

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/2705/19

BETWEEN:

HON. ILIYA GAMBO.....CLAIMANT

AND

BARR KENNETH UDEZE.....DEFENDANT

RULING/JUDGMENT

By an Originating Summons dated 19th August, 2019 and filed on 21st August 2019, the Claimant/Applicant is seeking for the determination of the following questions:-

- (1) Whether having regards to the totality of the Provisions of the Constitutions of the Action Alliance, 2005 (As Amended), the Defendant does not have the bounden duty to comply with, obey as well as act strictly within the confines of the Constitution of the Action Alliance, 2005 (As Amended) at all times and in all matters relating to the conduct of the affairs of the Action Alliance, having voluntarily and conscientiously subscribed to the Constitution of the party?

- (2) Whether in view of the suspension of Defendant as the National Chairman of the Action Alliance (AA) by the binding and final decision of the National Think Thank Committee of the Action Alliance (AA) acting pursuant to the mandatory Provisions of Article 14 (2) of the Constitution of the Action Alliance, 2005 (As Amended), the Defendant can still validly parade or hold out himself, issue notices of meetings, perform, discharge or in any other manner whatsoever exercise any powers relating or pertaining to the office of the National Chairman of the Action Alliance (AA)?
- (3) Whether having regards to Articles 14 and 15 of the Constitution of the Action Alliance, 2005 (As Amended) the meeting of the National Think Thank Committee of the Action Alliance held on 14th June, 2019 and presided over by Alhaji Mohammed Abubakar (now the Acting National Chairman) wherein the Defendant was suspended as the National Chairman of the Action Alliance (AA) is not valid, lawful and in accordance with the Provisions of the Constitution of the Action Alliance, 2005 (As Amended)?
- (4) Whether by the Constitution of the Action Alliance, 2005 (As Amended), the Defendant can validly and lawfully take any or further action, issue any notice of meeting or indeed summons or convene and preside over the meeting of the National Think Thank Committee of the Alliance (AA) in the capacity of the

National Chairman of the party, despite having been suspended for various anti-party activities by the National Think Thank Committee of the Party?

- (5) Whether by the combined effect of the Provisions of the Constitution of the Action Alliance, 2005 (As Amended) any or all actions or powers exercised by the Defendant in the capacity of the National Chairman of the Action Alliance is not invalid, null, void and no effect whatsoever?

And upon the determination of these questions above, the Claimant seek the following reliefs:-

- (a) A Declaration that the Defendant has the bounden duty to comply with, obey as well as act strictly act within the confines of the Constitution of the Action Alliance, 2005 (As Amended) at all times in all matters relating to the conduct of the affairs of the Action Alliance, having voluntarily and conscientiously subscribed to the Constitution of the Party.
- (b) A Declaration that the in view of the suspension of the Defendant as the National Chairman of the Action Alliance (AA) by the binding and final decision of the National Think Thank Committee of the Action Alliance (AA), the Defendant cannot parade or hold out himself, issue notices of meetings, perform, discharge or in any other manner whatsoever exercise any

power relating or pertaining to the office of the National Chairman of the Action Alliance (AA).

- (c) A Declaration that the meeting of the National Think Thank Committee of the Action Alliance held on 14th June, 2019 and presided over by Alhaji Mohammed Abubakar (now the Acting National Chairman) wherein the Defendant was suspended as the National Chairman of the Action Alliance (AA) is valid, lawful; and in accordance with the Provisions of the Constitution of the Action Alliance 2005 (As Amended).
- (d) A Declaration that the Defendant cannot validly and lawfully take any or further action, issue any notice of meeting or indeed summons or convene and preside over the meeting of the National Think Thank Committee of the Action Alliance (AA) in the capacity of the National Chairman of the Party despite having been suspended for various anti-party activities by the National Think Thank Committee of the Party.
- (e) A Declaration that any or all actions or powers exercised by the Defendant in the capacity of the National Chairman of the Action Alliance is invalid, null, void and of no effect whatsoever.
- (f) An Order of Court setting aside any or further action taken, notice of meeting issued or the meeting of the National Think Thank Committee of the Action Alliance (AA) summoned and held by the Defendant for being illegal, unlawful, ultra vires the

Constitution of the Party, null, void and of no effect whatsoever.

- (g) An Order of Perpetual Injunction restraining the Defendant, by himself, agents, Privies or howsoever described from further parading himself as or exercising any power is pertaining to the office of the National Chairman of the Action Alliance.

The Originating Summons is supported by a 9 Paragraph affidavit sworn to on 21/8/2019 by one Chinwe Mbonu, with two (2) Exhibits marked "A" and "B" Exhibit "A" – A copy of Membership Card.

