

**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
DATED 14TH DAY OF DECEMBER, 2020**

SUIT NO: FCT/HC/CV/3136/19

MOTION NO: FCT/CV/4487/2020

BETWEEN:

- 1. COMRADE AGBOR OJO IDABI**
- 2. COMRADE EDWARD SAMUEL AUMA**
- 3. COMRADE LAWANI KENETH OSAGIE**
- 4. COMRADE ABIA OBI MONDAY**
- 5. COMRADE ALIYU HUSSAINI**
- 6. COMRADE IORTYER**
- RIFKATUCLAIMANTS**
- 7. COMRADE IBRAHIM MOHAMMED**
- 8. COMRADE DAHIRU UMAR**



AND

- 1. NATIONAL PRESIDENT RATTAWU**
- 2. GENERAL SECRETARY RATTAWU**
- 3.COMRADE ADAMU ISYAKA**
- 4.COMRADE YESUFU M. OYAREKWA**
- 5.COMRADE JAMILU BAGUDU**
- 6.COMRADE ISAH SALE**
- 7.COMRADE JEGEDE O. KOLADE**
- 8.COMRADE AJAYI EMOKPARIE**



DEFENDANTS

**THE CLAIMANTS ARE REPRESENTED BY NANPON
WUYEPESQ
THE DEFENDANTS ARE REPRESENTED BY MOHAMMED
ADAMUS ESQ**

JUDGMENT

This Judgment is delivered in respect of Three Consolidated Separate Processes, namely, the Originating Summons filed before the Court, secondly, the Notice of Preliminary Objection corporately filed by all the Defendants and thirdly, a Motion on Notice filed by the Claimants, seeking Injunctive Reliefs.

By fashion of the Law, the Issues raised in the Preliminary Objection will be primarily determined before the other issues are dealt with. The issues in the Originating Summons will then be treated and if successful, then the reliefs sought for in the Motion on Notice would be addressed.

In the Originating Summons dated the 31th of July 2019, the Claimants are praying the Court to determine the Following Questions namely: -

1. Whether having regard to the clear **Provisions of Rules 12, 13, 14 and 15 of the Constitution of Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)**, the Defendants were constitutionally bound by the result of the Election into the FCT Council of RATTAWU held on the 12th of July, 2019.
2. Whether having regard to the **Constitution of Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)**, the Suspension of the Claimants as duly elected and inaugurated (Sworn in) Officials of the

FCT Council of RATTAWU by the 1st and 2nd Defendants, and the Constitution a Caretaker Committee comprising of the 3rd to 8th Defendants was not Unconstitutional, Unlawful, Null and Void.

3. Whether in view of the 1st and 2nd Defendants Reckless and Undue disregard to obey and comply with clear **Provisions of the Constitution of RATTAWU**, the Oath of which they fully subscribed to and Sworn to uphold as National President and General Secretary of RATTAWU, the 1st and 2nd Defendants are not unfit, Incompetent and Incapable of holding the exalted Offices of National President and General Secretary of RATTAWU or any other Office(s) in RATTAWU whatsoever.
4. Whether the Neglect, Failure and Refusal of the Defendants to allow the Claimants to function as Officials of the FCT Council of RATTAWU, despite that they were duly Elected and Sworn-in does not amount to a flagrant disregard to the Constitution of RATTAWU and Due Process.

In the light of the above Questions, they seek the following Reliefs namely:

1. A Declaration that having regard to the clear Provisions of **Rules 12, 13, 14 and 15 of the Constitution of Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)**, the Defendants are Constitutionally bound to immediately **recognize** the Claimants as the duly elected Officials of the FCT Council of RATTAWU.
2. A Declaration that having regard to the **Constitution of**

Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU), the Suspension of the outcome of the Election into the FCT Council of RATTAWU held on the 12th of July 2019 by the 1st and 2nd Defendants, and the Constitution, a Caretaker Committee comprising of the 3rd to 8th Defendants was Unconstitutional, Unlawful, Null and Void and to no effect whatsoever.

3. A **Declaration** that in view of the 1st and 2nd Defendants Reckless and Undue disregard to obey and comply with the clear **Provisions of the Constitution of RATTAWU**, the Oath of which they fully subscribed to and Swore to uphold as National President and General Secretary of RATTAWU, the 1st and 2nd Defendants **are Unfit, Incompetent and Incapable of holding the exalted Offices of National President and General Secretary of RATTAWU** respectively or any other Office(s) in RATTAWU whatsoever.
4. A **Declaration** that the **Neglect, Failure and Refusal** of the Defendants to allow the Claimants to function as Officials of the FCT Council of RATTAWU despite that they were duly Elected and Swore-in, amounts to a flagrant disregard to the **Constitution of RATTAWU and Due Process.**
5. An Order of this Court that the 1st and 2nd Defendants shall be immediately **removed, vacate and cease** to hold the Offices of the National President and General Secretary of RATTAWU respectively.
6. A Mandatory Order of this Honourable Court **Compelling** the Defendants to proceed immediately to direct the Secretariat of RATTAWU to start paying the stipulated

Take-Off Dues to the FCT Council of RATTAWU under the Leadership of the Claimants and to recognize and allow the Claimants to function and operate as the elected Officials of the FCT Council of RATTAWU.

