

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT ABUJA**

**THIS WEDNESDAY, THE 29<sup>TH</sup> DAY OF JANUARY, 2020**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: CV/1678/15**

**BETWEEN:**

**TOLU JOHN BABALEYE .....PLAINTIFF**

**AND**

**PEOPLES' DEMOCRATIC PARTY .....DEFENDANT**

**JUDGMENT**

The plaintiff initially commenced this action by way of a writ of summons under the undefended list. Having carefully considered the processes filed, the court was of the considered opinion that the matter raised triable issues and was not cognisable under the said procedure. The court on 12<sup>th</sup> May, 2015 accordingly ordered that the matter be transferred to the General Cause List and ordered for pleadings. Parties then complied with the order of court by filing their pleadings.

The plaintiff's claims as endorsed on the statement of claim dated 25<sup>th</sup> January, 2016 but filed on 26<sup>th</sup> January, 2016 is as follows:

- a. The sum of N2, 500, 000.00 (Two Million Five Hundred Thousand Naira only) being the sum paid by the plaintiff to the Defendant for the purchase of the Defendant's Expression of Interest for Nomination for House of Representatives Form 2014 and Nomination Form for House of Representatives for Akoko-South East/West Federal Constituency, Ondo State.**
- b. 10% interest on the judgment sum until from (SIC) the date of filing till judgment is delivered and the Defendant fully liquidates the sum thereof.**

The defendant joined issues with plaintiff and filed its statement of defence dated 18<sup>th</sup> April, 2016 but filed on 21<sup>st</sup> April, 2016.

In proof of his case, the plaintiff himself testified as the only witness (PW1) and adopted his witness statement on oath dated 26<sup>th</sup> January, 2016 and tendered in evidence the following documents, to wit:

1. Peoples Democratic Party (PDP) membership card of plaintiff was admitted as **Exhibit P1.**
2. Peoples Democratic Party Akoko South West cash receipts dated 3<sup>rd</sup> May, 2014, 27<sup>th</sup> March, 2014 and 31<sup>st</sup> October, 2014 were admitted as **Exhibits P2 (1-3).**
3. PDP Ondo State cash receipt dated 9<sup>th</sup> September, 2014 was admitted as **Exhibit P3.**
4. Ondo State Government Receipt issued by High Court, Oka, was admitted as **Exhibit P4.**
5. PDP Ondo State receipt dated 29<sup>th</sup> October, 2014 was admitted as **Exhibit P5.**
6. PDP provisional clearance certificate with No. 0000529 was admitted as **Exhibit P6.**
7. Letter by the PDP Ondo State Chapter to plaintiff dated 19<sup>th</sup> November, 2014 was admitted as **Exhibit p7.**
8. P.D.P Letter granting waiver to plaintiff dated 24<sup>th</sup> October, 2014 was admitted as **Exhibit P8.**
9. First Bank teller showing transfer of the sum of N2, 500, 000 was admitted as **Exhibit P9.**
10. Copy of PDP Form for expression of interest for House of Representatives Nomination 2014 was admitted as **Exhibit P10.**

11. Copy of PDP Nomination form for House of Representatives primary election 2014 was admitted as **Exhibit P11**.

12. Copy of letter of demand for refund of money by the law firm of Tolu Babalaye & Co. dated 22<sup>nd</sup> January, 2015 was admitted as **Exhibit P12**.

The plaintiff was then cross-examined by counsel to the defendant and with his evidence, the plaintiff closed his case.

On the part of the defendant, they also called only one witness, Mr. Nanchang Ndam who testified as DW1. He adopted his witness statement on oath dated 21<sup>st</sup> April, 2016 and tendered in evidence, the following documents:

1. The constitution of the PDP was admitted as **Exhibit D1**.
2. Electoral Guidelines for primary election 2014 of the PDP was admitted as **Exhibit D2**.
3. PDP Report of Conduct of Primary Elections for Ondo State Aspirants to the House of Representatives dated 6<sup>th</sup> December, 2014 was admitted as **Exhibit D3**.
4. PDP Report of Electoral Appeal Panel for the conduct of primary election for Ondo State Aspirants to the House of Representatives dated 8<sup>th</sup> December, 2014 was admitted as **Exhibit D4**.
5. Copy of PDP Result sheet for the primary election for Akoko South West and East Federal Constituency was admitted as **Exhibit D5**.
6. Copy of PDP receipt dated 13<sup>th</sup> October, 2014 was admitted as **Exhibit D6**.

