

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO – JUDGE**

SUIT NO. FCT/HC/CR/1735/19

BETWEEN:

- 1. ISA ALI**
- 2. PEOPLES DEMOCRATIC PARTY.....CLAIMANTS**

AND

- 1. MELA VICTOR**
 - 2. ALL PROGRESSIVE CONGRESS**
 - 3. INDEPENDENT NATIONAL**
 - 4. HOUSE OF REPRESENTATIVES OF**
- ELECTORAL COMMISSION (INEC)** **DEFENDANTS**
- THE FEDERAL REPUBLIC OF NIGERIA**

JUDGMENT

On the 26th of April 2019, the 1st Claimant, Hon. Isah Ali and the Peoples Democratic Party caused an Originating Summons to be issued for the determination of the following Questions, and Accompanying Reliefs:-

- 1. Whether by the Provisions of Section 66(1) (a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) a Nigerian Citizen who has voluntarily acquired the Citizenship of another Country is a Person**

- qualified to contest Election into the House of Representatives of the Federal Republic of Nigeria.
2. INCLUSIVE OF THE DAY of whether by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)**, the 1st Defendant a Nigerian Citizen who has voluntarily acquired the Citizenship of another Country is a Person qualified to contest Election into the House of Representatives of the Federal Republic of Nigeria.
 3. Whether by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)** the 2nd Defendant or any Political Party in Nigeria can sponsor the 1st Defendant or any person who is a Nigerian Citizen who has Voluntarily Acquired the Citizenship of another Country as a Candidate in an Election into the House of Representatives of the Federal Republic of Nigeria
 4. Whether by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)** the 3rd Defendant can issue a Certificate of Return to the 1st Defendant or any Person who is a Nigerian Citizen, who has voluntarily acquired the Citizenship of another Country in an Election into the House of Representatives of the Federal Republic of Nigeria.
 5. Whether by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)** the 1st Defendant being a Nigerian Citizen who has Voluntarily acquired the Citizenship of another Country can be sworn -in or allowed to sit as a Member of the House of Representatives of the Federal Republic of Nigeria in any way or at all.
 6. Whether the act of the 2nd Defendant in sponsoring the 1st Defendant and the act of the 1st Defendant who is a

Nigerian Citizen who has Voluntarily acquired the Citizenship of another Country in Participating in the 2019 General Election conducted by the Third 3rd Defendant and the Issuance of Certificate of Return to the 1st Defendant by the 3rd Defendant are not acts in violation of the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)** and therefore wrongful, Unlawful, Unconstitutional and Illegal and Liable to be set aside.

Upon answering the above questions, **the Claimants** then urged the Court to grant in its favour, the Following Reliefs: -

1. A Declaration that by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999(As Amended)** a Nigerian Citizen who has voluntarily acquired the Citizenship of another Country is not a Person qualified to contest Election into the House of Representatives of the Federal Republic of Nigeria.
2. A Declaration that by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999(As Amended)** the 1st Defendant a Nigerian Citizen who has voluntarily acquired the Citizenship of another Country is not a Person qualified to contest Election in to the House of Representatives of the Federal Republic of Nigeria.
3. A Declaration that by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999(As Amended)** the 2nd Defendant or any Political Party in Nigeria cannot sponsor the 1st Defendant or any Person who is a Nigerian Citizen who has voluntarily acquired the Citizenship of another

- Country as a Candidate in an Election into the House of Representatives of the Federal Republic of Nigeria.
4. A Declaration that by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999(As Amended)** the 3rd Defendant cannot issue a Certificate of Return to the 1st Defendant or any person who is a Nigerian Citizen who voluntarily acquired the Citizenship of another Country in an Election into the House of the Representatives of the Federal Republic of Nigeria.
 5. A Declaration that by the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999(As Amended)** the 1st Defendant being a Nigerian Citizen who has voluntarily acquired the Citizenship of another Country cannot be Sworn-in or allowed to sit as a Member of the House of Representatives of the Federal Republic of Nigeria in any way or at all.
 6. The Declaration that the Act of the 2nd Defendant in sponsoring the 1st Defendant and the act of the 1st Defendant who is a Nigerian Citizen who has voluntarily acquired the Citizenship of another Country in participating in the issuance of the Certificate of Return to the 1st Defendant by the 3rd Defendant are acts in violation of the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)** and therefore wrongly, Unlawful, Unconstitutional and Illegal and liable to be set aside.
 7. An Order Setting Aside the act of the 2nd Defendant in sponsoring the Defendant and the act of the 1st Defendant who is a Nigerian Citizen who has voluntarily acquired the Citizenship of another Country in participating in the 2019 General Election conducted

by the 3rd Defendant and the issuance of Certificate of Return to the 1st Defendant by the 3rd Defendant, the acts being in violation of the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)** and therefore wrongful, Unlawful, Unconstitutional and Illegal and liable to be set aside.

8. An Order of Perpetual Injunction restraining the Speaker of the 4th Defendant from swearing in or admitting the 1st Defendant as Member of the 4th Defendant, such swearing –in or admission being an act in violation of the Provisions of **Section 66(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (As amended)** and therefore wrongful, Unlawful, Unconstitutional and Illegal and liable to be set aside.
9. The Cost of this Suit.

This Application was supported by an Affidavit of Twenty-Seven (27) Paragraphs and Two (2) Exhibits, which were namely:

1. The Data Page of the 1st Defendant's Canadian Passport as **Exhibit A**
2. The Copy of 1st Defendant Form CF001, together with its own supporting documentation as **Exhibit B**

Also filed in support is the Written Address of Counsel dated the same date, and all these Processes were served on the Defendants as follows: -

The **1st Defendant** was served on the 17th of October 2019; while the **2nd, 3rd and 4th Defendants** were all served on the 19th of June 2019.