7. An Order **Setting Aside and /or Nullifying** the Letter or purported Suspension of the Outcome of the Election of the FCT Council of RATTAWU held on the 12th of July 2019 dated 18th July 2019.
8. An Order **Dissolving** the Caretaker Committee of the FCT Council of RATTAWU, which was purportedly constituted by the Letter of 18th July, 2019 comprising of the 3rd to 8th Defendants, and directing them to hand over all RATTAWU Properties in their Possession to the Claimants.

The Defendants were served with the Court Processes and they responded by filing a Twenty Four Paragraph Counter-Affidavit against the Originating Summons, dated the 15th of October 2019. Also attached to their Counter Affidavit is a Written Address of Counsel.

Now, in support of the Originating Summons, is a **Four Paragraph Affidavit** deposed to by Julius Oni, a Managing Partner in the Law Firm of the Claimants Counsel, which is dated the 7th of October 2019 with Five Annexures marked as **Exhibits A, B, C, D and E**. Also attached is the Written Address of Learned Counsel.

It is Mr. Julius Oni's evidence that he has the Consent and Authority of the Claimants to depose to the Affidavit. He thereafter asserted the fact that the 1st and 2nd Defendants are

the National President and General Secretary of RATTAWA respectively. On the 12th of July, an Election was held, electing Members of the State Administrative Council (SAC) of the FCT of RATTAWA.

The Claimants presented themselves, and met all the requisite requirements of the Union's Constitution and Electoral Guidelines. They were duly screened, cleared and the Electoral Committee published their names as Contestants for various Offices in the Election of 12th of July 2019.

The Vice President signed the List of the Contestants for FCT Council Election, while the 2nd Defendant signed the list of Successful Screened Contestants for FCT Council Election.

Upon Screening and Clearance of the Claimants, they proceeded to contest the Election, which was conducted under the watch of Security Agents including the DSS, Police, Civil Defence Corps and Members of the Press in a Free, Credible and Fair Election. According to the Claimants, they scored the highest Numbers of Votes and were returned into the various Offices having satisfied all the requirements of the Law.

In Compliance with the Laws, Guidelines and Due Process, the Claimants were sworn in as duly elected Officers of FCT Council of **RATTAWU**.

Suddenly, the 1st and 2nd Defendants suspended the outcome of the Election vide a Letter dated the **18th of July 2019**. They then constituted a Caretaker Committee, which Members comprises the 3rd to the 8th Defendants to run the Affairs of the Council in place of the Claimants. According to the Claimants,

the Defendants have neglected to recognize them as the duly elected Officers of FCT Council of **RATTAWU**, in contravention to the relevant Constitution and Electoral Guidelines.

After the Swearing in of the Claimants, the Secretariat of **RATTAWU** ought to have commenced payment of Take-Off Dues to the Claimants to enable them run the Affairs of the FCT Council.

The Claimants further contended that the 3rd to the 8th Defendants are presently running the Affairs of the FCT Council of **RATTAWU**, including but not limited to controlling all the Properties of the Union, which was not contemplated by the Union's Constitution.

Finally, he asserted that the stance of the 1st and 2nd Defendants is outrageous and a mockery of the Offices they occupy. It is also a suppression of the Mandate given in a transparent manner by the Members of **RATTAWU**, FCT Council.

Now, the Defendants in their Counter-Affidavit against the Originating Summons deposed to by Mr. Anieti Udo Akpausoh, the General Secretary of **RATTAWU** of the National Headquarters Kubwa FCT Abuja, Exhibited Annexures marked as **Exhibits 1, 2, 3 and 4**. Mr. Anieti Akpausoh asserted that he had the consent of the Defendants to depose to this Affidavit.

Thereafter, he admitted **Paragraphs 1, 2, a, b, d, 3a b, c, d and e of the Claimants Affidavit** but denied **Paragraphs 3f, g, h, I, j, k, m and Paragraph 4 of the Originating Summons**,

adding that the Claimants failed to follow Due Process of the Union Constitution.

It is his Position that there were crisis in the Union due to the Election, which led aggrieved Members to send Petitions to the National Secretariat and Headquarters. Following the Petition and situation on ground, the Leadership of the Union set up a Committee to look into the Petition and other serious issues raised. A Letter to that effect was sent to all Parties concerned and the Claimants were in attendance, affording them fair hearing in line with the principle of Natural Justice.

Submitting further, he asserted that the Committee just submitted their Reports, which the National Working Committee was to sit on at the end of October 2019 for consideration.

He also informed the Court that the entire Documents attached to the Originating Summons by the Claimants are of doubtful Origin.