DW1 was then cross-examined and in the process, the following documents were tendered to wit:

1. Certified True Copies (C.T.C) of Leadership Publications of 9<sup>th</sup> October, 2014 and 10<sup>th</sup> October, 2014 were admitted in evidence as **Exhibits D7 a and b**.

With the evidence of DW1, the defendant also close its case.

At the conclusion of trial, the parties filed, exchanged and adopted their final written addresses. In the written address of defendant, one issue was raised as arising for determination as follows:

**Whether the plaintiff has made out a case for the grant of the Relief sought in the writ of summons.**

On the part of the plaintiff, two (2) issues were raised as arising for determination:

- 1. Whether the Plaintiff is entitled to refund from the Defendant of his payment of N2, 500, 000.00 with interests in the circumstance of this case.**
- 2. Whether the Defendant has in any way controverted the plaintiff's case.**

The above issues set out by parties are in substance the same even if couched differently. These issues from the pleadings and evidence can be conveniently harmonised into one single issue as follows:

- 1. Whether the plaintiff has on the preponderance of evidence successfully established his entitlement to the reliefs sought.**

This issue would be predicated on a resolution of the following key questions:

- i. What are the modalities or guidelines for the payment of fees for the P.D.P expression of interest (EOI) 2014 Form and the Nomination 2014 Form.**
- ii. Did the plaintiff make the necessary payments and who did he pay to?**
- iii. If he indeed paid as appropriate, did he participate in the PDP primary elections?**
- iv. Whether in the circumstances, he is entitled to a refund of the fees paid to the defendant?**

The above broad issue and the questions raised are not taken or framed as alternatives to the issues as distilled by parties but are issues that conveniently accommodates all the issues as raised by parties and has brought out with sufficient clarity, the pith of the contest which has been brought to court for judicial ventilation and which remains to be resolved by court shortly with the pleadings of parties providing the sole fulcrum or pivot for streamlining of the issues in dispute.

The point to perhaps underscore at the outset is that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings and trial should show precisely what are the issues between the parties upon which they must prepare and present their cases and which remain to be resolved by court.

Any issue outside the template of the pleadings can only but have peripheral significance if any. In **Oversees Construction Ltd V. Greek Enterprises Ltd & Anor (1985) 3 N.W.L.R (pt.13) 407 at 418**, the Supreme Court instructively stated as follows:

**“By and large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff’s case collapses and the defendant wins.”**

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

Now to the substance, I shall take the sole issue raised with the questions together.

I had at the beginning of the Judgment stated the claims of the plaintiff. The case as made out is fairly straightforward to the effect that following the release of guidelines by the defendant (PDP) for the conduct of party primaries into political offices, he proceeded to obtain the expression of interest and nomination forms in the sum of N2, 500, 000 (Two Million Five Hundred Thousand Naira) only with a view to contesting for House of Representatives seat of Akoko South West/South East Federal Constituency.

That despite making these payments and fulfilling all necessary requirements, no proper primaries was held or conducted to allow him exercise his right to be elected and voted for. Having been denied this opportunity, he has now filed this

action seeking a refund of money paid to get the nomination forms in preparation for the primary election. The defendant on its part put up a contrary case to the effect that the said payment was not made to it but to a “factional state executive of the defendant” and accordingly that the plaintiff is not entitled to any refund.

Now before evaluating the pleadings and evidence and situating whether the required legal threshold have being met in establishing these contested assertions, it is germane to restate some settled principles.

It is trite principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act**. By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one’s pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 NWLR (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 NWLR (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;
2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act**. It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

I had earlier emphasised the pivotal role or importance of pleadings of parties. Anything outside the purview of the pleadings cannot be relevant. In resolving the issues raised by the present inquiry, there is no better template to situate the respective grievance or position of parties than the pleadings. With respect to the key question raised, the material averments of the plaintiff can be situated in the following paragraphs of the statement of claim, to wit:

**“3. The Plaintiff avers that the Defendant carries on its activities, programs, aims and objectives both from its National Headquarters and through its local chapters and wards throughout the thirty-six (36) States of the Federal Republic of Nigeria, including Ondo State through its Ondo State Secretariat located at Akure, Ondo State.**

**5. The Plaintiff avers that notwithstanding the Plaintiff’s registration in February, 2014 and in line with the Party’s Guidelines, the Plaintiff, being interested in contesting for an elective office, applied for and the defendant granted him a waiver to contest for an elective office under the Defendant’s platform. A copy of the Defendant’s Letter duly authenticated by the Defendant’s National Secretary granting Plaintiff waiver to contest for an elective office dated 24<sup>th</sup> October, 2014 is hereby pleaded and same shall be relied on during trial.**

