

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
OF NIGERIA
HOLDEN AT ABUJA
ON MONDAY 10TH DAY OF FEBRUARY 2020
BEFORE HIS LORDSHIP:HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO – ABUJA

SUIT NO: FCT/HC/CV/938/2020

BETWEEN:

UBAH CHRISTIAN CHUKWUNEDUM APPLICANT

AND

INDEPENDENT NATIONAL ELECTORAL } RESPONDENT
COMMISSION (INEC) }

JUDGMENT

The instant application was filed by the Applicant on 03/02/2020, pursuant to the grant of leave by this Court on 31/01/2020, to bring an application for judicial review by way of mandamus against the Respondent. The application seeks two reliefs, namely:

1. An order of Mandamus compelling and/or commanding the Defendant/Respondent to discharge its official public duty pursuant to section 75(1) of the Electoral Act, 2010, as amended, by issuing a sealed Certificate of Return in a prescribed Form within 7 days to the Claimant/Applicant being the winner of the Anambra South Senatorial District election which was held on 23rd February, 2019, and organized and supervised by the Defendant.

2. An order of Mandamus compelling and/or commanding the Defendant/Respondent to discharge its official public duty by withdrawing any Certificate of Return previously issued to any person in respect of Anambra South Senatorial District election held on the 23rd February, 2019.

To support the application, the Applicant relied on the Statement setting out the name and description of the Applicant; and Affidavit verifying the facts relied on, which were filed to support the application for leave, as permitted by the provision of **Order 44 Rule 6(1)** of the **Rules** of this Court. The Applicant further filed a written address of legal arguments to further support the application.

To oppose the application, the Respondent, on 04/02/2020, filed a Counter Affidavit of *5 paragraphs*, equally accompanied by a written address of learned counsel's legal arguments in opposition.

I have proceeded to examine the totality of the processes filed by the parties in pursuance of and to oppose the instant application. I have also given a careful

consideration to the written and oral arguments canvassed by learned counsel on both sides, to back up their respective contentions.

As confirmed by the Respondent in the depositions in paragraph 3(b), (c) and (g) of the Counter Affidavit of **Ibrahim Sani**, the Applicant was the lawfully recognized candidate of the Peoples Democratic Party (PDP), for the Anambra South Senatorial District for the National Assembly Elections which held on 23/02/2019. This recognition of the Applicant as the lawful candidate of the PDP at the said election resulted from the judgment of the High Court of FCT in Suit. No. FCT/HC/CV/2039/2018 between Hon. Chukwumaeze Marcellinus Nzeribe Vs. Peoples Democratic Party (PDP) & Ors., delivered on 20/02/2019 coram **O. O. Goodluck, J**, which confirmed the Applicant

herein was the authentic candidate of the PDP for the Anambra South Senatorial District with respect to the election in issue. The Applicant made reference to the said judgment in paragraph 2 of the Affidavit in support and attached certified true copy of the same thereto as **Exhibit A**.

Indeed the Applicant participated at the said election as the candidate of the PDP and according to the result announced *vide* **INEC Form EC 8E (1), Mr. Ifeanyi Patrick Ubah** won the election and was duly issued with Certificate of Return. The Applicant, as PDP Candidate, was the runner up at the election. Copy of the said **Form EC 8E (1)** is attached to the Affidavit in support as **Exhibit B**.

According to the Applicant, neither the Respondent herein; nor the PDP, who were parties to Suit No. CV/2039/2018,

coram **Goodluck, J**, appealed the judgment of the Court that affirmed the Applicant herein as the authentic candidate of the PDP for the said election.

The Applicant further deposed that during the pendency of Suit No. CV/2039/2018 under reference, one **Dr. Obinna Chukwudum Uzoh** filed a motion on notice on 27/11/2018, seeking to join as an interested party in the suit; but that the Court heard and dismissed the motion on notice on 29/11/2018. The Applicant attached certified true copies of both the said motion on notice and the Ruling of the Court, per **O. O. Goodluck, J**, dismissing the same as **Exhibits B** and **C** respectively to the Affidavit in support of the instant application.