Finally, he asserted that the Action of the Claimants are Premature and Incompetent as the Claimants approached the Court in utter disregard to the **Provisions of Rule I (VIII) of the Union's Constitution and Statutory Provision.**

He urged the Court to dismiss the Suit with Penalty and Substantial Cost in favour of the Defendants.

The 2nd Application before the Court is the Defendants Notice of Preliminary Objection dated the 14th of October 2019 and filed

15th of October 2019. The Defendants Notice of Preliminary Objection is praying the Court for the following Reliefs: -

1. An Order of the Honourable Court striking out Names of the 1st and 2nd Defendants/Applicants for not being a Juristic Person
2. An Order striking out the entire Suit for lack of merit
3. An Order Dismissing the Suit for lack of Jurisdiction.
4. And such Order or further Order as the Honourable Court may deem fit to make in the circumstance.

The Grounds upon which the Application is made are as follows

1. The Honourable Court lacks the jurisdiction to entertain the Matter
2. The 1st and 2nd Respondents /Applicants are not Juristic Persons
3. By Virtue of the Provisions of the **Trade Dispute Act Cap T. 18 LFN 2004**, the Suit is Incompetent.
4. Going by the Nature of the Suit, Originating Summons is inappropriate to commence such
5. The Suit of the Plaintiff /Respondent is a Trade Dispute.

In his Written Address in support of the Preliminary Objection, Learned Counsel to the Defendants raised a Sole Issue for Determination, which is '**Whether going by the Facts and Nature of this Case, the Honourable Court can make a finding as to the Nature of Trade Dispute**'.

Learned Counsel to the Claimants in response, filed a Written Address to the Preliminary Objection dated the 21st of January 2020 and filed on the 22nd of January 2020.

He raised Two Issues for Determination, which is: -

- 1. Whether the Claim in this Suit is a Trade Dispute and is considerable exclusively in the National Industrial Court.**

- 2. Whether Originating Summons is the appropriate way of commencing this Suit.**

In essence, Learned Counsel to the Defendants argued in their Written Address in support of the Preliminary Objection, that this Suit is purely Trade Dispute and therefore, ought not to be entertained by the Court. By Virtue of **Section 21 of the Trade Dispute Act**, when Matters are Trade Dispute or any Inter or Intra Union Disputes, the Matter ought to go before the National Industrial Court and no other Court. Reliance was made to **Section 2 (2) and 254 of the 1999 Constitution**.

Arguing Further, Learned Counsel submitted that going through the facts of this Case, it clearly shows that the Grounds and Prayers on which the Claimants rely are disputed facts. They therefore urged the Court to hold that it is improper to commence this Proceeding by Originating Summons and asked the Court to dismiss the Case with Substantial Cost of Five Million Naira (N5, 000, 000.00).

In response to the Defendants assertions, Learned Counsel to the Claimants, argued that by the Provision of **Section 48 of the Trade Dispute Act, CAP 432 LFN, 1990**, 'Trade Dispute' means any dispute between Employers and Workers or Workers and Workers, which is connected with Employment or Non-Employment, or the Terms of Employment and Physical Conditions of work of any Person, and he relied further on the Supreme Court Case of **N.U.EE VS V.B.P.E. (2010) NWLR (PT 94) P. 538**.

He further argued that where a Suit borders on Construction of a Statue or where the Facts are substantially not in dispute, Originating Summons would be the appropriate means to commence the Suit. Reliance was placed on the Case of **NIGERIAN BREWERIES PLC VS LAGOS STATE INTERNAL REVENUE BOARD (2001) FWLR (PT 72) @ 1981**. He submitted that this Suit is not contentious as to warrant commencing the Action by a Writ of Summons.

The Third Application, which is a Motion on Notice equally filed by the Claimants, is dated 21st of January 2020 and filed on the 22nd of January 2020, and it seeks for an Order for Interlocutory Injunction pending the hearing and determination of the Originating Summons. The Prayers as contained in this Motion is of threefold (3) namely an Order: -

1). Restraining the Defendants, their Agents, Assigns and any Person acting on their behalf from conducting Elections into the **Chapters of the FCT Council of Radio, Television,**

Theatre and Arts Workers Union of Nigeria

(RATTAWU) pending the determination of the Substantive Suit.

2). Restraining the Defendants, their Agents, Assigns and any Person acting on their behalf from conducting Elections into the Chapters of **the FCT Council of Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)** pending the determination of the Substantive Suit.

3. For such further Order(s) as this Honourable Court may deem fit to make in the Circumstances.

In support of the Motion on Notice is a Seventeen (17)-Paragraph Affidavit deposed to by Deji Ajare, a Legal Practitioner, in the Law Firm of the Claimants Counsel. Also Attached is a Written Address of Counsel wherein, a Sole Issue was raised for determination, which is **“Whether given all the Facts and Circumstances of this Case, especially having regards to the Supporting Affidavit, this Application ought to be granted.”**

The Defendants did not file a Written Objection to the Claimants Interlocutory Injunction but submitted in the Open Court on Points of Law that where a Party says certain facts exist, it must show that the facts exist.