The **1st Defendant** Mr. Mela Victor, in response and in conjunction with the **2nd Defendant**, filed a Twenty-Nine (29) Paragraph **Counter Affidavit in opposition to the Originating Summons**, which he personally deposed to dated the 18th of October 2019, with one Annexure and a Written Address of Counsel. They also filed a Notice of Preliminary Objection.

The 1st Claimant Mr. Isa Ali response to this Counter-Affidavit, filed a 17 Paragraph **Further Affidavit in Support of the Originating Summons** dated the 14th of November 2019 with Four (4) Annexures and a Written Address.

In further response, the **1st and 2nd Defendants** filed a Twenty Two (22) Paragraph Counter Affidavit in opposition to the **Further Affidavit of the Originating Summons** dated the 29th of November 2019, which was also deposed to by the **1st Defendant**. Attached to this Further Counter were Two (2) Annexures and a Written Address of Counsel.

Subsequently, **the Claimant** filed a **Reply on Points of Law** to the **1st and 2nd Defendants** Written Address in opposition to the Originating Summons dated the 13th of November 2019 and filed on the 14th of November 2019.

The 3rd Defendant did not file a Counter Affidavit to the Substantive Suit (Originating Summons), even though they were served with the Originating Processes. However, they filed a Notice of Preliminary Objection.

The **4th Defendant**, in response to the Originating Processes, filed a Twenty-four (24) Paragraph **Counter Affidavit** deposed

to by Dankuwo Adeboye and dated the 3rd of October 2019 as well as a Notice of Preliminary Objection.

The Claimant in response also filed a Thirty (30)- Paragraph **Further Further Affidavit in support of the Originating Summons** dated the 9th of October 2019 and deposed to by Nonye Nwabueze a Counsel in the Law Firm of the Claimants.

The 4th Defendant filed a Sixteen (16) Paragraph **Further and Better Counter Affidavit in opposition to the 1st Claimant's Further Affidavit in his Originating Summons** dated the 3rd of December 2019, which was deposed to by Abdulahi Kokori-Abdul a Legal Officer of the Department of Legal Services of the National Assembly. Attached to this Application are Annexures and a Written Address dated the 3rd of December 2019.

The Claimants filed a Written Address in Opposition to the 4th Defendants **Objection/ Further Further Written Address** in support of the Originating Summons dated the 13th of November 2019 and filed on the 14th of November 2019.

The Court on the 4th of December 2019 consolidated all the **Preliminary Objections** as **ONE** for the Purposes of this Judgment. It is clear that the questions raised throughout these objections must be initially dealt with and resolved before determining the Issues raised in the Originating Summons. See the Case of **ATTORNEY GENERAL ANAMBRA VS ATTORNEY GENERAL, FEDERATION (1993) 7 SCNJ 245.**

The 1st and 2nd Defendants, in their **Notice of Preliminary Objection** dated and filed on the 18th of October 2019 challenged this Suit on the following basis: -

1. The Cause of Action being a Pre-Election Matter is Statute Barred, has expired, and is a Gross Abuse of Court Process by Virtue of **Section 285(9) of the 1999 Constitution of Federal Republic of Nigeria (As Amended)** with 4th Alteration made in July, 2018.
2. The Issues raised in this Originating Summons are clearly outside the Jurisdictional Competence of this Honourable Court.

The Grounds for which the Objections are brought are as follows: -

1a. That by Virtue of the combined effects of the Provision of **Section 285(a) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended)**, being the Constitutional alteration made in July, 2018, **Section 31 of the Electoral Act 2010 As Amended** and particularly Sub **Section (2)(3)(4) and (5) and the Election Time Table and Manual for Election Officials 2019**, the **time** for raising the objection to the particulars of the 1st Defendant/Applicant or initiating a Court Proceedings for lack of Substantial Compliance has lapsed and since expired.

b. That this Originating Summons was filed on the 26th day of April 2019 after Election Processes had been concluded, Election Results announced and Certificate of Return issued to the 1st Defendant/Applicant by the 2nd Defendant and Swearing – in of the 1st

Defendant/Applicant had also taken place beyond the 14 days after the Cause of Action had accrued.

c. The Reliefs and Acts complained of that constitute the Cause of Action or Subject Matter in this Suit has been done and completed therefore *fait accompli* and an afterthought.

2. This Suit was initiated in Gross Abuse and Violation of Due Process and this Honourable Court to Dismiss and/or Strike Out this Suit as lacking in Merit and for want of Jurisdiction.

3. That the 1st and 2nd Defendants/Applicants shall contend and urge this Honourable Court to dismiss and /or strike out this Suit as lacking in merit and for want of Jurisdiction. Attached also to the Preliminary Objection is a Written Address dated the 18th day of October 2019.

The Issues raised in this Objection of the **1st and 2nd Defendants** are **Threefold** and are as follows: -

- Whether this Court has the Power under **Order 15 Rule 18 (1), (a), (d), (e) and (3) of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018** and under the Inherent Jurisdiction to hear and determine this Preliminary Objection.
- Whether the Cause of Action or Issue raised in the Originating Summons are not Pre-Election Matters and therefore Statute Barred by Virtue of the combined effect of **Section 285 (9) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) with 4th Alteration**

2018; and Section 31 (2), (3), (4) and (5) of the Electoral Act 2010 (As Amended), thereby robbing this Court of Jurisdiction.

- Whether the Originating Summons in its entirety is not a Gross Abuse and Violation of Due Process and ought not to be Struck Out/ Dismissed.

Responding to the 1st and 2nd Defendant **Preliminary Objection**, the Claimant filed a Written Address on the 14th of November 2019 raising **Three (3) Issues, namely: -**

1. Whether the Ground of the Suit of the Claimants is a Ground known to the Claimants before the Election so as to make it a matter to be challenged before the Election in the face of the Claimants **Exhibit CFA3** attached to the Further Affidavit in support of the Originating Summons which is the 1st Defendant's admission on oath that he did not disclose the fact that he voluntarily acquired the Citizenship of another Country before the Election.
2. Whether **Section 285(9) and 285 (14) of the 1999 Constitution (As Amended)** are applicable to the Suit of the Claimants/ Applicants so as to deprive the Court of the Competence and Jurisdiction to entertain the Suit.
3. Whether the Suit of the Claimants/ Respondents is an Abuse of Court Process.