The Applicant further deposed that the said **Dr. Obinna Uzoh** filed a separate suit at the High Court of the FCT in

Suit No. FCT/HC/CV/170/2018, between Dr. Obinna Uzor Vs. Peoples Democratic Party & 2 Ors. In the said suit, by which the said **Dr. Obinna Uzor** sought a determination of the Court that he was the authentic candidate of the PDP for the same election under reference, both the Respondent and the Applicant in the instant application were the 2nd and 3rd Defendants respectively. According to the Applicant, the said suit was dismissed by the Court, *coram* **C. O. Agbaza, J.**, on the ground that the same was statute barred. The Applicant attached as **Exhibit C** to the Affidavit in support of the instant application, certified true copy of the said Ruling of 08/02/2019.

The Applicant further deposed that apart from the Court decisions referred to in the foregoing, against which there were no appeals, the Defendant had in its custody Forms

filled by the Applicant which indicated that he was the candidate of the PDP for the said election to the Anambra South Senatorial District at the Senate. The said Forms – **E.C.4B; C.F. 001** – were annexed to the Affidavit in support as **Exhibits E** and **F** respectively.

The Applicant further referred to the judgment of the High Court of the FCT in *Suit No. FCT/HC/CV/3044/18 Anani Anacletus Chuka Vs. Uba Ifeanyi Patrick & 3 Ors.*, delivered on 11/04/2019, coram **Bello Kawu, J.** According to the Applicant, this judgment, annexed to the Affidavit in support as **Exhibit H**, disqualified **Ubah Patrick Ifeanyi**, the erstwhile candidate of the **Young Progressive Party (YPP)**, who originally won the election; and that being the candidate that has the second highest number of votes cast at the election, according to the results released by the

Respondent, *vide* **Exhibit G**, he ought to be the beneficiary of the said judgment and be issued with Certificate of Return by the Respondent.

The Applicant's bone of contention, which indeed is the crux of the instant suit, is however that, at page 17 of the judgment in **Exhibit H**, the Court, having disqualified the said **Ubah Ifeanyi Patrick** and the **YPP** from the election, went on to declare that **Dr. Obinna Uzoh**, 4th Defendant in the suit, as the actual winner of the election and thereby ordered INEC, as the 3rd Defendant in that case, to issue Certificate of Return to the said **Dr. Obinna Uzoh** as the duly elected Senator for Anambra South Senatorial District, being the candidate of the PDP and having scored the highest number of valid votes.

The Applicant contended that the Court, in coming to the decision that **Dr. Obinna Uzoh** was the candidate of the PDP at the election, forgot and overlooked the previous decisions of **O. O. Goodluck, J;** and **C. O. Agbaza, J,** **Exhibits A** and **D** respectively, that affirmed that the Applicant herein was the candidate of PDP at the election.

The Applicant further deposed that since the decision, especially of **Goodluck, J,** in **Exhibit A** was delivered first in time on 20/02/2019, and had settled the issue that he, the Applicant, was the authentic candidate of PDP for the said election; as such the portion of the subsequent decision of **Kawu, J,** **Exhibit H,** declaring **Dr. Obinna Uzoh** as the candidate of PDP, was a decision held *per incuriam* and as such a nullity.

The Applicant further deposed that he had made repeated demands, through his Solicitors, *vide* letters annexed to the Affidavit in support as **Exhibits J, K and L**, respectively, to the Respondent to issue him with Certificate of Returns, which letters it has failed to heed.