- 6. The Plaintiff avers that in October, 2014, the Plaintiff formally expressed his interest to contest House of Representatives election in the Akoko South West/East Federal Constituency, Ondo State by obtaining the Defendant's "Expression of Interest for House of Representatives and Nomination 2014 Form".**
- 7. The Plaintiff states that the Defendant published the party's account bank details and payment modalities in a national dailies into which bank account aspirants were required to pay for the Expression of Interest 2014 Form and the Nomination 2014 Form and using the said account details, the plaintiff paid the sum of N2, 500, 000.00 (Two Million Five Hundred Thousand Naira) only at First Bank Plc, Oke-Aro-Akure Branch, Ondo State to the Defendant's National Headquarters First Bank Plc account number 2004308430. Copies of the First Bank plc Teller dated 29/10/14 showing Instant Transfer of the said sum and the Defendant's national account number and the Defendant's Ondo State Chapter Receipt dated 29/10/14 with PDP/TR No.: 0184 are hereby pleaded and same shall be relied on during trial.**
- 8. The plaintiff further states that following the payment of the aforementioned sum of N2, 500, 000.00 (Two Million Five Hundred Thousand Naira) only, he was issued with the Expression of Interest for House of Representatives Nomination 2014 Form Code PDP002/NA with Serial No.: 0000376 alongside the Nomination Form for House of Representatives Primary Election 2014 Code PFP003/NA with Serial No.: 0001390. The said Expression of Interest for House of Representatives Nomination 2014 Form and the Nomination Form for House of Representatives Primary Election 2014, duly completed and submitted by the Plaintiff are hereby pleaded and shall be relied on at the trial.**
- 9. The plaintiff avers that he duly participated in the Defendant's screening exercise held at the Defendant's National Headquarters in the Federal Capital Territory for nomination of House of Representatives whereat he submitted all his credentials; his tax clearance, school certificates, etc.**



- 10. The plaintiff states that during the screening exercise, the defendant cleared the plaintiff to contest in the party's House of Representatives Primary Election for Akoko South West/East, Ondo State and issued the Plaintiff a Provisional Clearing Certificate duly authenticated by the Secretary and Chairman of the Screening Committee with Serial No.: 0000529 evidencing Plaintiff's clearance is hereby pleaded and shall be relied on during trial.**
- 11. The plaintiff avers that in line with the party's Electoral Guidelines for Primary Elections 2014, the Defendant approved and scheduled to hold its Primary Election for Nomination of House of Representatives at the Federal Constituency's Headquarters at Community Hall, Oka-Odo, Oka-Akoko South-West Local Government on the 6<sup>th</sup> December, 2014.**
- 12. The plaintiff further avers that on the said primary election date at the aforesaid venue, party delegates who came from the 26 wards in the Federal Constituency converged at the venue of the primary election very early in the morning on that day looking forward to choose their candidate; and the Plaintiff presented himself but was expressly denied the right to contest, despite presenting his Clearance Certificate.**
- 13. The plaintiff avers that the primary election was to take place among for aspirants; to wit: the plaintiff, Major Bobare (RTD), Martins Abiloye and one Hon. Debo Ologunagba who would later emerged as the Governor's preferred candidate.**
- 14. The plaintiff avers that as soon as the stage was set for the primary election, the Electoral officer sent from the National Office in connivance with Mr. Debo Ologunagba acting the script of the Defendant and the Governor of Ondo State, came with his thugs, chased away the party delegates and carted away the election materials to an unknown destination.**

- 15. The Plaintiff avers that he, Major Bobare (RTD), Mr. Martins Abiloye, the party delegates and their numerous supporters left the venue of the primary election in frustration.**
- 16. The plaintiff avers that some hours after the botched primary election, the defendant announced the name of Mr. Debo Ologunagba as its candidate for the Akoko South East/West Federal Constituency without conducting any election in line with party guidelines.**
- 17. The Plaintiff avers that no primary election took place on 6<sup>th</sup> December, 2015 and no form of primary election took place also as party delegates were part of the people chased away from the venue of the primary election by thugs acting for the defendant.**
- 18. The plaintiff avers that he, Major Bobare (RTD), Mr. Martins Abiloye and the party delegates were alarmed at this news as no adoption of candidates can take place in the absence of the party adhoc delegates who are the ones the constitution of the party empowers to cast votes or adopt candidates by voice vote.**
- 19. The Plaintiff also avers that not only was he deprived of his right to contest in the primary election, the defendant announced a rescheduling of the primary election to a later date not mentioned, whereas it surreptitiously held the primary election at the house of one of the party's so-called anointed candidate on the same day, and later announced the State Governor's list of preferred candidates, purportedly declared as the Party's "consensus candidates", thereby depriving the plaintiff of opportunity to participate in any primary election despite collecting the sum of N2, 500, 000.00 (Two Million Five Hundred Thousand Naira) only from the Plaintiff.**
- 20. The plaintiff avers that, at all times material to this case, the Defendant has only one recognised State Executive body located at No. 86, Oyemekun Road, Akure, Ondo State which the Plaintiff dealt with throughout the period of preparation for the primary election which never held.**