On the Part of the 3rd Defendant, INEC, their Notice of Preliminary Objection dated the 26th of July 2019, was premised on three (3) Grounds namely: -

1. The Subject Matter of the Claimant Suit is not within the Jurisdiction of this Honourable Court.
2. The Claimant's Suit as constituted, is Stated Barred.
3. The Suit of the Claimants is not within the Territorial Jurisdiction of this Honourable Court.

Attached to their Objection was a Written Address of Counsel. In this Address, Learned Counsel to the 3rd Defendant raised Two (2) Issues for Determination, namely: -

1. Whether considering the Facts and Circumstances of this Case Vis-a-Vis **Section 285 (9) of the 4th Alteration of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)**, this Suit is Statute Barred thereby robbing the Court of Jurisdiction to entertain same
2. Whether the Cause of Action falls within the Constitutional provided Jurisdiction of this Court bearing in mind that Elections have been conducted.

In opposition to the 3rd Defendants Preliminary Objection dated the 2nd of December 2019, the Claimants filed their Written Address raising **Two Issues** for determination, which are: -

1. Whether the Ground of the Suit of the Claimants is a Ground known to the Claimants before the Election so as to make it a Matter to be challenged before the Election in the face of the Claimant's **Exhibit CFA3**, which was

attached to the Further Affidavit in support of the Originating Summons, which is the 1st Defendant's admission on oath that he did not disclose the fact that he voluntarily acquired the Citizenship of another Country before the Election.

2. Whether **Section 285(9) and 285 (14) of the 1999 Constitution (As Amended)** are applicable to the Suit of the Claimants/ Applicants so as to deprive the Court of the Competence and Jurisdiction to entertain the Suit.

As regards the Third and Final Preliminary Objection, this was filed by **the 4th Defendant**, dated the 3rd of October 2019, and in it, they prayed the Court to Strike out this Suit on the following Grounds: -

- a. The Applicant/Respondents lacks the Locus Standi to institute this Action as this Action is Statute Barred, and therefore, this Honourable Court has no Jurisdiction to entertain this matter.
- b. The Action is improperly constituted and therefore this Honourable Court has no Jurisdiction in respect of the Claims.
- c. The Action as presently, constituted, has no place with the Constitutionally Guaranteed Jurisdiction of this Honourable Court.

In their Written Address, **Five Issues** were raised for the Court's Determination, namely: -

1. Whether the Applicants have the Locus Standi to institute this Action and if the Honourable Court

has Jurisdiction to entertain the Matter in respect thereof.

2. Whether by the Provisions of **Section 285 (9) of the Constitution of the Federal Republic of Nigeria, 1999 (4th Alteration No. 21) Act 2017**, the Claimants are not already precluded by the way of time Limitation from Instituting this Action
3. Whether this Court would be right to assume jurisdiction over an action that is Statute Barred
4. Whether assuming without conceding, **Section 66(1) of the Constitution of the Federal Republic of Nigeria 1999 As Amended** actually precluded the 1st Defendant from contesting Election into the House of Representatives of the Federal Republic of Nigeria
5. Whether in view and by reason of the above raised issues, having been resolved in the affirmative, in favour of the 4th Defendant/Applicant, the 4th Defendant/Applicant Speaker can be perpetually injuncted (sic) and restrained from swearing in or admitting the 1st Defendant/Respondent as Member of the 4th Defendant.

The Claimants in reaction to the 4th Defendant filed their Written Address, which raised three issues for determination: -

1. Whether the Ground of the Suit of the Claimants is a Ground known to the Claimants before the Election so as to make it a Matter to be challenged before the Election in the face of the Claimant's **Exhibit CFA3**, which was attached to the Further Affidavit in support of

the Originating Summons which is the 1st Defendant's admission on oath that he did not disclose the fact that he voluntarily acquired the Citizenship of another Country before the Election.

2. Whether the Claimants have the Locus Standi to institute and maintain this Suit.
3. Whether **Section 285(9) and 285 (14) of the 1999 Constitution (As Amended)** are applicable to the Suit of the Claimants/ Applicants so as to deprive the Court of the Competence and Jurisdiction to entertain the Suit.

Now, after a careful consideration of all the Ten Issues raised collectively by the Applicants/Defendants and the Eight Issues raised for determination by the Defendants/Claimants in response to the Preliminary Objections, **Eighteen Issues** in total (18), the Court will settle on these following Issues as necessary for the just determination of the Consolidated Preliminary Objections: -

- 1. Whether the Claimants had foreknowledge of the facts deposed to in Exhibit CFA3 attached to the Further Affidavit in support of the Originating Summons, before the Elections, and whether, the Cause of Action or Issue raised in the Originating Summons are not Pre-Election Matters and therefore Statute Barred by Virtue of the combined effect of Section 285 (9) of the 1999 Constitution of the**

Federal Republic of Nigeria (As Amended) with 4th Alteration 2018; and Section 31 (2), (3), (4) and (5) of the Electoral Act 2010 (As Amended), thereby robbing this Court of Competence and Jurisdiction to entertain this Suit, and

2. Whether the Originating Summons in its entirety is not a Gross Abuse and Violation of Due Process and ought not to be Struck Out/ Dismissed.

The Court has had a very thorough appraisal of all the Written Arguments on Record of all Counsel across the Board and there is no reason to restate them here, except in referral.