Learned Counsel further argued that the Claimants failed to show the List of Contestants and did not attach documents to buttress same in this Application or to state otherwise, and he finally told the Court that it is not in all Affidavits that a Counter Affidavit should be filed.

After the Submissions made by Learned Counsel, on the 17th of March 2020, the Parties adopted and argued their Submissions for the purposes of this Judgment.

The Claimants raised a Sole Issue for determination in their Originating Summons, which is **'Whether the Plaintiffs are entitled to the Reliefs sought in the Originating Summons'**.

The Defendants on their own part also raised a Sole Issue for determination in their Counter Affidavit to the Originating Summons namely **'Whether the Applicants' Application have recommended itself for favourable Consideration'**.

Now, upon a Careful Consideration of all issues raised in all the Applications across the divide, the Issues necessary for determination are found to be as follows: -

- 1. Whether the Preliminary Objections raised by the Defendants are Meritorious**
- 2. Whether the Claimants have proved their Case to be entitled to the Reliefs sought for in their Originating Summons and flowing from this,**
- 3. Whether it is expedient in the interest of justice to grant the prayers contained in the Motion on Notice seeking for an Interlocutory Application.**

On Issue One, **"Whether the Preliminary Objection raised by the Defendants are Meritorious"**.

It is important to state at the onset that the Defendants raised a Ground that the 1st and 2nd Defendants are not Juristic Persons

but did not make any Submissions or Argument on this Ground. Ordinarily the Law is trite that where a Party fails to submit regarding an issue, he is deemed to have abandoned it, reliance is made to the Case of **SUARA YUSUF VS OLADEPO OYETUNDE & ORS (1998) 12 NWLR (Pt. 579) 1, (1993) 9-10 SC 123.**

It is clear that even though the Applicants/Defendants did not argue extensively on this issue, except to state it, the issue raised is very fundamental to the assumption of this Court's Jurisdiction over the Case and especially over the 1st and 2nd Defendants.

In the Cases of **YELLOW & ANOR VS YUNUS (2018) LPELR-45101 (CA)** and **ATAGUBA V GURA (NIG) LTD (2005) ALL FWLR (PT. 265) PG 1219, (2005) 2 SCNJ PG 139**, it was held that "For an Action to be properly Constituted so as to vest jurisdiction in the Court to adjudicate on it, there must be a competent Plaintiff and a competent Defendant.

The Law is trite that **only** Juristic Persons can sue or be sued. The categories of such Persons are Natural Persons, Companies incorporated under the Companies and Allied Matters Act (CAMA), Corporations, whether Aggregate or Sole, Perpetual Successions, Unincorporated Associations granted the status of Legal Personal by Law such as Registered Trade Unions Partnerships, Friendly Societies and Sole Proprietorships.

Reference is made to the Case Law Authorities of **FAWEHINMI VS N.B.A. NO.2 (1989) 2 NWLR PT 105 PAGE 558; MARTINS VS FEDERAL ADMINISTRATOR-GENERAL (1963) L. L. R. 65; IYKE MED MERCH VS PFIZER (2001) 10 NWLR PT 722 AT**

540; APOSTOLIC CHURCH ILESHA VS A.G MID WEST (1972) 4SC 150; ABAKALIKI LGC VS ABAKALIKI RMO (1990) 6 NWLR PT 155 PAGE 1 & 2; NWLR PT 155 PAGE 1 & 2.

The Evidence of such Juristic Personality of Non-Human Juristic Persons or of their Right to Sue and be Sued eo nomine is the production of their Certificates of Incorporation or their Registration under the Relevant Laws. Suing a Non-Juristic Person is not a Misnomer and cannot be amended to substitute a Juristic Person and the Court references the Case Law Authority of **MANAGER SCOA BENIN VS MOMODU SUIT NO: SC 23/1964 DELIVERED ON 17TH NOVEMBER 1964.**

It therefore goes without saying that if found to be non-juristic, the 1st and 2nd Defendants cannot be sued in this Action and their names are liable to be struck out. See **AGBONMAGBE BANK VS GMGB OLLIVANT (1961) 1 AUNLR AT 116; EMECHETA VS OGUERI (1996) 5 NWLR PT 447 PAGE 227 AND EJIKEME VS AMAECHI (1998) 3 NWLR PART 542 AT 456.**

AUGIE JCA (AS HE THEN WAS) IN UBA V UDUSIP (2014) LPELR 23198 held that in effect, Unincorporated and Non-Juristic Entities are Association of Persons, who does not possess a Personality different and distinct from its Members. Her Lordship referred to the case of **FAWEHINMI V NBA (NO. 2) (SUPRA)** wherein **KARIBI WHYTE JSC**, held that "an Association of Persons without Incorporation cannot be regarded as a Legal Persons for the purposes of an Action in Court." The right to form any Association for the protection of the interests of the Members is quarantined under the

Constitution and is an Entrenched Right. However, such Association of Persons, though recognized by the Constitution, does not ipso facto vest in the Association, the attributes of Incorporation, which alone confers Legal Personality. Legal or Juristic Personality is not attained until the Law recognizes over and above the Associated Individuals, a Single Entity which represents them, but it is not identical with them.