**24. The plaintiff avers that the defendant willfully and deliberately scheme him out of the primary election after collecting his N2, 500, 000 (Two Million Five Hundred Thousand Naira only).**

**25. The plaintiff avers that the plaintiff has made a demand for the refund of his money from the defendant but his has been ignored. A copy of the letter of demand dated 22<sup>nd</sup> January, 2015 is hereby pleaded and same shall be relied on during trial.”**

The evidence of plaintiff is essentially in line with the structure of the above averments.

In rebuttal, the defendant pleaded the following averments as follows:

**“3. The defendant does not dispute paragraph 3 of the Statement of Claim.**

**5. The defendant avers in rebuttal paragraphs 4, 5 and 6 of the Statement of Claim that the alleged money was paid to the factional State Executive of the defendant and not the defendant.**

**6. The Expression of interest and Nomination Form of the Defendant are purchase from the National Headquarters of the Defendant which in turn issues a receipt accordingly. The receipts are headed in the National Headquarters of the Defendant and clearly bear the said address and not address of a State Executive. The defendant did not receive any money from the Plaintiff. The receipt normally issued by the defendant in hereby pleaded and shall be relied upon at trial.**

**7. That by virtue of the Constitution of the Defendant and to Guidelines for Primary Elections of the Defendant, matters of the Defendants Primary Election are conducted by the National Headquarters of the Defendant. This includes purchase of Nomination Forms and Expression of Interest Forms as well as the actual conduct of the Primary Election. Copies of the Constitution and Guidelines of the Defendant are hereby pleaded and shall be relied upon at trial.**

**9. In further denial to paragraphs 7 and 8 of the Statement of Claim, the Defendant avers that she did not at any material point in time publish the party's Bank account details in any National daily for the payment of expression of interest 2014 form and nomination 2014 form.**

**10. The alleged sum of N2, 500, 000.00 (Two Million Five Hundred Thousand Naira) was paid to the factional State Executive of the defendant and not to the defendant. The Defendant avers that she not issue the Plaintiff with any Nomination forms and expression of interest forms to the plaintiff and is surprised to same. The defendant did not process the forms through the body authorised by the defendant to conduct primary election in Ondo State.**

**11. The defendant denies paragraphs 9 and 10 of the Statement of Claim and avers that they are false and misleading.**

**12. In further rebuttal to paragraphs 9 and 10, the Defendant avers as follows:**

- i. The purported screening exercise which cleared the plaintiff was not conducted by the committee set up by the defendant. The plaintiff's alleged Provisional Clearance Certificate was merely contrived by the Plaintiff and his co-travelers who parade themselves as the Defendant's State Executive in Ondo state.**
- ii. The National Assembly Primary Election was all duly conducted by the defendant in all the Federal Constituencies in Ondo State including the Constituency, the subject matter of this suit. The primary election was never cancelled following the successful conduct of the primary election, the Electoral Committee set by the Defendant to conduct the primaries and the Electoral Committee set by the defendant to conduct the primaries and the Electoral Appeal Panel set up by the defendant to receive and address petitions against the conduct of the primaries made their respective reports. The reports of the conduct of Primary Election for Ondo State Aspirants to the House of Representatives dated December 6, 2014 and the Report of the Peoples Democratic**

**Party (PDP) Electoral Appeal for the conduct of primary election for Ondo State aspirants to the House of Representatives dated December 8, 2014 respectively are hereby pleaded and shall be relied upon at the trial.**

- iii. The primary election for Akoko South West and South/East Federal Constituency was duly conducted and was won by Hon. Debo Ologunagba who was the sole aspirant. The result of the primary election for Akoko South, West and East Federal constituency is hereby pleaded and shall be relied upon at trial.**
- iv. The Plaintiff was not an aspirant in the National Assembly primary election of the defendant in Ondo State. The primary election was duly conducted by the National Executive of the Defendant through the Electoral Committee set up by her and the plaintiff did not submit any petition to the Election Appeal Panel of the Defendant as required by the Guidelines.**
- v. If the Plaintiff's claim is indeed genuine, he would proceed against the State factional Executive who he paid money to and receive the receipt. The defendant did not instruct any intending aspirant to pay nomination fees to a State Executive Committee or a State factional Executive.**
- vi. The defendant could not have refunded the plaintiff the alleged money as claimed vide the Plaintiffs purported provisional clearance certificate as the defendant did not receive any money from the plaintiff.**