The Issue raised by both Learned Counsel to the 4th Defendant and Learned Counsel to the Claimants on the question of *Locus Standi* was deliberately not set aside as an Issue in this Judgment for determination, because it is a clear issue that has been ably settled in Law and would amount to an overspeak to set it out as a contestable issue for discussion. The Question of Locus Standi is to be determined by consideration of the Statement of Claim, and in this instance, the Originating Summons, which must exhibit sufficient interest in the subject matter of the dispute. All Parties against whom complaints are made must be joined and it is the duty of Claimant to join all Parties whose presence is crucial to the resolution of the Suit. A Person, who is being made a Party against his wish, must inform the Court timeously of his disinterest in the matter so as not to become a Victim of a Court Order. **BUHARI VS OSENI (1992) 4 NWLR PT 237 PAGE 557 AT PAGE 583**

Reference is made to the decided Cases Law Authorities of **SENATOR ABRAHAM ADESANYA VS PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA AND 1 OR (1981)2 NCLR**

**358;ADESOKAN VS ADETUNJI (1994) 6 SCNJ 123LAWANI
ADESOKAN AND OTHERS VS PRINCE MICHAEL O.O.
ADEGOROLU AND OTHERS (1997) 3 SCNJ 1;PROF. YESUFU
VS GOV. EDO STATE & VISITOR EDO UNIVERSITY (2001) 6
SCNJ PAGE 1; GLOBAL TRANSPORT VS FREE ENTERPRISES
(2001) 2 SCNJ 224; DEANA VS THE PRESIDENT, FRN (1981)
2 NCLR;FAWEHINMI VS AKILU (1987) 4 NWLR PART 67
PAGE 797 OCEANIC S.A. VS FREE ENTERPRISES (2001) 2
SCNJ 224.**

Suffice to say that a Party will certainly have recourse to the Law where his interest is adversely affected, as it is shown throughout the Pleadings that the 1st Claimant was a Co-Competitor with the 1st Defendant in the Election into the House of Representatives of the Federal Republic of Nigeria for the Balanga/Biliri Constituency of Gombe State in the 2019 General Elections and the 2nd Claimant is the Political Party upon whose platform he contested.

It is trite also that the Party must show that he has sufficient or even special interest in the performance of the duty sought to be enforced, and that perhaps, explains the need to join the 3rd and the 4th Defendant as a Party in this Action so that they could also be bound by the Orders delivered by the Court in this Judgment. The Court finds that the requisite locus is present and to that end, this Point of Objection raised by the 4th Defendant is found unmeritorious and is dismissed accordingly.

Now, turning to the **First Issue for Determination**, and starting off with the Question of Foreknowledge, the Claimants had argued that their point of contention in the Originating Processes was **not** known by them before the Electionso as to make it a Matter of Challenge. Reference was made to **Exhibit**

CFA3 attached to the Further Affidavit, which was the Affidavit deposed to by the 1st Defendant before the High Court of the Federal Capital Territory averring to his inadvertence in disclosing in Form CF001, the fact that he had acquired the Citizenship of another Country before the Election.

According to the Claimants, issues can only be challenged when disclosed. In **Paragraph 11 of Part B of the 3rd Defendant's Form CF001**, which required an answer to the question of voluntary acquisition of the Citizenship of another Country, the 1st Defendant had answered that he had not acquired any other Citizenship. It was therefore, this answer that was published by the 3rd Defendant before the Elections, and there was no way they would know that they needed to challenge the 1st Defendant's nomination because of the concealment of this vital information.

The Claimants further contended that the 1st Defendant made a Publication of his Oath on the 21st day of May 2019 in the Leadership Newspaper.

According to the Claimants, the fact of the Publication and fact that the Oath by Affidavit took place after the Election and his revelation, cannot by any stretch of Legal Imagination be classified a Pre-Election Matter.

In any event they argued that their Suit falls under the Interpretation of the Constitution and could be lawfully instituted at any time.

All responses of all the Defendants were in relation to Cause of Action; Limitation of Time; Statute Barring and Abuse of Court Process, wherein they all relied on **Sections 285 (9) and (14) of the 1999 Constitution**.

Before going to the Proprietary of the Objections, it is imperative at this juncture to set out the **Timing by Dates** of the sequence of occurrence of events as follows: -

- From the Data Page of the 1st Defendant's Canadian Passport, the Date of its issuance was the 15th of February 2018.
- The 1st Defendant filled out **Form CF001** Stating that he did not acquire any other Citizenship dated 12th October 2018.
- The Form was submitted through the 2nd Defendant, his Party and acknowledged as received by the 3rd Defendant on the 18th of October 2018.
- This **Form CF001** was published at the Constituency Office on the 25th of October 2018.
- The Claimants had on the 16th of March 2019 filed a Petition before the Election Tribunal.
- The Claimants filed this present Suit under consideration, on the 26th day of April 2019, approximately One Month and Ten Days after he instituted the action before the Election Tribunal.
- On the 20th of May 2019, the 1st Respondent deposed to an Affidavit on Oath regarding his inadvertence.
- On the 21st of May 2019, the 1st Respondent published a Public Notice.

It is worthy to note that the Claimants did not mention the question of Dual Nationality before the Election Tribunal and even if there was a late discovery of this fact, it ought to have been raised, even through an Amendment at the Election Petition, before the Election Tribunal, who was then seized of the Matter. This is especially so, as it is clear from the Records that Judgment of the Tribunal was delivered in regard to the Parties on the **5th of August 2019**.

It is also clear that the 1st Defendant had deposed to an Affidavit on the 20th of May 2019 and had also caused to be published, a Public Notice in the Leadership Newspaper of the 21st of May 2019. The Public Notice was to the effect that he “inadvertently omitted to state that he was also a Canadian Citizen” in addition to his Nigerian Citizenship.

