

- i. In its public notice [Exhibit APGA 2], the defendant never stated that it was "*inviting suitably qualified persons to purchase the Party's Expression of Interest and Nomination Forms*" as stated by the defendant.

- ii. The defendant simply invited him and other gubernatorial contenders to purchase Expression of Interest and Nominations Forms, and fixed a timeline of 4th to 11th of September, 2018, within which the forms must be purchased and returned.
- iii. Based on Clause [f] of the public notice [Exhibit APGA 2], the defendant issued Expression of Interest and Nomination Forms to him having considered and/or deemed him eligible.
- iv. The Imo State Chapter of the Party is an agent of the National Headquarters acting in the normal course of its duties.

Issues for determination:

In his written address, learned counsel for the claimant formulated five issues for determination. These are:

1. Whether or not the Constitution of the defendant and its Electoral Guidelines for Primary Elections amount to contract between the claimant and the defendant to entitle the claimant to seek redress for its breach.
2. Whether or not the act of the defendant by inviting the claimant to purchase and return the Expression of Interest Form and Nomination Form while his eligibility for waiver is yet to be determined by the defendant and or the subsequent act of denial of waiver by the

defendant does not amount to misrepresentation entitling the claimant to seek the necessary remedies.

3. Whether having regard to the said misrepresentation and upon the subsequent denial of the claimant's application for waiver determining his eligibility to participate in the Party primaries, the claimant is not entitled to a refund of the sum of N2,000,000.00 and N8,000,000.00 which he paid to the defendant vis-à-vis the provisions of Article 23[1a and b] of the APGA Electoral Guidelines for Primary Elections making the payment of the said amount non-refundable.
4. Whether or not this suit is a pre-election matter entitling the claimant to initiate this claim within 14 days as stipulated under Section 285[9], 285[14] of the 1999 Constitution as amended and Section 87[9] of the Electoral Act 2010 as amended.
5. Whether or not the claimant is not entitled to damages arising from the misrepresentation of terms by the defendant.

On the other hand, learned counsel for the defendant posed one issue for determination, viz:

Whether or not the claimant is entitled to a favourable resolution of the Questions for determination in order to entitle him to any of the reliefs sought.

In respect of his Issue No. 1, learned counsel for the claimant argued that the defendant's Constitution and its Electoral Guidelines for Primary Elections 2018 amount to contract between the claimant and the defendant to entitle the claimant to seek redress for its breach. He cited the case of Ugwu v. Ararume [2007] ALL FWLR [Pt. 377] 807 to support the view that the court must enforce compliance with the agreements reached by parties in their contracts. Learned defence counsel agrees with the above view. I also agree.

The fourth issue formulated by the claimant's counsel has already been dealt with in the preliminary objection where the Court held that this suit is not a pre-election matter which must be commenced within 14 days from the date the cause of action arose. The third and fifth issues - which are respectively on refund of N10 million paid by claimant for the Forms and damages - are dependent on the second issue. Clearly, the determination of the claimant's reliefs revolves around the second issue formulated by claimant's counsel. Against this backdrop, I am of the considered opinion that there are two main issues for determination. The first is whether the claimant has established his allegation of misrepresentation against the defendant; and the second is whether the claimant is entitled to his reliefs.

ISSUE 1

Whether claimant has established his allegation of misrepresentation against the defendant.

The claimant's allegation of misrepresentation is hinged on the defendant's public notice conveyed through Whatsapp, which he attached to his affidavit as Exhibit F. The crux of the claimant's case is as stated in paragraphs 4.24 & 4.25 of the written address in support of the Originating Summons thus:

"... we contend that the public notice by the Defendant [Exhibit F] wherein it stated timelines to purchase and return EOI and Nomination Forms was in fact a misrepresentation of facts because it led the Claimant into believing that his application for waiver had been granted and that he is cleared to seek nomination as prescribed under Article 24[a] of the APGA Constitution 2014 requiring him to be a financial member and under Article 24 [b] requiring the National Working Committee to either [to] deny or grant him waiver.

The entire gist of the Claimant in this written address is that the Claimant's application for waiver must be determined first and foremost before he is invited to seek nomination but this was not so because of the misrepresentation by the Defendant in its public notice leading the Claimant to seek nomination on the understanding that his eligibility for waiver was granted. We submit that it is illegal of the Defendant to disqualify the Claimant on the ground of waiver, when Claimant was led by its misrepresentation to seek nomination."