Exhibit "B" – A copy of the Constitution of Action Alliance.

Also filed is a Written Address.

On receipt of the processes, the Defendant filed, counter-affidavit in opposition of 7 Paragraph deposed to by the Defendant – Barrister Kenneth Udeze on the 10/1/2020, with one (1) Exhibit marked as Exhibit 1 Series, which is the Report and Approval by INEC.

The parties having settled their pleading's and exchanged, the both counsel on 13/1/2020 moved and adopted their processes, in urging this court to grant and/or refuse this said application.

In the Written Address, in support of the Originating Summons of the Claimant, settled by Emmanuel Chukwemeka Diribe Esq, only one (1) sole issue was formulated for determination, which is;

“Whether the Claimant has on the preponderance of evidence proved his case as to be entitled to the reliefs sought”.

And submits in brief and relying on several judicial authorities cited, that the Claimant has sufficiently, by way of affidavit evidence stated good grounds that would assuage this court to resolve the issues formulated in favour of the Claimant and allow the reliefs of the Claimant sought in its entirety.

On the other hand, in the Written Address of the Defendant in opposition, settled by G.E.O. Egharevba, Esq only one (1) sole issue was formulated for determination, which is;

“Whether having regards to the entire facts and circumstances of this Suit, it is in the interest of justice to dismiss this Suit with cost against the Claimant and make any consequential findings in favour of the Defendant”

And submits, in brief, that from the totality of evidence in proof by the Claimant, the Claimant has failed woefully to adduce cogent and credible evidence in proof of its declaratory claims and restating the position of the law, in *Oladimeji & Ors Vs Ajayi (2012) LPELR -20408 (CA)*, that a Claimant to succeed on its claim, must rely on his strength and not on the weakness of the Defence; amongst other judicial authorities, cited in urging this court to dismiss the Claimant claim and make consequential orders which is sequel to this instant claim, regardless that the Defendant did not file any counter-claim.

Having carefully considered this instant application, the question set for determination, and reliefs sought, along the line of the affidavit evidence and the Written Addresses, including the judicial authorities cited for and against this application, the court finds that only one (1) issue calls for determination;

“Whether in the face of the affidavit evidence juxtaposed with the law on declaratory relief, the Claimant has indeed given credible and cogent evidence, sufficient to assuage this court to grant the relief sought”.

In this instance application, the Claimant has set out 5 (Five) questions for determination, which bothers on the binding effect of the Constitution of the Action Alliance (AA) 2005 (As Amended) on all the members including the Defendant herein and compliance to a subsisting decision of the Party hierarchy against any member, as in this case, the Defendant and obedience thereof. And that by the purported suspension of the Defendant, if he can still function in that capacity, consequent upon the appointment of an acting Chairman by the National Think Thank Committee, highest organ of the party, therefore seeking declaratory reliefs against the Defendant amongst other reliefs.

To determine, the questions set out, as it relates this instant Suit, recourse must be made to the Constitution of the Action Alliance Party 2005 (As Amended), herein Exhibited as Exhibit “B” by the Claimant. In this instant case, the court is invited to give interpretation of the Constitution of the Action Alliance, in relation to legal dispute or question of law arising from

this Suit vis-vis construction of the Provision of the Exhibit "B" the Constitution of the Action Alliance.

Firstly, it is settled that both parties are members of the Action Alliance Party, by paragraph Paras 3 and Exhibit "A" and Para 7 of the Claimant affidavit in support and by paragraph 1 of the Defendant counter-affidavit in opposition, while contending Para 3 (ii) of the said counter-affidavit, that the Claimant is nor a registered member, nor financial paying member. I shall deal with this point along with issues in course of this Ruling. From the above, this court quite rightly, has the vires to intervene in the determination of the questions and subsequently proceed to determine the reliefs sought.

In this instances, the relevant Articles of the Constitution of the Action Alliance, 2005 (As Amended), that calls for interpretation in the determination of this application, is Article 14, 15, I shall however, include the Article 10 along with it.

The Article 14 – Titled National Think Thank Committee, of relevance to this issue is Article 14 (2) which deals with the powers and functions of the National Think Thank, under it Articles 14 (2) (L-M) states thus;

"L" – Have power to suspend any member of the National Think Thank Committee and to recommend further disciplinary action against such member to the National Convention.

"M"– Have power to suspend and exercise other disciplinary control over any member of the National Executive Committee.

Article 15 – talks about the composition, powers, functions, meeting of the National Executive Committee amongst others.