Further reference is made to **WOME MOSES ESQ. VS NIGERIAN BAR ASSOCIATION (NBA) (2019) LPELR-46918 (SC) PER AUGIE, J.S.C. (Pp. 6-14, Paras D-A)**

From the Annexure attached to the Affidavit in Support of the Originating Summons, which showed a Partial Extract of the Association's Constitution and from **Paragraph 18** of the Counter Affidavit in Support of the Originating Summons, which exhibited the Full Constitution of the Union, the Court can see, particularly from the Preamble to the End of the Constitution, that the Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU) Union was **not** a Registered Union. There was no evidence of Registration or of an Enabling Law to prove their juristic personality before the Court. It is clear that any Association of Persons without incorporation cannot be regarded as a Legal Persons for the purposes of Actions in Court. **OBASEKI, JSC at (P. 99, Paras. B-E) in FAWEHINMI VS NBA NO.2 (1989) (CITED SUPRA)** referred to **AMODU RUFAI SHITTA AND ORS VS MOMODU LIGALI AND ORS (1941) 16 NLR 23**, in respect of Twelve Persons regarding themselves in the Writ as the "Executive of the Central Mosque", who purported to sue in that capacity. It was held that the Committee was nothing more than a

collection of individuals and had no capacity to sue. Thus the "Executive of the Central Mosque" was held not to be a juristic person".

The Constitution of RATTAWU is not a Statutory Instrument. It is a pure and simple private document, which its Members were entitled to draw up, in exercise of their right to provide a constitution for the Union to regulate its affairs. Membership of this Union even if stated to be automatic, may be termed a pre-condition and is certainly not a Statutory Provision.

It follows therefore, that if the RATTAWU Union is not a Juristic Personality, any position under this Union cannot possibly be recognized. It would have been a different thing altogether if the 1st and 2nd Defendants were sued by their individual names along with their designations, e.g. Mr. John Smith, National President of RATTAWU. But unfortunately, this was not done and to that end, the Suit is not maintainable against the 1st and the 2nd Defendants.

Therefore, the names of the 1st and 2nd Defendants are accordingly struck off this Suit.

Before delving further, it is important to note that in the Originating Summons, at Issues/Questions for determination, at Issue No.3, which attracted the **Reliefs of 3 and 5**, the Principles laid down in the Case Authority of **HON. PATRICK C. ONUOHA VS CHIEF R.B.K. OKAFOR CHAIRMAN N.P.P. & ORS(1983) LPELR-2705(SC)** will guide this Court. In this case, it was held that the Court cannot delve into such matters because if a Court could do this, it would in effect be managing the Political Party for the Members thereof, which ought to be

determined by the Rules and Constitution of the Party. It was held to involve a domestic issue and not such, would be justiciable in a Court of Law.

In this present instance, this Court finds that the Question in Issue 3 as well as Reliefs 3 and 5 are matters to do with the internal workings of an Association/Union, which are virtually the same, and the Court on the above stated Case Authority, declines to delve into these questions has to do with the internal workings of an Association.

There is also the added fact that these raise contentious issues, for which, facts are needed to be elicited in their regard. Accordingly, Reliefs 3 and 5 are inappropriately instituted under an Originating Summons Procedure, and are accordingly disregarded and dismissed.

The Second Objection is whether this Suit is a Trade Dispute, by Virtue of the Definition Clause in **Section 54 of the Trade Union Act 1973, As Amended by Trade Union (Amendment) Decree 1978 Cap. T14, Volume 15, Laws of the Federation of Nigeria, 2004**. This Act stipulates that Trade Disputes are any dispute between Employers and Workers, or between Workers and Workers, which is **connected** with the Employment or Non-Employment, or the Terms of Employment or Conditions or work of any Person. Reference is made to the Cases of **HIGH CHIEF (DR) OLUFEMI OLAIFA v. CHIEF R. A. ADENIJI & ORS (2017) LPELR-42708** and **EZE & ORS v. UDEH & ORS (2017) LPELR-42716**. In other words, for a dispute to be declared a Trade Dispute

within the meaning of **Section 48**, the following Ingredients must all be present (a) there must be a dispute; (b) the dispute must involve a trade; (c) the dispute must be between Employers and Workers or between Workers and Workers; (d) the dispute must be connected with the Employment or Non-Employment or the Terms of Employment or the physical conditions of work of any person. Reference on this point is made to the Cases of **NATIONAL UNION OF ROAD TRANSPORT WORKERS VS OGBODO (1998) 2 NWLR (PT 537) 189, ATTORNEY GENERAL, OYO STATE VS NIGERIA LABOUR CONGRESS, OYO STATE CHAPTER (2003) 8 NWLR (PT 821) 1.**