In the Counter Affidavit filed on its behalf, the Respondent did not deny the substance of the Applicant's claims. As a matter of fact, as I had stated earlier on, the Respondent admitted in paragraph 3(b), (c) and (d) of its Counter Affidavit that the PDP submitted the name of the Applicant as its candidate representing the Anambra South Senatorial District for the 2019 National Assembly Elections; and that it published the Applicant's name as mandated by law; and that at the conduct of the said

election on 23/03/2019, the Applicant was the candidate of the PDP.

It is further deposed for the Respondent that at the said election, one **Mr. Ifeanyi Patrick Ubah**, who was candidate of the **Young Progressives Party (YPP)**, scored the majority of lawful votes at the election, was accordingly returned as elected; and was issued with Certificate of Returns in line with **s. 75** of the **Electoral Act, 2010** (as amended).

Still recognizing the Applicant as the candidate of the PDP at the said election, the Respondent further deposed in paragraph 3(g) and (h) of the Counter Affidavit that the Applicant, as PDP candidate at the said election, challenged the success of **Ifeanyi Patrick Ubah** at the Election Tribunal and at the Court of Appeal, but lost.

From the deposition in paragraph 3(j) of the Counter Affidavit, it becomes clear that the reason the Respondent has refused to issue Certificate of Return to the Applicant, was a result of the portion of the judgment cited by the Applicant in **Exhibit H**, by which the Court declared **Dr. Obinna Uzo** as the PDP candidate for the election and having scored the highest number of valid votes cast.

The Respondent further deposed in paragraph 3(m) that **Mr. Ubah Ifeanyi Patrick** approached the Federal High Court and obtained an *ex parte* order by which it (INEC) was restrained from issuing a fresh Certificate of Return in respect of the said election.

The Respondent lastly deposed in paragraph 4 of the Counter Affidavit that there is no Court order to issue Certificate of Return to the Applicant.

Now, from the totality of the depositions, both in the Affidavit in support and in the Counter Affidavit; and the totality of the arguments canvassed by learned counsel on both sides, it seems clear to me that the issues that have arisen for determination in the instant case are:

- 1. Whether that portion of the judgment of the FCT High Court, coram Kawu, J, delivered on 11/04/2019, declaring one Dr. Obinna Uzoh as the candidate of the PDP and winner of the Anambra South Senatorial District for the 2019 National Assembly Elections not rendered per incuriam and thereby incapable of being enforced; and if so, whether the Respondent was right to have relied on the same to withhold issuance of Certificate of Return to the Applicant, having regard to the portion of the said judgment disqualifying Patrick Ifeanyi Uba, who originally won the election, as the candidate of Young Progressives Party (YPP) at the said election.***

2. If issue (1) is resolved in the negative, whether this Court is not empowered, by orders of mandamus, to compel the Respondent to issue Certificate of Return to the Applicant in the circumstances of this case?

In narrowing the crux of this suit to the issues set out in the foregoing, the Court has considered that both the Applicant and the Respondent were *ad idem* on a few fundamental issues or facts, namely:

1. That the Applicant was the duly recognized candidate of the PDP for the Anambra South Senatorial District for the election to the Senate of the National Assembly at the 2019 General Elections; his name having been submitted by the PDP for the said election.

2. That the Applicant participated at all the stages of the election and scored the second highest number of votes cast as declared by INEC *vide* **Form EC 8E(1)**, attached as **Exhibit G**.
3. That several attempts by **Dr. Obinna Uzo** to upstage the Applicant as the candidate of PDP for the election, through Court actions, failed.
4. That **Dr. Obinna Uzo** did not participate whatsoever at the said election.
5. That **Uba Ifeanyi Patrick**, who originally won the said election; and his political party – **Young Progressives Party (YPP)** were disqualified from the said election *vide* the judgment, **Exhibit H**.

6. That attempts by the said **Uba Ifeanyi Patrick**, to set aside the judgment in **Exhibit H**, did not succeed as the Court dismissed his application, *vide* Ruling attached to the Affidavit in support of the instant application.