**15. In answer to paragraphs 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Statement of Claim, the defendant avers that:**

- a. The defendant approved and scheduled its Primary Elections for the Nomination of candidates for the House of Representatives which was conducted on the 6<sup>th</sup> December, 2014.**

- b. That on the said day approved by the Defendant, only Honourable Debo Ologunagba was present to contest the election for the primary election of the House of Representatives for Akoko South West/East, Ondo State.**
- c. The plaintiff was not present at the venue of the election, rather the plaintiff joined some Ondo State Chapter/factional party members/executives who conducted their own primary election distinct from the one conducted by the National Executive Committee of the Plaintiff for the House of Representatives of Akoko South West/East in Ondo State.**
- d. That the primary election conducted by the National Executive Committee of the Defendant for the House of Representatives of Akoko South West/East in Ondo State as provided by the Defendants Electoral Guidelines produced Honourable Debo Ologunagba being the sole aspirant. A copy of the primary election result conducted by the National Executive Committee of the Defendant wherein Honorable Debo Ologunagba emerged as the sole candidate is hereby pleaded and shall be relied upon at the trial.**
- e. The State Chapter of the Defendant does not have any authority to conduct primary elections.**
- f. Honourable Debo Ologunagba emerged in line with the provisions of the Defendants constitution and Party Guidelines and he is not the candidate of the Governor of Ondo State.**
- g. That Honourable Debo Ologunagba is not an agent of the Governor of Ondo State nor did he act for the Defendant and the Governor of Ondo State as no election materials were carted away by any thug on the said day of the Primary election that elected Honourable Debo Ologunagba as the candidate of the Defendant for the House of Representatives of Akoko South West/East in Ondo State.**

**18. The defendant denies paragraphs 25 and 26 of the statement of claim and avers in rebuttal that the defendant is not in the position to refund the plaintiff the alleged money he claims vide the plaintiffs purported provisional clearance certificate as the defendant did not receive any money from the plaintiff. ”**

The evidence of the sole witness for the defendant was similarly in line with the above averments.

I have here deliberately and in-extenso set out the salient averments in parties respective pleadings as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings.

With the above pleadings and evidence providing a credible legal and factual template, I shall now proceed to determine and resolve all the issues presented by the extant dispute.

Now on the evidence, there is no dispute that at the material point in time in 2014, the defendant conducted primaries for the election of party candidates for various elective offices including that of member of the National Assembly. It is equally common ground that electoral guidelines vide Exhibit D2 were produced by the PDP to regulate the primary election. For purposes of the National Assembly primary election, Part (v) covering Sections 22-31 of the guidelines regulates the process. It is stating the obvious that both the party and its adherents are bound by these guidelines.

One of the key features of the guidelines under Section 24 and which is critical to the resolution of this dispute include that any aspirant for the primary election to the national assembly shall among others obtain, complete and submit the expression of interest form-Code PS003/NA.

It is logical to state that to be in a position to even buy this expression of interest forms, such person must be a member of the defendant. Before dealing with what

obviously is the crux of this dispute, whether the plaintiff properly paid for the nomination forms and whether he was allowed to participate in the primaries, let me deal with some peripheral issues raised by the pleadings which may offer some clarity to some of the contested assertions. In this case, the plaintiff has by Exhibit P1 denoted or demonstrated clearly his membership of the defendant. Exhibit P1 was signed and or authenticated by the Ward and National Executives of defendant showing that the plaintiff is a registered member of defendant in ward 13, Akoko South West Local Government Area Council in Ondo State. Exhibits P2 (1-3) and P3 shows the financial contributions to the activities of defendant in the local government which was acknowledged by the defendant's Director of Organisation in Ondo State vide Exhibit P7. Apart from bare general denials, these averments were not seriously challenged or impugned by the defendant. In the absence of any serious challenge, these representations with respect to plaintiff's membership of defendant and that he is equally an active financial contributor to the activities of defendant are clearly deemed as established. The defendant has sought to impugn the credibility of Exhibit P7 as emanating from "an illegal and factional chairman of the defendant in Ondo state" without delineating or streamlining precisely the legal and recognised arm of defendant in Ondo State and the legal chairman known to the headquarters. This is more so when plaintiff has stated clearly on the pleadings and evidence that there are no factions of defendant in Ondo State at the point in time. In the absence of any scintilla of evidence denoting these factions and who their representatives are, the contention that Exhibit P7 is a product of an illegal faction in Ondo State is discountenanced.