Learned counsel for the claimant stated that the claimant's grouse is that the defendant ought to have determined his eligibility vis-à-vis his application for waiver before inviting him to seek nomination to contest as prescribed under Article 24[8][a] and [b] of its Constitution, 2014. He argued that the

public notice was for all prospective aspirants including the claimant whose waiver eligibility was not decided at that time as there was no indication that persons whose waiver applications were pending were excluded from purchasing the forms. The defendant was aware that the claimant was a prospective aspirant who is likely to act on the public notice; hence it owed the claimant a duty to specify that the public notice excluded members whose applications for waiver were pending. He submitted that the defendant by its conduct represented to the claimant that he can seek nomination.

Peter C. Ezegamba Esq. submitted that the defendant's purported denial of the claimant's application for waiver after it had tacitly approved same amounts to a breach of its Constitution. He urged the Court to hold that the claimant was induced by the defendant's misrepresentation into purchasing the Forms and it is estopped from reaping the fruits of its misrepresentation. The case of SDV [Nig.] Ltd. v. Ojo & Anor. [2016] LPELR-40323 [CA] was cited in support of the doctrine of estoppel by conduct.

For his part, learned counsel for the defendant stated that the claimant was aware of his ineligibility to contest the primary election and applied for waiver. Without waiting for the outcome of his application, he went ahead to purchase the Expression of Interest and Nomination Forms. The claimant was at liberty to wait for the defendant's decision on his waiver application before rushing to purchase the said Forms. He disregarded the doctrine of *caveat emptor* and prematurely bought the Forms to his detriment when he has not

obtained waiver. Counsel cited the case of Ejigini v. Ezenwa [2003] 16 NWLR [Pt. 846] 420 on the doctrine of *caveat emptor*; and posited that the claimant “bought a pig in a poke” when he purchased the Expression of Interest and Nomination Forms without first obtaining the requisite waiver.

Ifeanyi Mbaeri Esq. likened the claimant to a traveller who has purchased plane tickets and fully paid for his hotel abroad before applying for a visa. Having had his visa application rejected, he has now turned round to blame the embassy contending that it “misrepresented circumstances to him thereby inducing” him into making travel plans when his visa application is still pending. He submitted that by the doctrine of *caveat emptor*, the claimant ought to have been more circumspect in the circumstances of this case. It was also submitted by Mr. Mbaeri that defendant invited only suitably qualified prospective aspirants to purchase the Forms. The claimant, knowing that he was ineligible, ought not to have heeded the invitation to purchase the Forms. Hence, the allegation of misrepresentation is baseless and unfounded.

Mr. Mbaeri also referred to Clause [f] of the public notice [Exhibit APGA 2], and stated that the Clause was inserted for intending aspirants still awaiting the defendant’s decision on their waiver applications, like the claimant. The claimant ignored this safeguard and acted to his detriment. The claimant failed to take advantage of the said Clause [f] to be patient, tarry a while and still obtain the Expression of Interest and Nomination Forms.

In the reply on points of law, Osinachi C. Obi-Njoku Esq. argued that the case of **Ejigini v. Ezenwa [supra]** on the doctrine of *caveat emptor* is not applicable to the instant case as the claimant is claiming that he was “*misrepresented into believing that he was granted waiver. ... One of the exceptions to the equitable principle of Caveat emptor is misrepresentation and fraud.*” On Clause [f] of the public notice [Exhibit APGA 2], learned counsel for the claimant did submit that the provision supports the case of the claimant. I will refer to the details of the submission on the said Clause [f] later in this judgment.

In **Fhomo [Nig.] Ltd. v. Zenith Bank [2016] LPELR-42233 [CA]**, it was held that misrepresentation is simply the act of making a misleading or false assertion about something. In an action alleging misrepresentation, the law requires the appellant to prove that respondent made a false statement knowing it to be false, or reckless. See also the case of **Albert Afegbai v. Attorney General, Edo State [2001] LPELR-193 [SC]**. The claimant must also prove that he relied on the defendant’s false representation to his detriment.