This erroneous answer in **Form CF001** was what was disclosed to the Public in INEC’s (3rd Defendant’s) Publication as required under the Electoral Act. The correction of this mistake occurred after the Election had taken place. If, as in their **Paragraph 3.08 of the Claimants Written Address** in response to the 1st and 2nd Defendants, they only knew of the error when the 1st Defendant owned up in the Affidavit before the High Court, then how come this Present Action alleging false declaration was Instituted a Month Prior to the Disclosure in the Affidavit?

It does not tally and leads to the irresistible presumption that the Applicants had knowledge of this error way before the institution of the action. Due to the fact that the **ACTUAL DATE** the Applicant came to the **knowledge** of this error is **UNKNOWN**, and especially as his supporting affidavit did not disclose any timing, the actual time of knowledge could be anytime from before the Election up until the swearing in of the 1st Respondent.

The Applicants in their Various Written Addresses in response to the Preliminary Objections, had argued that **Section 285 (9) and (14) of the 1999 Constitution** are not applicable because the Suit is not an Election Matter either under the Electoral Act or under the Constitution, to be made Subject to the Constitution. According to the Applicants, they only seek the

Interpretation of the Constitution *Simpliciter*, specifically
Section 66 (1) (a) of the 1999 Constitution.

The Applicants further argued that the issue was a Constitutional Matter, and the **Section 66 (1) (a)** was Exclusionist and Prohibitive of other Sections, and urged the Court not be interested in the outcome of its interpretation. According to Counsel, a Person caught by the Provisions of **Section 66 (1)(a)** is a Person Prohibited and clearly excluded and cannot include himself by any other Provision of the Constitution or any other Law.

He argued, that the Prohibition and Exclusion provided in **Section 66 (1)(a)** of the Constitution affects not just the involvement but includes the constitutionality of sitting in the 4th Defendant as Member. Even where such Person purport to have been involved in such Election, his purported involvement is void ab-initio and does not exist in the eye of the Law.

Submitting further, he argued that to interpret any Section of the Constitution including **Section 285 (14)** to defeat in any way the enforcement of the Provision of **Section 66 (1)** of the Constitution, as relates to matters provided, would be clearly absurd. He urged the Court not to interpret a Statute in a way that the outcome of such exercise will lead to absurdity. Learned Counsel also submitted that the Applicant was not Contesting the fact that it is a Pre-Election Matter and went on a long explanation of what a Pre-Election Matter.

Now, Section 66(1) (a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) provides that: -

*“No Person shall be disqualified for Election to the Senate or the House of Representatives if... (a) **Subject to the Provisions of Section 28 of this Constitution**, he has voluntarily acquired the Citizenship of a Country other than Nigeria or, except in such Cases as may be prescribed by the National Assembly, has made a Declaration of Allegiance to such Country”*

Section 28 of the 1999 Constitution provides as follows: -

(1) Subject to the other Provisions of this Section, a Person shall forfeit forthwith his Nigerian Citizenship if, not being a Citizen of Nigeria by Birth, he acquires or retains the Citizenship or Nationality of a Country, other than Nigeria, of which he is not a Citizen by Birth.

(2) Any Registration of a Person as a Citizen of Nigeria or the Grant of a Certificate of Naturalization to a Person who is a Citizen of a Country other than Nigeria at the time of such Registration or Grant, shall, if he is not a Citizen by Birth of that other Country, be conditional upon effective renunciation of the Citizenship or Nationality of that other Country within a period of not more than Five (5) Months from the date of such Registration or Grant.

Now, Section 66 (1) of the Constitution of the Federal Republic of Nigeria 1999, makes specific provisions for a person's disqualification or Non-Qualification for Election to the Senate or House of Representatives. These include the person's voluntary acquisition of the Citizenship of a Country other than Nigeria, OR his having been adjudged a lunatic or an un-discharged bankrupt, or his having been sentenced to death or to imprisonment for an offence involving dishonesty, or that he is a member of a secret society, or his having been indicted for embezzlement or fraud, his presentation of a Forged Certificate to the Independent National Electoral Commission. Any of these disabilities spelt out in **Section 66(1) of the**

Constitution of the Federal Republic of Nigeria 1999, can properly constitute a Ground upon which a Person's Election can be questioned in an Election Petition. A person's disqualification or Non-Qualification based on or arising from the Domestic Nomination Exercise of his Political Party is clearly a Pre-Election Matter.

The Court is being called upon by the Claimants to interpret in particular **Section 66 (1) (a) of the 1999 Constitution (As Amended)** to the Exclusion of any other Competing Sections of the Same Constitution, which are **Sections 285 (9) and (14), with the 4th Alteration 2018**, another Fundamental Part of the Constitution which is Regulatory and which sets out what is and is not a Pre-Election Matter.

In order words, the Court is being urged by the Applicants to streamline and extricate and interpret in specificity, **Section 66 of the 1999 Constitution.**

The unanimous response of all the Respondents to the above was to refer and rely on **Section 285 (9) and (14) of the same Constitution.**

When the Court is faced with Two Equal Competing Provisions of the Constitution and asked by a Party to decide only on one without adopting a Holistic Approach on the other, it could lead to injustice. The Court must balance the Two Equally Important Constitutional Provisions to be fair, especially if the effect of one Provision will affect the Interpretation of another Provision, in which Case, the Two must be considered in the same stream.

Now the Applicants are saying that it is not a Pre-Election Matter, and they are not interested in Election Matters, they want nothing to do with Election but the Interpretation of a

Constitutional Provision. If this is what the Applicants want, then they need to concern themselves **ONLY** with the Interpretation of **Section 66 (1)(a) of the Constitution** and not seek Reliefs, which clearly lies under **Section 285 (9) and (14) of the 1999 Constitution**.

Ironically, it is the Section that grounds their reliefs that the Applicants now urge the Court to disregard. If the Applicant says **Section 66** is exclusionist, then the Reliefs sought under it must surely be exclusive to **Section 66 (1) (a) of the 1999 Constitution** and **NONE OTHER**. It must just be to the Interpretation of it and none other.