To further detract from the value or credibility of the assertions of defendant in their pleadings and evidence that the plaintiff is not a member of defendant and that his contributions are to an illegal faction of defendant in the state, the defendant through its National Secretary specifically granted plaintiff waiver to contest elective office vide Exhibit P8 dated 24<sup>th</sup> October, 2014. For purposes of clarity, let me reproduce the contents of the **Exhibit P8** as follows:

**"Tolu Babaleye**  
**PDP, Ondo State Chapter**

**GRANTING OF WAIVER TO CONTEST ELECTIVE OFFICE**



**Please recall your letter on the above captioned.**

- 2. The NWC at its 387<sup>th</sup> meeting held on 22<sup>nd</sup> October, 2014 considered your application.**
- 3. Having been found to have satisfied the relevant provisions of our Party's constitution for the granting of waiver, I am pleased to inform you that your application has been approved.**
- 4. You are therefore, free to contest for any elective office under our platform. This is without prejudice to any other requirements contained in the Party guidelines and constitution.**

**5. Congratulations!**

**Prof. Wale Oladipo  
National Secretary"**

The above letter is clear and self explanatory. This letter clearly emanates from the higher echelons of the defendant. The sole defence witness in evidence admitted that in 2014, Prof. Wale Oladipo who signed Exhibit P8 was the National Secretary of PDP. It is therefore inconceivable that the National Secretary would issue a waiver to a non-member or someone of no consequence in the party.

With the waiver granted him, plaintiff stated that he then expressed his interest to contest the House of Representative Election in the Akoko South West East Federal Constituency by obtaining the defendants' "Expression of interest for House of Representatives and Nomination 2014 Form". That the defendant vide Exhibit D7b published the party's account details and payment modalities in a national daily into which payments for the Expression of Interest Form and Nomination Form are to be made. The plaintiff said he then paid the sum of N2, 500, 000 into the said account vide Exhibit P9 and he was then issued with the Expression of Interest for House of Representative Nomination 2014 (Exhibit P10) and the nomination form for House of Representatives primary election 2014 (Exhibit P11.).

The defendant in their defence denied that these payments was made to them but that it was paid to the “factional state executive”. They also stated that there was no publication by them in any daily newspaper streamlining modalities for payment of fees for forms. That forms are issued at the National Secretariat and that the receipts they issue are headed in the National Headquarters and not the address of a state executive.

In addition, DW1 in evidence said that the procedure for purchase of forms is that you have to go to the Finance Department at the National Headquarters where you are given an account number. That you are then expected to go and make the payments and bring the teller to the headquarters where you are given a receipt having National Headquarters address and then the forms will be issued to you.

Let me quickly state that this aspect of the oral evidence with respect to how payments are to be made was not pleaded by the defendant. It is trite principle that evidence led in respect of unpleaded facts go to no issue and ought to be discountenanced.

Now contrary to the above case as made out by the defendant and the evidence of DW1, it is clear in the evidence that by Exhibit D7b, the Certified True Copy of publication in the leadership newspaper, obtained from the National Library, the defendant infact issued a publication stating among others that Expression of interest form (E01) and Nomination forms can be obtained “from the National Secretariat of the party or such other places as may be designated by the National Executive Committee of the party and that upon completion, the forms are to be submitted to the National Secretariat.” The Exhibit then provides that the fees for the E01 form and nomination form for house of representatives is N500, 000 and N2, 000, 000 respectively.

The total sum to be paid was therefore N2, 500, 000. The Exhibit then stated that the National Working Committee (NWC) had designated five banks for the receipt of funds for the sale of the forms. For our present purpose, one of the banks clearly was **Zenith Bank Plc with Account No: 1012436478**.

The assertion by DW1 that there was no such publication is completely undermined by this publication duly signed by the National Organizing Secretary. The unpleaded contention by DW1 that party faithfuls have to come all the way

from all corners of the country to Abuja to get the account number for payment of fees for the forms also completely lack credibility.

The defence witness here does not appear to me as one prepared to state the truth even in the face of **Exhibit D7b** shown to him. It is inconceivable that in this age and time, that for purpose of purchase of forms, people have to travel from far and near and to get the account number of defendant in Abuja to be able to make the required payments. The essence of the designation of five (5) banks by the defendant is to make for ease of payment and convenience of its party members. The incredible tale of DW1 that people have to come to Abuja to get the account number is again discountenanced as lacking in value.