Article 24[8][a] of APGA Constitution 2014 [attached to claimant’s affidavit as Exhibit C] provides: “*No member of the Party shall be eligible to seek nomination as a Candidate of the Party in any election unless such a member has been a financial member of the Party for a period of not less than 18 months.*” The parties agree that by this provision, claimant was not qualified or eligible to seek nomination as a candidate of the defendant in the March 2019 governorship election because he became a member of the defendant in January 2018. Also, the claimant was

not eligible to contest the gubernatorial primary election of the defendant, which was conducted to select a candidate for the governorship election. As the claimant was not qualified or eligible, he applied to defendant's National Working Committee [NWC] for waiver of the restriction in the said Article 24[8][a]. His application for waiver was pursuant to Article 24[8][b] thereof, which provides:

[b] The National Working Committee of the Party shall have the discretionary power to grant Waiver of the provisions of sub paragraph [a] above as it deems necessary in any given circumstance.

The claimant's case is that while he was waiting for the outcome of his waiver application, the defendant issued the public notice [Exhibit F] "*inviting me and other gubernatorial contenders to purchase Expression of Interest Form and Nomination Form.*" I pause to remark that the full content of the public notice is in Exhibits APGA 2 & 3 attached to defendant's counter affidavit. It would appear that Exhibits F & H attached to the claimant's affidavit respectively contain parts of the public notice.

From the claimant's allegation of misrepresentation, the critical question is whether there is anything in the public notice [Exhibits F & H; or Exhibits APGA 2 & 3] to show that the defendant invited the claimant to purchase the Expression of Interest Form and the Nomination Form for its gubernatorial primary election.

Article 22[1] of the defendant's Electoral Guidelines for Primary Elections 2018 [Exhibit D attached to the claimant's affidavit] sets out the qualification of prospective aspirants for the defendant's gubernatorial primary election. The said Article 22[1] reads:

- [1] *A prospective Aspirant for the gubernatorial primary election shall:*
- [a] *Be a citizen of Nigeria by birth;*
- [b] *be a registered financial member of the Party for a period of not less than 18 months prior to the gubernatorial primary election, unless waived by the National Working Committee in accordance with Article 24[8][b] of the APGA Constitution [2014 as amended];*
- [c] *Fulfil all the conditions set out in Sections 177 and 182[1] of the Constitution of the Federal Republic of Nigeria 1999 [as amended], the Constitution of the Party, the provisions of any other relevant law and these Guidelines;*
- [d] *Complete and submit the Expression of Interest and Nomination Forms;*
- [e] *Possess educational qualification not below the level of Senior Secondary Certificate or its equivalent;*
- [f] *Have attained the age of thirty-five [35] years.*

By the above provisions, the claimant was not a "prospective Aspirant for the gubernatorial primary election" to whom the public notice applied because as at

the date of the public notice, his application for waiver had not been granted by the defendant's NWC. It follows that the claimant knew or ought to have known that he was not eligible or qualified to purchase the Expression of Interest Form and Nomination Form since he had not been granted waiver by the defendant's NWC. As the claimant's counsel rightly stated in paragraph 4.20 of his written address, *"it is our client's case that he only becomes eligible to seek nomination when granted waiver as prescribed by Article 24 [8a and b]"* of the APGA Constitution. Notwithstanding the fact that he was not *"eligible to seek nomination"*, the claimant decided to purchase the Forms.

The claimant's counsel stated that the claimant acted on the information in the public notice while hoping that his waiver application has been approved by the act of the defendant especially as the public notice fixed timelines for the purchase and return of the Forms. In my opinion, since claimant's waiver application was not granted before the public notice, the implications were that his request for waiver was not granted by the NWC at that time; and the public notice did not apply to him. I reason that if the claimant was in doubt as to whether the public notice applied to persons whose applications for waiver had not been granted or determined [like himself], he would have sought clarification from the defendant before purchasing the Forms.

Part of the arguments of learned claimant's counsel is that the defendant was aware that the claimant was a prospective aspirant who is likely to act on the public notice; hence it owed the claimant a duty to specify that the public

notice excluded members whose waiver applications were pending. With due respect, I reject this argument in view of my decision that the claimant knew or ought to have known that he was not qualified to contest the gubernatorial primaries as at the date of the public notice since he had not been granted waiver. The defendant did not have a duty to specify that the public notice excluded members whose applications for waiver were pending since the members of the defendant were aware of the Electoral Guidelines for the primary elections, which specified qualifications of qualified aspirants.