Looking at the Affidavit in support of the Originating Summons particularly **Paragraphs 3a, c, d, e, f, g, h, I, j, k, l and m**, and **Paragraphs 8, 9, 10 of the Counter Affidavit**, it can be seen that this Case borders on a Dispute between Parties and is in regard to the Election into FCT Council of RATTAWU as well as the Suspension of the Elected Executive Members of Union. The Case is not connected with Employment, Non-Employment, or the Physical Condition of work of any Person. Therefore, without further ado, the Objection raised in this regard is found untenable, and is accordingly dismissed.

The Third Point of Objection, is whether Originating Summons is the appropriate Mode to commence this Action. In the case of **OSSAI V. WAKWAH (2006) 4 NWLR (PT.969) 208**, His **Lordship Mohammed, J.S.C.**, held that “In other words, it is our considered view that Originating Summons should only be applicable in such circumstances where there is no Dispute on question of Facts or the likelihood of such Dispute. Where, for

instance, the issue is to determine short questions of Construction, and is not a matter of such Controversy that the justice of the Case would demand the setting of Pleadings, Originating Summons could be applicable.

In the Case of **AMASIKE V. REGISTRAR GENERAL OF THE CORPORATE AFFAIRS COMMISSION (2010) 13 NWLR (Pt. 1211) 337 SC**, HIS LORDSHIP OGBUAGU, J.S.C. at P. 42, Paras A-C, held “It is no longer in dispute that generally; an Action by an Originating Summons is used when the facts of a Case or Matter, is not likely to be or in fact, are not in dispute - i.e. it is used for Non-Contentious Actions. In other words, it is not used in Hostile Proceedings.” See the Cases of **OSUAGWU V EMEZI (1998) 12 NWLR (PT.579) 640 AND DIRECTOR OF SSS & ANOR. V. AGBOKOBA (1999) 3 NWLR (PT.595) 425; (1999) SCNJ 1.**

Having considered the following Judicial Pronouncements, the Court has had a close look at the Issues and Questions in this Case, which border on the Construction of the Constitution of RATTAWU and finds that the Claimants Cause of Action as per the Originating Summons are Non-Contentious and can be speedily dispensed with since the Issues for determination are to do with the Construction and Strict Interpretation of the Union’s Constitution. The Action is accordingly appropriately instituted under this Procedure, and the objection raised in this regard is untenable and dismissed.

Therefore, in conclusion, aside of the upholding of the Objection in regard to the Juristic Personality of the 1st and 2nd Defendants, the other points of contention in the Preliminary

Objections are found to be unmeritorious and accordingly dismissed.

Turning to the Originating Summons itself, which forms the 2nd Issue raised for determination, namely: **Whether the Claimants have proved their Case to be entitled to the Reliefs sought for in their Originating Summons.**

Learned Counsel representing the Claimants, in his arguments stated that the Claimants were elected into Elective Positions during their validly conducted Election and were actually sworn in to hold various positions. They were subsequently removed from office and effectively disabled from performing any of their roles.

In support of their contention, the Claimants tendered the **Notice of FCT Council Election Venue, List of Contestants in FCT Council Election and List of Successfully Screened Contestants for FCT Council Election** to show that they were screened and cleared to contest the Election. They argued that due compliance with the Relevant Laws, Guidelines and Due Process were complied with and the Election was free, fair, credible and transparent.

However, in a complete twist of events, the 1st and 2nd Defendants, in a Letter dated the 18th of July 2019, suspended the outcome of the already conducted Elections and constituted a Caretaker Committee to run the affairs of the Council in their stead.

They also tendered a Letter of Suspension tagged as **"Suspension of the Outcome of FCT Council Election"** dated the 18th of September 2019, where the National President

directed the outcome of the Election be set aside pending Proper Investigation of Issues raised in the Petition received by the National Secretariat. The directions and decisions of the National Secretariat was to be communicated to all Parties after Investigations had been concluded, and this Letter, was signed by Comrade A. Akpausoh the General Secretary.

According to Learned Counsel representing the Claimants, the Defendants are bound by the Provisions of the Constitution of RATTAWU and by the Electoral Guidelines, to accept and allow the Claimants to function in the Offices they were elected into. Further he argued that the holders of the various Offices/Leadership Positions should be made to obey the very Rules and Laws which brought them into such Offices and not be allowed to choose which Laws to obey and which not to.

Hefinally urged the Court to hold that they had made out a Case to warrant a grant of the entire reliefs sought.

On his own part, Learned Counsel representing the Defendants had contended that the Suit against the 1st and 2nd Defendants is incompetent as the said Parties are not Juristic Persons.