Now, learned counsel for the Applicant had contended that the facts of the present case met the principal purpose for which an order for mandamus may issue; in that the Respondent, on the basis of the circumstances of the case, had a statutory public duty to comply with the provision of **s. 75(1)** of the **Electoral Act**, by issuing Certificate of Return to the Applicant, having won the election in issue upon the disqualification of the original winner.

Learned counsel therefore argued that the essence of the application is to compel the Respondent, being a public

body, to perform its statutory duty by complying with s. **75(1)** of the **Electoral Act** as it relates to him. Learned counsel relied on the authorities of Layanju Vs. Emmanuel Araoye [1961] 1 SCNLR 139; Ulegede Vs. Hon. Commissioner for Agriculture, Benue State [1991] 8 NWLR (Pt. 467) 437; Anthony Vs. The Governor of Lagos State [2003] 10 NWLR (Pt. 828) 288.

The Applicant's learned counsel further underscored the point that both the Respondent and the said **Dr. Obinna Uzoh** were deemed, in the eyes of the law, to have accepted that the Applicant was and is still the authentic candidate of the PDP with respect to the election in issue, having not appealed against the concurrent judgments of the FCT High Court referred to in **Exhibits A, C and D** respectively.

Learned counsel further argued that on the basis that both the Respondent and the said **Dr. Obinna Uzoh** were deemed to be bound by the decisions of the FCT High Court aforementioned, that that part of the subsequent decision of the FCT High Court in **Exhibit H**, delivered on 11/04/2019, declaring that **Dr. Obinna Uzoh** is PDP candidate at the said election was made *per incuriam* the earlier decisions and therefore constituted a nullity.

Learned counsel argued that the decisions of the FCT High Court mentioned in **Exhibits A, C and D** in the foregoing were not appealed against and remained binding on the parties and on the Court and that any subsequent decision of this Court which is reached to contradict those decisions is reached *per incuriam* in that the Court overlooked or forgot its earlier decisions on the same issue.

Learned counsel relied on the authority of Mr. David Umaru Vs. Dr. Muazu Babangida Aliyu [2010] 3 NWLR (Pt. 1180) 135, as to the purport of decisions reached *per incuriam*.

Learned counsel further relied on the definition of “*per incuriam*” in Black’s Law Dictionary 10th edition at page 1254, and urged the Court to grant the application as prayed.

The only argument offered by the Respondent’s learned counsel, apart from recounting the contents of the Counter Affidavit, is that there is no Court order directing INEC to issue Certificate of Return to the Applicant and as such the Respondent is not in breach of any law or order of Court. Learned counsel thus urged the Court to dismiss the suit.

It is pertinent to note, in furtherance to the fundamental issues upon which the Court has made findings in the

foregoing, that parties were *ad idem*, that even though it is deposed in paragraph 3(m) of the Respondent's Counter Affidavit, that **Mr. Uba Ifeanyi Patrick** obtained an *ex parte* order of the Federal High Court to restrain the Respondent from issuing a fresh Certificate of Return in respect of the Anambra South Senatorial District, pursuant to the judgment in Suit No. CV/3044/18, the Respondent failed to exhibit the said *ex parte* order to the Counter Affidavit. As correctly submitted by the Applicant's learned counsel, the only admissible evidence of the decision of a Court is the decision itself or an admissible secondary evidence thereof, by virtue of s. 128 of the **Evidence Act**.

In the circumstances, this Court cannot rely on oral or mere affidavit evidence of the said *ex parte* order of the

Federal High Court referred to by the Respondent and as such is not bound by the same. I so hold.

Now, I have considered and cannot fault the arguments of the Applicant's learned counsel that the aspect of the judgment of the FCT High Court, *coram* **Kawu J**, delivered on 11/04/2019, declaring one **Dr. Obinna Uzoh** as the candidate of PDP for the election in issue and ordering the Respondent herein to issue him with Certificate of Return is clearly reached *per incuriam* and cannot bind the Applicant or the Respondent in the present suit.