At this juncture, let me consider the submissions of Osinachi C. Obi-Njoku Esq. in the reply on points of law to the effect that Clause [f] of the public notice supports the claimant's allegation of misrepresentation made against the defendant. I have earlier quoted the said Clause [f]. However, for clarity, let me quote Clause [f] of the public notice here. It reads:

"The Party reserves the right and discretion to issue Expression of Interest and Nomination Forms to credible and eligible Aspirants, any time, before the scheduled primary elections."

The learned counsel for the claimant submitted as follows:

"The word "ISSUE" used in the clause implies that the onus is on the Party to certify that they are issuing the Expression of Interest and Nomination Forms to credible and eligible Aspirants as their constitution prohibits non eligible

members from seeking nomination. The burden and or onus of proof is on the defendant to prove that at the time they issued the Expression of Interest and Nomination Forms to the Claimant that he was ineligible, ... Simply put, the Defendant has not complied with the provisions of Article 24 [8a and b] of its Constitution requiring it [to] grant waiver to members before issuing Expression of Interest and Nomination Forms to them. ...

Clause [f] is an unequivocal representation to the claimant and other contestants whom the defendant issued Expression of Interest and Nomination Forms to, that they are both credible and eligible to seek nomination. The claimant acted on the public notice and the onus is on the defendant not to have issued the forms to him knowing that he was ineligible ab initio.

The defendant's Constitution mandates it in clear terms to determine the eligibility of the candidates first before issuing them the Expression of Interest and Nomination Forms. See Article 24 [8a and b] of the APGA Constitution. "

My respectful view is that there is no provision in the Constitution of the defendant or its Electoral Guidelines for Primary Elections 2018 mandating it to issue or sell the said Forms to only persons who are eligible to contest the gubernatorial primary election as provided under section 22[1][a]-[f] of the said Electoral Guidelines. Contrary to the view of claimant's counsel, there is also nothing in Article 24[8][a] & [b] of APGA Constitution mandating the defendant to "*determine the eligibility of the candidates first before issuing them the Expression of Interest and Nomination Forms.*"

Since members of the defendant knew or are deemed to know the provisions of their Party Constitution and the Guidelines for Primary Elections, I hold that it is reasonable for officers of the defendant in charge of issuing the Expression of Interest Form and Nomination Form to presume that members of the Party who raise money and come forward to obtain the Forms have satisfied themselves that they are qualified or eligible to contest the primary election. For example, one of the qualifications for the gubernatorial primary election under Article 22[1][f] of the Electoral Guidelines is that the person must have attained the age of 35 years. It is not the duty of officers of the defendant in charge of issuing the Forms to ask a member of the Party who seeks to purchase the Forms if he/she has attained the age of 35 years; such question can only come up during the screening exercise.

In the case of the claimant, it is noteworthy that there is no evidence that the Forms were issued by the defendant's NWC which received his application for waiver. There is also no evidence that the officers of the defendant who were responsible for issuing the Forms were informed that the claimant applied for waiver and that the application had not been determined by the NWC. So, the said officers could not have refused to issue the Forms to the claimant. Therefore, in my view, the submission of the defence counsel which placed a burden or onus on the defendant *"to certify that they are issuing the Expression of Interest and Nomination Forms to credible and eligible Aspirants"* before the Forms are issued is misconceived and untenable.

What is the meaning of Clause [f] of the public notice? The position of the law, as rightly stated by the claimant's counsel, is that once the words of a written document are plain and unambiguous, the court is bound to apply the ordinary meaning of the word used. See **Kwara State Polytechnic, Ilorin & Anor. v Shittu [2012] LPELR-9843 [CA]**.

Osinachi C. Obi-Njoku Esq. submitted that: "*Clause [f] is an unequivocal representation to the claimant and other contestants whom the defendant issued Expression of Interest and Nomination Forms to, that they are both credible and eligible to seek nomination.* I do not agree with this submission. In my humble opinion, the ordinary meaning of Clause [f] of the public notice is that for persons who are credible and eligible aspirants, the defendant has the right and discretion to issue the said Forms at any time before the scheduled primary elections. Contrary to the view of the claimant's counsel, Clause [f] of the public notice does not mean that once the Forms are issued to any person, he or she becomes a credible or eligible aspirant for primary election.