Most importantly, the bare oral assertions of DW1 cannot alter or change the contents of exhibit P7b to suit a particular purpose. See **Section 128 of the Evidence Act**.

Now by **Exhibit P9**, a first bank teller, dated 29<sup>th</sup> October, 2014, the plaintiff paid the sum of **N2, 500, 000** for the forms into the defendants **Zenith bank account number 1012436478**. This account for purposes of clarity is one of the accounts designated by defendant vide Exhibit D7b for payments. The **teller** speaks for itself and it is in law clear evidence of the transaction or transfer of the sum of N2, 500, 000 to the account of defendant. There is absolutely no evidence by the defendant challenging this payment neither is there any evidence to show that this money was not paid and received.

Indeed all that Exhibit D7b, the publication required from Aspirants is that they “should ensure that payments are made only by bank drafts or electronic bank transfer (e-payment).” Aspirants are also expected to ensure that “evidence of payment bears their names.”

The transfer of the money by plaintiff vide Exhibit P9 complies fully with this directive. The contention by defence witness that because the receipt vide Exhibit P5 issued was by the Ondo State Chapter of defendant and some how that it translates to the money being paid to a faction of defendant is with respect again, completely lacking in value. The teller here shows that the payments was made to the bank designated by the National working Committee of defendant. The receipt issued by PDP Ondo state chapter only acknowledged the payment made but it

cannot in law be the evidence of the payment and neither can it override or alter the contents and superior status of the **teller** showing the transfer to the account of defendant specifically designated by them.

In any event, the issuance of the receipt can only be seen in the light of the activities the state chapters undertake on behalf of the headquarters. In paragraph 3 of the statement of claim, the plaintiff avers as follows:

**“3. The Plaintiff avers that the Defendant carries on its activities, programs, aims and objectives both from its National Headquarters and through its local chapters and wards throughout the thirty-six (36) States of the Federal Republic of Nigeria, including Ondo State through its Ondo State Secretariat located at Akure, Ondo State.”**

The defendant in its defence averred thus:

**“3. The defendant does not dispute paragraph 3 of the statement of claim.”**

The above admission is clear. The defendant here acknowledges that its activities, programmes, aims and objectives are carried both from its National Headquarters and through its local chapters and wards throughout the thirty six states of the federation. **Article 5** of the defendants constitution vide Exhibit D1 recognises the existence of other offices such as branch offices in addition to the Head Office of the party in the FCT.

The point to underscore here is with or without the receipt, Exhibit P5 issued by the state chapter of PDP in Ondo State, the payment of **N2, 500, 000** to defendant through its Zenith Bank account, which is a designated bank for payment of fees for forms by aspirants has been creditably established by plaintiff.

Indeed it is because he made this required payments that he was issued with both the Expression of Interest and Nomination Forms vide **Exhibits P10 and P11**. The defendant again did not put up any credible evidence challenging the payment of fees by plaintiff or the issuance of these forms. Most importantly the defendant did not proffer any evidence impugning or challenging the integrity of these forms. All they stated in their paragraph 10 of their defence is that they did not process the forms or issue same to plaintiff and that they are “surprised to same (sic)”.

If they are “surprised” to see the forms, then so be it but that cannot be a defined or streamlined defence to fact that the plaintiff was issued the forms after payment of the requisite fees to defendant. To again undermine the rather unsubstantiated allegation of surprise, after the issuance of the forms, the defendant cleared the plaintiff to contest the House of Representative primary election vide Exhibit P6, the Provisional Clearance certificate issued by the **National Headquarters of the defendant**. The defendant which contends that it did not clear plaintiff and that the alleged Provisional Clearance Certificate was merely contrived by plaintiff and others who parade themselves as defendants State Executive in Ondo State did not again, furnish any evidence to support this allegation. The Provisional Clearance Certificate, Exhibit P6 does not bear any address in Ondo state. Indeed the address on the certificate showed that it was issued from the National Secretariat of defendant in Wuse Zone 5, Abuja and duly signed by the secretary and chairman of the screening committee. Again, the bare oral evidence of DW1 cannot alter or change the contents and effect of this provisional clearance certificate.

The Certificate provides clearly that the plaintiff **“is cleared to contest the House of Representative Primary Election.”** Interestingly the same Clearance Certificate contains a column where reasons are proffered where an aspirant is not cleared to contest the primary election. There is a clear diagonal line or marking on this column indicating that the plaintiff has fulfilled all the requirements to allow him contest the primary election. Having been cleared, it is logical to posit that there were therefore no impediments to his participation in the primary election.