The Court refers to **Paragraph 3.20 of the Written Address in response to the 1st and 2nd Defendants**, where the Applicants contended that where the Court finds that a Person has acted in breach of **Section 66**, the “act is void ab initio”. The effect of what the Applicant is claiming under this relief directly affects **Section 285**.

Moreover, even though the Applicant suggested that this is not a Pre-Election Matter, on the Face of all the Documents he submitted and especially by his Supporting Affidavit, it clearly is, because it is based on Nomination, Sponsorship and Qualification, which are Pre-Election Matters. Whatever the form of his challenge and whatsoever manner it was couched and cushioned, the effect is still a Pre-Election Matter. Therefore, it is a situation of what the Applicant wants and what the Law dictates.

They sought for Electoral Reliefs such as Qualification, Sponsorship, Issuance of Certificate of Return; Swearing In and Setting Aside the Election. These Reliefs sought, encroached into Electoral Terrain and their Substance was Cardinal. The

Applicant cannot say the Court need not be concern about the outcome of the Reliefs, because the outcome of the Reliefs overreaches into an equally important Constitutional Provision which deals with the **Electoral Act**, and which has been Constitutionally provided for in **Section 285** of the same **Constitution**. It is clear that no one Provision is superior to the other.

The Applicant cannot eat his Cake and have it.

It is apt to conclude that if the Applicant is asking the Court to only focus on **Section 66 (1)(a) of the Constitution**, and no other Section, then that means the Court must be mindful of the Reliefs that is prayed for by the Applicants. The Court could only grant Reliefs that pertain to the Section alone and certainly **NOT** those Reliefs that crosses the Border Line and enters the terrain of **Section 285 of the 1999 Constitution**.

Had the Applicants stuck to only the issue of Dual Citizenship, the Court would have interpreted it through plethora of Case Law Authorities on what the Apex Court decided on the fact of Dual Citizenship, or Renunciation or the fact that someone cannot contest in an Election.

Now, in the Case of **CHUKWUEGBO VS AGU & ORS (2015) LPELR-25578(CA)**, reliance was placed on the decision of the **Apex Court** in **PDP V SARROR & ORS (SC/381/2011 and SC/383/2011 on 28/11/2011)**, which held that the Tribunal can deal with the issue of Qualification of a candidate to contest a particular Election, whether the issue arises by virtue of the Constitution or otherwise. It is now beyond argument that the issue of a person's Qualification for Election is both a Pre-Election and Post-Election issue. This point is settled by a long line of Supreme Court decisions including **DANGANA VS**

USMAN (2013) 6 NWLR (PT 1349) 50 at 89 – 90; SALIM VS CPC (2013) 6 NWLR (PT 1351) 500; WAMBAI VS DONATUS (2014) 14 NWLR (PT 1427) 223;and IKECHUKWU VS NWOYE (2015) 3 NWLR (PT 1446) 367.

The characterization of a dispute over a Person's Qualification for Election for any reason as a Pre-Election or post Election, is determined by whether the dispute was presented for judicial determination before or after the General Election. If it is brought before the General Election, it is a Pre-Election Matter. If it is brought after the **General Election and after the person who's Qualification is disputed has been elected, it is a Post Election matter.** As a Pre-Election matter, it can be presented only in a High Court by Virtue of **S. 31(5) AND (6) AND S. 87(9) OF THE ELECTORAL ACT 2010 AS AMENDED.**

In regard to a Post-Election challenge of an elected person's Qualification for Election, it can be presented **only** as an Election Petition in an Election Tribunal. Further reference is made to the dictum in the Case of **SALIM V CPC (Supra)** in which the Supreme Court held inter alia that - "*...In conclusion it has to be stated that the issue of disqualification, nomination, substitution and sponsorship of candidates for an Election precedes Election and are therefore Pre-Election matter. The instant situation where the appellant as plaintiff did not complain to Court before Election and even then 38 days after the Election to talk of Pre-Election matter for the first time, is a pill too difficult to swallow.*

He by his lack of consciousness took his matter out of the domain of Pre-Election and can only go before the Election tribunal to try his luck, since the status of the matter was Post-Election clearly outside the ambit of either the Federal High Court, the State High Court or High Court of FCT".

Reference is made to the Case of **ABDULRRAFIU ADESINA BARUWA VS APC & 2ORS (DELIVERED ON 6TH DAY OF MAY 2019) APPEAL NO CA/A/269/2019, MOHAMMED BABA IDRIS JCA** held inter alia that “ The yardstick for determining the accrual of Cause of Action cannot be at the pleasure, whims and caprices of a Party. As clearly provided in **Section 31 (3) of the Electoral Act**, the 2nd Defendant is mandated, upon receipt of the Form CF 001 from the Candidate, to publish the same within Seven Days (7) thereafter. Once the 3rd Defendant receives the Form, which, as shown by the Claimant in the present Case to be 25/10/2018, the Cause of Action immediately arises on the same date and whoever desires to challenge the contents of the Form, can from that date activate the Mandate contained in **Section 31 (4) of the Electoral Act**.

This Suit was considered dead on arrival considering the fact that it was shown to have been filed outside the time limited by **Section 285 (9)** for commencing a Pre-Election Action”. Therefore and in conclusion on this point, a Cause of Action accrues to a Party from the time or date when a duty is breached or an act occurs, which warrants the Party injured thereby to take action in Law to assert or protect his violated Legal Right.

In the Supreme Court decision of **ADEKUNLE ABDULKABIR AKINLADE & 1 OR VS INEC & 2ORS (DELIVERED ON WEDNESDAY 18TH OF DECEMBER 2019) SUIT NO: SC.1438/2019**, which is practically on all fours with the circumstances and facts of this Case, **EJEMBI EKO JSC** held that the issue was that of a Pre-Election and added that the 4th Alteration to the Constitution had provided further procedure for ventilating Pre-Election Issues. Reference was made to **Section 285 (9) of the 1999 Constitution of Federal Republic of Nigeria (As Amended)**

with 4th alteration made in July, 2018, states thus:
“Notwithstanding anything to the contrary in this Constitution, every Pre-Election Matter shall be filed not later than 14 days from the date of the occurrence of the event decision or action complained of in the Suit.”