From all that I have said under Issue No. 1, the decision of the Court is that there was no representation in the public notice issued by the defendant that it applied to the claimant because as at the date of the public notice, he was not qualified to contest the gubernatorial primary election as stipulated under Article 22[1] of defendant's Electoral Guidelines for Primary Elections 2018. In other words, the claimant failed to prove his claim that in the public notice, defendant invited him to purchase the said Forms. Therefore, the submission

of the claimant's counsel in paragraph 4.8 of his written address that "*the public notice was for all prospective aspirants including the claimant whose waiver eligibility was not decided at that time ...*" is not correct. I also hold that claimant failed to establish the allegation of misrepresentation against the defendant. The claimant took a chance or risk when he purchased the Forms with the hope that the defendant's NWC will grant his application for waiver.

ISSUE 2

Whether the claimant is entitled to his reliefs.

In relief 1, Dr. Joseph Obi-Njoku seeks an order declaring his transaction with the defendant with respect to the purchase of the Forms void and rescinded. In reliefs 2 & 3, the claimant seeks a refund of the sum of N10 million which he expended in purchasing the Forms. In relief 4, the claimant claims N20 million as general damages. In relief 5, he claims punitive damages of N30 million. Relief 6 is a claim of N2 million as cost of the suit.

Learned counsel for the claimant argued that the misrepresentation by the defendant entitles the claimant to rescind the contract and seek a refund and damages. He cited **Kuforiji & Anor. v. V.Y.B. Nig. Ltd. [1981] LPELR-1716 [SC]** in support of the grant of the claims. In paragraphs 4.17-4.28 of his written address, claimant's counsel canvassed arguments to the effect that the claimant is entitled to a refund of the sum of N10 million paid for the

purchase of the Forms notwithstanding the provisions of Article 23[1][a] & [b] of APGA Electoral Guidelines for Primary Elections which made the said sum non-refundable.

Also in paragraphs 7.1-7.4 of his written address, Mr. Peter C. Ezegamba argued that the claimant is entitled to general damages and punitive damages arising from the defendant's misrepresentation. He emphasized that damages for the misrepresentation will put the claimant into the position he would have been if the misrepresentation had not been made by the defendant

The viewpoint of learned counsel for the defendant is that claimant's reliefs [2] & [3] for refund of N10 million violate Clause [d] of the defendant's public notice [Exhibit APGA 2] and Article 23[1][a] & [b] of the APGA Electoral Guidelines for Primary Election 2018, which stipulated that all payments are non-refundable. Since what transpired between the claimant and defendant is akin to a contract, the terms of the contract are embodied in the said APGA Electoral Guidelines and the public notice. The claimant was aware that the payments were non-refundable but went ahead to make them. Mr. Ifeanyi Mbaeri referred to the case of **Hyd Road and Others Tech. Ltd. v. Abia State Govt. & Anor. [2014] LPELR-24375 [CA]** and submitted that parties to a contract are bound by the terms and conditions of the contract they freely entered into. He urged the Court to hold that the claimant is not entitled to any of the reliefs.

Article 23[1][a] & [b] of the APGA Electoral Guidelines for Primary Elections 2018 stipulated that the sums of N2 million [for Expression of Interest Form] and N8 million for Nomination Form are non-refundable. The defendant's public notice also stated that the fees for the Forms are non-refundable. The defence counsel is correct that the parties are bound by the provisions of these documents, which contain the terms of the contract between defendant and its members for the primary elections. The duty of the Court is to enforce the agreement of the parties. See the case of Arjay Ltd. v. A.M.S. Ltd. [2003] 7 NWLR [Pt. 820] 577. Since the sums expended by the claimant to purchase the Forms are non-refundable and the claimant failed to prove the allegation of misrepresentation against the defendant, I hold that he is not entitled to the refund of the sum of N10 million.

In view of the decision of the Court that the claimant failed to prove the allegation of misrepresentation against the defendant, the claims for general damages and punitive damages are dismissed.

CONCLUSION

In conclusion, I resolve questions 1 & 5 in the Originating Summons in favour of the claimant. I resolve questions 2, 3, 4 & 6 thereof against the claimant.

The 6 reliefs of the claimant lack merit. The suit is hereby dismissed. I award cost of N100,000.00 to the defendant payable by the claimant.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

1. Nzewi Arinze Nnajekwu Esq. for the claimant.
2. Ifeanyi Mbaeri Esq. for the defendant; with F. C. Chukwu Esq.