It has been held that a judgment rendered *per incuriam* is one exception to the rule of *stare decisis* and that such judgment has no authority. I refer to the expansive definition of "*per incuriam*" in *Black's Law Dictionary, 10th*

Edition, cited (supra) by the Applicant's learned counsel which states as follows:

“(of a judicial decision) wrongly decided, usually because the judge or judges were ill-informed about the applicable law...

‘There is at least one exception to the rule of stare decisis. I refer to judgments rendered per incuriam. A judgment per incuriam is one which has been rendered inadvertently. Two examples come to mind: first, where the judge has forgotten to take account of a previous decision to which the doctrine of stare decisis applies... It is in cases such as these that a judgment rendered in contradiction to a previous judgment that should have been considered binding, and in ignorance of that judgment, with no mention of it, must be deemed rendered per incuriam; thus, it has no authority...

The same applies to judgments rendered in ignorance of legislation of which they should have taken account. For a judgment to be deemed per incuriam, that judgment must show that the legislation was not invoked...'

Louis-Philippe Pigeon, Drafting and Interpreting Legislation 60 (1988)."

In the instant case, I have examined the judgment of the FCT High Court *coram Kawu, J*, under reference. The judgment did not make reference to or take account of the previous binding judgment of the same Court, *coram Goodluck, J*, that positively ruled that the Applicant was the candidate of the PDP representing Anambra South Senatorial District for the February 23, 2019 election to Senate of the National Assembly. The reason for this is however not farfetched in that the issues in controversy in the suit related strictly to the primary elections of **Young**

Progressives Party (YPP) and the candidature of **Uba Ifeanyi Patrick** to contest as the candidate of that party at the general election for Anambra South Senatorial seat of the National Assembly. The suit had absolutely nothing to do with PDP or who was qualified as its candidate for the said election.

I further note that even though **Dr. Obinna Uzoh** applied to be joined as a co-defendant in the suit, which the Court granted, he did not file a Counter-Claim in the action and invariably sought no reliefs that were capable of being granted by the Court.

The only portion of the judgment in which the name of **Dr. Obinna Uzoh** was mentioned states as follows:

“The 1st and 2nd defendant (sic) having violated the provision of section 87(4) (c) (i) (ii) of the Electoral Act,

2010 [As amended], Judgment is hereby entered against the 1st and 2nd Defendants in favour of the Claimant and the 4th Defendant. The Claimant's relief having been overtaken by events, the 4th Defendant's reliefs are hereby granted been (sic) a candidate who participated in the general election with the 1st Defendant who is disqualified in this suit.

(Underlined portions for emphasis)

Without seeking to sit on appeal over the judgment under reference, it is safe to hold here that the decision of that Court that the 4th Defendant in that case – **Dr. Obinna Uzoh** – participated in the general election with the 1st defendant **Uba Ifeanyi Patrick**, is clearly *per incuriam* in that it was rendered inadvertently without taking account of the subsisting judgment referred to in the judgments **Exhibits A, C and D** which had decided positively that the

Applicant herein was the candidate of the PDP for the said election; and that the Applicant indeed participated at the said election.

The Supreme Court, in Makun Vs. Federal University of Technology, Minna [2011] LPELR-40998(SC), also elucidated on the definition of “*per incuriam*” decision when it held as follows:

“Sequel to the definition in decided authorities, per incuriam is a Latin phrase which generally means “through inadvertence.” In the case of Adisa v. Oyinwola (2000) 6 SC. Pt. 11 page 47 at page 48 the supreme court in their exposition of the law held that – “the principle appears to be that a decision can only be said to be per incuriam if it is possible to point to a step in the reasoning and show that it was faulty because of a failure to mention a statute, a rule having statutory effect

or an authoritative case which might have made the decision different from what it was."