Article 10 – talks about the rights and obligation of members.

It is the contention of the Claimant, that following the conduct of the Defendant, being not in accord with the ideals and obligation of the party as stated in paragraphs 8 (ii- iv) of the affidavit in support, and consequent upon this, a meeting of the National Executive Committee and the National Think Thank Committee was convene by the Alhaji Mohammed Abubakar on 14th June, 2019 wherein the Defendant was summon to the disciplinarian Committee but failed to respond and upon deliberation and finding him liable was accordingly suspended from office as National Chairman of the Action Alliance. That consequent upon the suspension of the Defendant, Alhaji Mohammed Abubakar was appointed as acting National Chairman. That the Notice of meeting of the INEC and National Think Thank Committee was communicated to INDC. That despite the said suspension of the Defendant, the Defendant still parades himself as the National Chairman, hence this action. All these facts are contained in paragraphs 8 (v-xvii) of the supporting affidavit.

The Defendant, on the other hand, contend that by the Provisions of Article 32 (1); Articles 15 (5) (a) (b) and 38 of the Constitution of Action Alliance, the powers of the National Chairman is clearly stated and the mode of suspension and removal of the Defendant are clearly stated and in all, submits that the Claimant has failed to prove by credible and cogent evidence of compliance with any of the laid procedure, hence has failed to

establish their claim. Further that he did not convene the meeting of the 14/6/2019, rather a meeting was convened by him on 21st June, 2019, where in exercise of the Constitutional Powers, and due Notice given to INDCand report duly given – Exhibit 1 – series evidencing the suspension of Alhaji Mohammed Abubakar and other members.

It will be recalled that this court has stated that it law that a party who alleged must rely on the strength of his case and not on the weakness of the Defendant, with credible and cogent evidence in proof. See *Oladimeji & Ors Vs Ajayi (Supra)*. *Omotola Vs Enterprise Bank Ltd (2013) ALL FWLR (PT.698) 911 @ 933 Para E-H*.

In this instance, it is not in doubt that by the Provision of Article 14 (2) (1) & (m), the National Think-Thank Committee, as the highest body of the party has the powers to suspend any member of the party. And by the Provisions of Articles 14 (3), 15 (5) (a) of the parties Constitution provides the procedure of carrying out disciplinary actions, leading to suspension by the National Think-Thank Committee of the party and all must be communicated to the INEC, pursuant to Section 85 of the Electoral Act, 2010 (As Amended).

The question to be asked is whether the Claimant has furnished this court with credible evidence of due compliance with these laid down procedures. A careful perusal of the Claimant affidavit in support of the Originating Summons does not reveal any evidence to support the averments alleging compliance with the procedure, of particular reference is

Paragraph 8 (v) (vi) (vii) (viii) (ix) (x) (xi) of the supporting affidavit. The Claimant did not support these paragraphs with any evidence.

On the otherhand, the Defendant contend that it was Alhaji Mohammed Abubakar and other members of the National Members of the Action Alliance were disciplined and subsequently suspended following the due procedure as laid down by the relevant constitutional provision of the party's constitution and the law, and in support of this, is the Exhibit 1 series, evidencing due compliance with the laid down procedure; as contained in Paragraph 4 (iv) of the Defendant counter-affidavit.

It must be noted that the Claimant did not controverted this averment of the Defendant in any manner. It is settled law that where any fact which has not been categorically countered or denied by a party, that fact is deemed admitted by the other party. See *Njoemana Vs Ugboma & Ors* (2014) LPELR – 22494 (CA).

In the circumstance, this leaves the court to believe that indeed the Claimant allegation of due compliance with the procedure taken leading to suspension of the Defendant is not correct in the absence of any proof.

On the issue of the fact alleged by the Defendant that the Claimant is not a member of the party, on ground of not being a financial member. I have carefully perused the affidavit evidence on both sides; the Claimant attached Exhibit A, in proof of his membership, thus qualifying him to bring this action. On the other hand, the Defendant did not furnish this court with any evidence to the contrary and in proof of his assertion. It is settled law that he who assert must prove. In this instance, the Defendant has

failed to do. Consequently I hold that the Claimant having shown proof is a member of the party and qualify to bring this action.

In all, having carefully considered the questions set out for determination and the reliefs sought, along the lines of this court's findings that the Claimant has failed to establish their claim by credible and cogent evidence in support of this action should fail. Accordingly, it is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

26/3/2020

APPEARANCE:

CHINEDU ODO - FOR THE CLAIMANT

GABRIEL EGHAREVBA - FOR THE DEFENDANT