Further, Counsel argued that the Claimants failed to abide by the Provisions of **Rule I (Viii) of the Constitution**. He argued that immediately a Committee was set up to look at the various Petitions and Crisis of the Union as it affects the Claimants, they headed straight to the Court without waiting for the Outcome of the Committee.

Learned Counsel re-argued his submission in the Preliminary Objection on Trade Dispute and urged the Court to decline Jurisdiction and relied on the Case of **MADUKOLO VS NKEMDILLIM (1962) 1 ALL NLR @587, AMECHI VS INEC (2008) 1 MJSC @ 48 and SECTION 2 (2) and (3) OF THE TRADE DISPUTE ACT.**

It is his contention that it is improper to commence this Action by Originating Summons as certain disputes can be seen in the Affidavit and Prayers of the Claimants. Also, the Claimants did not make certain facts available for the removal of the 1st and 2nd Defendants from office. He relied on the Cases of **DOHERTY VS DOHERTY (1968) NMLR @ 241 and NATIONAL BANK LTD VS AYODELE ALAKIJA (1978) 9-10 SC 59.**

Arguing further, Learned Counsel submitted that whoever desires any Court to give Judgment must have a Legal Right or Liability dependent on the existence of facts, which, he asserts must prove that those facts exist. Reliance was placed on **Section 131 (1) Evidence Act 2011** and the Case of **IYERE VS BFFM LTD (2001) FWLR (PT37) 1166 CA.** Finally, he urged the Court to dismiss the Case with substantial cost of Five Million Naira.

According to the Defendants, the Crisis within the Union was an aftermath of an Election, and aggrieved Members wrote a Petition on the 15th day of July 2019 to the National Secretariat. Then the Leadership of the Union set up a Committee to look into the Petitions, as well as other serious issues raised. All Parties were invited, including the Applicants, who were present during the Proceedings, which ensured fair hearing. They claimed that the Claimants did not follow the

House Rules and laid down Procedures for airing their grievances as stipulated in the **Constitution of Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)**. They maintained also that the approach by the Applicants to this Court was premature and incompetent.

Now, before delving into this issue, the Defendants had questioned the Authenticity of the Documents attached to the Claimants Originating Summons by averring that it is of doubtful origin. By this averment, he is inputting Forgery, and it is trite that he who asserts must prove and the proof must be beyond Reasonable Doubt. See the Case of **ACTION CONGRESS OF NIGERIA V. SULE LAMIDO & ORS. LPELR SC.25/2012**.

Also on a Charge of Forgery it is essential to prove that the Accused forged the document in question. Reliance is placed on the Case of **AGBANIMU V FRN (2018) LPELR-43924 (CA)**.

The Mere stating by the Defendants that the entire Documents attached to the Originating Summons by the Claimants are of doubtful Origin is not enough. Where, however, the Commission of a Crime is directly in issue in any Proceeding, whether Civil or Criminal, in this Case, Forgery, the alleged Crime must be proved beyond reasonable doubt. Reliance is placed on the Case of **EYA V OLOPADE(2011) 5 SCNJ 98**.

Since it is the Defendants who asserted the Commission of the Offence of Forgery, they had the burden of proving it by adducing sufficient evidence to establish it.

Clearly, their Counter Affidavit Evidence fell far short of the standard of proof required for an allegation of this nature, and the Court will disregard this Allegation.

Now, moving to the Main Issue, a careful perusal of the Constitution of the **Radio Television Theatre & Arts Workers Union of Nigeria** attached as an Exhibit states under the Preamble: -

“a). This Document and as it may from time to time be amended, shall be referred to as the Constitution of the Radio, Television, Theatre & Arts Workers Union of Nigeria (RATTAWU).

*It compelled all Members of the Union to be bound by the Rules and Regulations stated therein, and by **Rule 6 viii**, vested the Government of the Union on certain Organs, which included inter alia, the **Central Working Committee; the Chapter Executive Committee, the State Executive Council and the State Administrative Council**”.*

At the onset, it is important to set out the Relevant Rules referred to by Counsel across the divide.

Learned Counsel representing the Defendants had only referred the Court to the Provisions of **Rule I (Viii) of the Constitution**, but this Rule does not actually exist in the Stated Constitution.

Learned Counsel representing the Claimant, on his own part, relied on **RULES 12; 13; 14 and 15 of the Constitution**.

In summary, these Rules identified the status of Five Professional Trade Groups within the Union, to be the Pressure Group and Professional Centre of the Union. Each Trade Group was to comprise of a Chairman and Secretary from each Chapter of the Trade Group, which will be presided over by the

Host Chapter. The Rule also mandated the times of Meetings in a Year, and regulated that any decision arrived at the Trade Group would be forwarded to the Central Working Committee for Approval, which upon approval, shall become binding upon all the Members of such Trade Group.

RULE 13 of the Constitution mandated every State of the Federation and Federal Capital Territory to constitute State Councils, and explicitly set out the Memberships of the Councils thereto, as well as the mode of Election into such Councils.