The next follow up and logical question is did he participate in the primary election? On the evidence, the case of plaintiff is that despite presenting himself on the day of primary elections, he was denied the right to contest along with other aspirants. He stated that no proper party primaries was held in accordance with the party guidelines but someone was then announced as the winner of the Akoko South East/West Federal Constituency without conducting any election in line with the party guidelines. I think here the defendant have made a resolution of whether the plaintiff participated in the party primary less challenging by the stance adopted in their pleadings and evidence.

In their pleadings and evidence, the case made out by defendant is that the primary election for Akoko South West and South East federal constituency was conducted peacefully and was won by Hon. Debo Ologunagba who was the **sole aspirant**. Indeed paragraph 12 (iv) of the defence stated that the plaintiff was not an “aspirant” in the National Assembly Primary Election for defendant in Ondo State. **Exhibit D3** (the Report by the defendant on the conduct of primary election for Ondo state aspirants to the House of Representatives) **Exhibit D4** (Report of the defendants electoral appeal panel for the conduct of primary election for Ondo state aspirants to the house of representatives) and **Exhibit D5** (copy of the result sheet showing only one contestant) only **served** to accentuate the point that the plaintiff was not allowed to participate in the party primary despite having fulfilled all requirements from getting a **waiver** allowing him to contest, **making of the requisite payment for the forms, getting and filling the forms and finally getting cleared to participate in the primary election.**

If the plaintiff was not allowed to contest the primary election as in this case despite having fulfilled all requirements and cleared by the National Headquarters of defendant, then the reasons must be precisely defined and this must be in the context of the guidelines regulating or guiding the primary elections. In this case, apart from the debunked contention that the payment for the forms was made to a faction of defendant and not the defendant and that plaintiff was not processed or cleared by defendant; all unsubstantiated and rather sterile empty assertions bereft of credibility, nothing was really put forward by the defendant to justify their action of preventing the plaintiff from participating in the primary elections.

The fees for the forms may have been described as **non-refundable** in Exhibit D7b but there is an implied obligation here that whoever pays for the forms and fulfills all requirements as provided for by the defendant’s guidelines must participate or be allowed to participate in the primary election proper. Where a person participates in the primary election, the issue of refund of fees obviously becomes a non-issue. On the flip side, where an aspirant pays for the forms and fulfills or meets all requirements for participation and such a person as the plaintiff is not allowed to participate in the election for no discernable and cogent reason(s), then the point that the fees in such situation are non-refundable cannot be availing. The justice or fairness of such provision of non-refundable fees must be predicated on the parties meeting up to the very basis of the mutual reciprocity of obligations

which in this case means providing an opportunity for every aspirant including the plaintiff to contest the primary election. Where an aspirant is denied such opportunity, then the whole basis of the contention of non-refundable fees is irredeemably compromised. The defendant cannot hide under the cover of non-refundable fees to perpetuate injustice. Having not, on the evidence allowed plaintiff to participate in the primary election for aspirants to the House of Representatives, for Akoko South West Local Government Area of Ondo State, there is no justifiable basis for the defendant to hold on any longer to the **N,2, 500, 000** paid by the plaintiff into defendants Zenith Bank account. The plaintiff has since vide Exhibit P12 dated 22<sup>nd</sup> January, 2015 demanded for a refund without a positive response from defendant. It is now getting to five (5) years since this money was paid and having reneged on their commitments, the defendant must as a legal imperative make the refund without any further delay.

On the whole, the sole issue raised is answered in the positive in favour of the plaintiff. **Relief (i)** is thus availing. **Relief (ii)** for 10% post judgment interest per annum is predicated on the provision of **Order 39 Rules 4 of the Rules of Court**. Having carefully considered the facts of this case, I am of the considered opinion that the relief has merit and should be granted.

On the whole and for the avoidance of doubt, judgment is entered for the plaintiff against the defendant for the refund of the sum paid as follows:

- 1. The sum of N2, 500, 000 (Two Million Five Hundred Thousand Naira) only being the sum paid by the plaintiff to the defendant for the purchase of the defendants Expression of interest form for nomination for House of Representatives form 2014 and Nomination form for House of Representatives for Akoko South East/West Federal Constituency Ondo State.**
- 2. I award 10% interest per annum on the judgment sum from today until the final liquidation of the sum thereof.**

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**Hon. Justice A.I. Kutigi**

**Appearances:**

- 1. Victoria Echobu (Mrs.) for the Plaintiff.**
- 2. Nwachukwu Ibegwu, Esq., for the Defendant.**