I hereby further hold that the decision in the judgment under reference is faulty in that the reasoning of the Court in coming to the conclusion that **Dr. Obinna Uzoh** was the duly elected Senator for Anambra South Senatorial District being the candidate of the Peoples Democratic Party (PDP) was clearly reached inadvertently, for the reason that it overlooked the judgments of the FCT High Court recognizing the Applicant, and no one else, as the candidate of the PDP for the said election; and **INEC Form EC 8E (1) – Exhibit G**, being INEC Declaration of Result of Election to the Membership of the Senate Anambra South Senatorial District held on 23rd February, 2019, which showed clearly that the Applicant – **Ubah Christian C**; and not **Dr. Obinna Uzoh**, was the candidate of the PDP who

participated at the election; and as such that portion of the judgment was reached *per incuriam*. I so hold.

It is also pertinent to point out that the judgment overlooked the fundamental concurrent provisions of **s. 285(13)** of the **Constitution** of the Federal Republic of Nigeria, 1999 (as amended) and **s. 141** of the **Electoral Act, 2014** (as amended), as correctly submitted by the Applicant's learned counsel.

S. 285(13) of the **Constitution** which is *in pari materia* with **s. 141** of the **Electoral Act** provides that:

“An election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election.”

The unequivocal evidence that the Respondent has in its custody is that the Applicant; but not **Dr. Obinna Uzoh**, participated in all the stages of the said election. That being so, I must hold that the aspect of the judgment of **Kawu, J**, under reference – **Exhibit H**, ordering the Respondent to issue Certificate of Return to **Dr. Obinna Uzoh** as the duly elected Senator for Anambra South Senatorial District, being candidate of the Peoples Democratic Party (PDP) and having scored the highest number of valid votes cast clearly overlooked the mandatory provisions of the constitutional provision of **s. 285(13)** of the **Constitution**, which, in view of its fundamental essence to the electoral process, is repeated in **s. 141** of the **Electoral Act**, which forbids either the election Tribunal or any Court to declare any person who has not fully participated at all the stages of an election as

the winner. If the Court, *coram* **Kawu, J**, had adverted its mind to **s. 141** of the **Electoral Act**; and there being no evidence adduced or produced before it that **Dr. Obinna Uzoh** indeed participated at every stage of the election in question, the Court would have arrived at a different decision. I so hold.

The effect is therefore that parties in the present suit are not bound by that portion of the judgment that ordered the Respondent to issue Certificate of Return to **Dr. Obinna Uzoh**, for reasons elucidated in the foregoing; and that the Respondent is under obligation, in pursuance of the valid and subsisting portion of the judgment, **Exhibit H**, that disqualified **Ifeanyi Patrick Uba** and **Young Progressives Party (YPP)** from the said election; and by virtue of the provision of **s. 75(1) of the Electoral Act**, *supra*, to issue

Certificate of Return to the Applicant without any further delay, let or hindrance.

In the final analysis, I resolve the two issues set forth in the foregoing in favour of the Applicant and accordingly it is hereby ordered as follows:

1. An order of mandamus is hereby issued compelling and commanding the Respondent to discharge its official public duty pursuant to the provision of s. 75(1) of the Electoral Act, 2010, as amended, by issuing a sealed Certificate of Return in a prescribed Form forthwith to the Applicant being the winner of the Anambra South Senatorial District election which was held on 23rd February, 2019, and organized and supervised by the Respondent.

2. An order of mandamus is hereby further issued compelling and commanding the Respondent to discharge its official public duty by withdrawing any Certificate of Return previously issued to any person in respect of Anambra South Senatorial District election held on the 23rd February, 2019.

3. Parties shall bear their respective costs of this action.

OLUKAYODE A. ADENIYI
(Presiding Judge)
10/02/2020

Legal representation:

B. E. I. Nwofor, Esq. (with V. N. Ugwu, Esq.) – for the Applicant

I. S. Mohammed, Esq. – for the Respondent