Section 285 (14), on its own part, defined extensively what constitutes a Pre-Election Matter. His Lordship held that the contention of making false depositions in Form CF001 was a Pre-Election issue. Further, the right of a Petitioner to enforce his right to the Cause of Action would be extinguished by the operation of Section 285 (9) of the Constitution unless the action was “filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the action.”

HER LORDSHIP MARY UKAEGO PETER-ODILI JSC, in her lead judgment on the above Case stated inter alia that a Party asserting non-compliance has the duty to prove the substantial non-compliance for which such a Declaration of Invalidity of the Election could be made.

Another Case on all fours with the facts of this Case is that of **ATIKU ABUBAKAR & 1 OR VS INEC & 2 ORS (DELIVERED ON THE 15TH OF NOVEMBER 2019) IN SUIT NO: SC.1211/2019 AT PAGE 11 ONWARDS**, His Lordship **EJEMBI EKO JSC** held that Disqualification of a Candidate on grounds of false information in his Form CF001 is a Pre-Election Matter by dint of **Section 285 (14) (c) of the 1999 Constitution**. The procedure for venting any grievance on this is statutorily provided in **Section 31 of the Electoral Act, 2010, As Amended**. His Lordship referred to **Section 285 (9)** which is that every Pre-Election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of to state that whoever complains that a

Candidate at an Election had made false declarations on oaths in FORM CF001 published by INEC pursuant to **Section 31 (1) of the Electoral Act** shall timeously, before the General Election and within 14 days from the date of the Publication by INEC of the alleged false declarations in FORM CF001 submitted by the Candidate, file a Suit at the High Court against such Candidate seeking a declaration that the information contained in the said Form is false.

His Lordship further held that “The effect of such Person, complaining that the information contained in the candidate’s Form CF001 is false, and not filing the Suit within 14 days from the date of the Publication by INEC of the said Form CF001 pursuant to **Section 285(9) of the Constitution**, is that the Right to the Cause of Action arising or accruing to such person, on the grounds of any false information contained in Form CF001, is extinguished the Cause of Action having become **Statute Barred**.”

Accordingly, once the right of the Cause of Action accruing or arising from the fact of submitting Form CF001 that contains false particulars or information about the Candidate to INEC, has become statute barred by dint of **Section 285 (9) of the Constitution**, it remains statute barred and the rights thereto extinguished. The issue or Cause of Action that has become statute barred and the right to enforce the same, having become extinguished, can no longer, and would no longer, be available to the Appellant therein to subsequently litigate on in their Election Petition”.

See also the Case Authority of **ADEKUNLE AKINLADE & 1 OR VS INEC & 2 ORS (DELIVERED ON THE 11TH DAY OF NOVEMBER 2019) APPEAL NO: CA/IB/EPT/OG/GOV/20/2019 PER MOHAMMED DANJUMA JCA.**

Further, there is the twin question of knowledge and time of knowledge of the error, which gives the Applicant a Cause of Action. In the Case of **JAFAR SANI BELLO VS YUSUF & 2 ORS (2019) 15 NWLR PART 1695, 201-410 SUPREME COURT PER M.D. MUHAMMAD JSC**, held that “the clear and unambiguous **Section of Section 285 (9) of the 1999 Constitution**, neither makes knowledge on the part of the Appellant a Pre-Condition to the filing of his action nor excludes the date of his Cause of Action accrues in the determination of when time begins to run against him. By the Section, the Appellant’s knowledge of the 1st Respondent’s Non-Compliance with the 2nd Respondent’s Constitution and Electoral Guidelines is immaterial.

To hold that time begins to run against the Appellant only on his becoming aware of the 1st Respondent’s Non-Compliance, and further exclude the date the Appellant’s Cause of Action accrues, in determining when limitation begins to run against him, is to read into the Section what it does not contain. No Court has the jurisdiction of doing so.” Reference was also made to the Case Law Authorities of **DANGANA & ANOR VS USMAN & ORS (2012) LPELR, 25012 SC; (2013) 6 NWLR PART 1349 AT 50; GANA VS SDP & ORS (2019) 11 NWLR PART 1684 AT 510. See Also IBETO CEMENT CO LTD VS THE ATTORNEY GENERAL OF THE FEDERATION(2007) LPELR-8877(CA); WOHEREM VS EMEREUWA (2004) 13 NWLR (PT 890) 398 AT 416; SAVANNAH BANK OF (NIG.) LTD V PAN ATLANTIC SHIPPING AND TRANSPORT AGENCIES LTD (1987) 1 NWLR (PT 49) 212”Per PETER-ODILI, JCA (P28, Paras A-F**

Still on this point, His Lordship held that “By the Section, the Limitation Period is 14 days, and since neither knowledge nor

the date of the accrual of the Cause of Action is made a pre-condition for the determination of the period, the Lower Court in excluding the Appellant's knowledge of the 1st Respondent's Non-Compliance and taking into cognizance, the date his Cause of Action arises, in his computation of the limitation period, is beyond reproach".

As can be seen from the above cited Cases from the Supreme Court of Nigeria, the time in which the Applicants had to challenge the fact of none or wrongful disclosure of the 1st Respondent's Dual Citizenship had lapsed and had become statute barred for all purposes.

The Supreme Court also held that Knowledge and Time of knowledge was immaterial to the fact of the 14 days Limitation Period set under **Section 285 of the 1999 Constitution** and therefore, the Applicants cannot hide under **Section 66 (1) (a) of the 1999 Constitution** to seek refuge for claims clearly under **Section 285 of the Constitution**.

As regards the Issue for determination, as raised by Learned Counsel to the 4th Defendant, which is "Whether **Section 66(1) of the Constitution of the Federal Republic of Nigeria 1999 As Amended** actually precluded the 1st Defendant from contesting Election into the House of Representatives of the Federal Republic of Nigeria", the Court finds that it touches on the substance of the Main Claim and therefore will not make any pronouncement on it at this Preliminary Stage.

In regard to the **Second Issue** for determination, **whether the Originating Summons in its entirety is not a Gross Abuse and Violation of Due Process and ought not to be Struck Out/ Dismissed**, the Court will make reference to the Cases of **ACB PLC. V. NWAIGWE & ORS. (2011) LPELR-208 (SC)**, where the term "Abuse of Court Processes" was defined to

include a situation where a Party improperly uses Judicial Process to the Irritation, Harassment and Annoyance of his Opponent and to Interfere with the Administration of Justice. It also arises where Two or more similar Processes are issued by a Party against the same Party/parties in respect of the exercise of the same right and same subject matter or where the process of the Court has not been used bona fide and properly - **SEE SARAKI V. KOTOYE (1992) 9 NWLR (PT.264) 156 AT 188; OKORODUDU V. OKOROMADU (1977) 3 S.C 21; OKAFOR V. A-G ANAMBRA STATE (1991) 6 NWLR (PT.200) 63 AT 681; NNANA V. NWANEBE (1991) 2 NELR (PT. 172) 181; C.O.P. V. FASEHAN (1997) 9 NWLR (PT.507) 171; OLUTINRIN V. AGAKA (1998) 6 NWLR (PT.554) 366."** PER ONNOGHEN, J.S.C. (PP. 12-13, PARAS. F-B).

In the Case of **ETIM & ANOR VS OBOT & ORS LPELR-4128(CA)**

In the Case of **NTUKS V. NIGERIAN PORTS AUTHORITY(2007) All FWLR (Pt. 387) 809 at 823 - 824 and 830 (SC)**, the Supreme Court per Tabai, JSC; dealt with the issue of Abuse of Court Process at 832. His Lordship said thus: - "Abuse of Court Process generally means that a Party in litigation takes an irregular, unusual and precipitate action in the judicial process for the sake of action qua litigation, merely to waste valuable litigation time. It is an action which is one (or more) too many; an action which could be avoided by the Party without doing harm to the mailer in dispute, The process of Court is used mala fide to overreach the adversary to the direct annoyance of the Court. The Court process is initiated with malice or in some premeditated or organized vendetta, aimed at frustrating either the quick disposal of the matter or the abatement of the mailer for no good cause, The Court process could also be said to be abused where there is no iota of law

supporting it. In other words, the Court process is premised or founded on frivolity or recklessness.

This Latter decision says it all. The Applicants ought to have raised the issues in this Originating Summons before the Election Petition Tribunal and it appears both Cases were being simultaneously pursued. This could have led to an absurdity for if, the Tribunal dismissed his Petition and the High Court had granted the prayers in the Originating Summons, which had clearly the same end result as that hoped to achieve before the Tribunal, albeit in a back door manner, there would have been a Mockery of the Justice Sector.

Therefore, this Court finds that the Originating Summons constitutes an Abuse and violation of due process of law.

More fundamental is the fact of Territorial Jurisdiction, which was incidentally, not raised by any Party before the Court. In the Case of **ABDURRAFIU ADESINA BARUWA VS APC & 2 ORS DELIVERED ON 6TH OF MAY 2019, CITED SUPRA**, it was held that the acts, events or decision given rise to the Action occurred in Ogun State. The Mandatory Publication of the 2nd Respondents Form CF001 was made in Ogun State and therefore, the FCT High Court did not have the Territorial Jurisdiction to entertain the Matter. **HIS LORDSHIP, MOHAMMED BABA IDRIS JCA** held that Territorial Jurisdiction is the jurisdiction over Cases arising in or involving persons residing within a defined territory and referred to the Cases of **IBORI VS OGBORU (2005) 6 NWLR PT 920 AT 102**. A Court no doubt lacks the competence to adjudicate over Matters and Persons outside its Territorial Jurisdiction. See also the Cases of **TUKUR VS GOVT GONGOLA STATE (1989) 4 NWLR PT 117 AT 517; DAPIALONG VS TURAKI (2003) 15 NWLR PT 843 AT 310**.

Final Reference is made to the Case of **HON. KHAMISU AHMED MAILANTARKI VS HON. YAYA BAYCHI TONGO & 2 ORS (2018) 6 NWLR PT 1614, AT 69**, which involved a challenge to an Election from Gombe State. The facts are on all fours with the facts of this Case. The Court of Appeal held that the High Court of FCT had no jurisdiction to hear and determine the Suit of the Appellant, the Cause of Action of which accrued to him in Gombe State, outside the Federal Capital Territory. The Supreme Court hearing the further Appeal, held that a Court in one State of the Federation does not have jurisdiction to hear and determine a Matter, either exclusively within the jurisdiction of another State or which arose within the Territory of another State. NO Court in any State, including the High Court of the FCT has extra Territorial Jurisdiction. **EKO JSC** held that Gombe State and the Federal Capital Territory Abuja are distinct and independent of each other. The FCT High Court was held to have acted ultra vires in assuming jurisdiction over a Cause of Action that arose in Gombe, outside its jurisdictional territory. It was also held that the filing of the Suit in Abuja was a clear example of forum shopping in the hope of securing a favourable outcome.

In conclusion, the Objection of Learned Counsel to the 4th Respondent on the question of Locus Standi was found unmeritorious and the objection in that specific regard is dismissed.

All other Issues raised in the Preliminary Objections argued by Counsel to the 1st to 4th Respondent are found meritorious, and accordingly upheld.

The Originating Summons Suit is accordingly dismissed.

**HON. JUSTICE A.A.I. BANJOKO
JUDGE**