Mandate was bestowed on the State Council to meet once every Month, to conduct Election into the Chapters, by coordinating the activities of the Chapters in its area of Jurisdiction; serving as an effective link between one Chapter and another, and also by promoting corporation among the Chapter in its jurisdiction. This was to ensure that Union Policies were widely known, understood and implemented and further, to generally strengthen the Union in its Jurisdiction.

RULE 14, on its own part, merely set out the Composition of the Chapter Executive Committee and its Powers. **RULE 15** stipulated how the Biennial General Meeting of the Chapter would be conducted.

Now, having set out the Rules referred to by Learned Counsel in the matter, none was found by this Court to be relevant to determine the Real Issues in controversy between the Parties. They were merely of General Application.

The Claimants had admitted in their **Paragraph 3 h of their Originating Summons** that the Defendants constituted a Caretaker Committee.

The Court can see from the Defendant's Counter Affidavit to the Originating Summons that the Defendant attached as an Exhibit a Report tagged "**REPORT OF THE AD-HOC COMMITTEE ON THE CONTROVERSIAL FCT COUNCIL ELECTION OF RATTAWU THAT WAS HELD ON THE 12TH OF JULY 2019**". This Committee was a Six (6) man Ad-hoc Investigating Committee set up to manage and administer the Association pending a Fresh Election.

An important statement this Court notes from their Pleadings, is that the Committee had just submitted their Reports and forwarded them to the National Working Committee to deliberate on them.

The Question before this Court is whether their removal was legally done and this alone is the crucial question.

Rule 3 Sub viii of the Association's Constitution stipulates that "**Any Member who has grievances with any Official of the Union or Executive Committee of his Branch shall have the Right to seek redress from his/her Local Chapter's General Meeting. If he/she is not satisfied, he/she has a right of Appeal to the State Council, the Central Working Committee, the National Executive Council or National Delegate's Conference in the order.**"

The word '**SHALL**', makes this stipulation Mandatory, which compels its Members to accept and comply with the procedure of complaint where any grievance arises between Members.

Having set out the Sequence of channelling a Complaint, the Question that must be asked is **did the Claimants employ the proper Channel?**

The Claimants never denied that a Committee was set up and in fact had admitted in their **Paragraph 3 h of their Originating Summons** that the Defendants constituted a Caretaker Committee.

They also did not deny that they failed to follow the proper process for seeking redress. It was expected that they counter these statements through a Reply to the Counter Affidavit of the Defendants, and the Law is trite that uncontroverted Evidence is deemed true. Reference is made to the Cases of **ALHAJIADEBAYO AKANDE V JIMOH ADISA & ORS (2012) 5 SCNJ 517** and **UGWUEGEDE V ASADU & ORS (2018) LPELR-43717 (SC)**. Based on the above Authority, the Court must of necessity believe that the Leadership of the Union instructed and endorsed the Committee that investigated the Petitions.

Now, the Claimants tendered the Constitution of **Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)** but did not tender the **Electoral Guidelines**, while the Defendants tendered **RATTAWU's Constitution** and also an incomplete **Electoral Guideline**.

In the Electoral Guidelines tendered by the Defendants, there is no mention of **Any Person/Body/Committee** responsible for Electoral Disputes and neither did it set out any Steps that should be taken if any Dispute arises during Electoral Issues.

Therefore, due to the absence of a Comprehensive Guidelines, recourse will then be made to the Constitution of **Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)**.

A close look at **Rule 10 Sub IV of RATTAWU**, States that the **Central Working Committee** shall have the Power to appoint a Standing Committee, Financial Committee, Establishment Committee, Education Committee and any other Ad-Hoc Committee as the need arises. It is clear that the Constitution anticipated the constitution/formation of Committees and therefore any Disciplinary Committee set up by the Abuja Chapter, was well within the premise of the Constitution and was permissible.

Rule 27 Sub-Rule iii of the Constitution, states that the Chapter Executive Committee shall be given adequate opportunity to handle both individual and collective grievances of Members and the facts of the Case and **“action already taken by the Chapter Executive”** shall be communicated in writing to the Zonal Council, who shall summon a Meeting of the Zonal Council, after consultation with the Zonal Council Committee. If the Zonal Council is successful in effecting a settlement of the grievance, the matter shall be reported through the National General Secretary to the Central Working Committee.

Furthermore a close look at **Rule 17 Sub-Rule vii and viii** will show that all Members of the Chapter Executive Committee may be removed on the Decision of the National Executive Council pending Congress Meeting. It is clear that a Chapter Executive Committee shall be subject to the Congress control and direction of the National Executive Council/Central Working Committee. This in effect means that the State Committee can certainly take action pending the ratification by the Central Working Committee.

Further still, **Appendix B, 3** titled **“Use of Code for Disciplinary Action”**, States that *“The Failure on the Part of*

Member and Official of a Trade Union or a Trade Union to observe any of its Provisions shall, in any Proceedings for Disciplinary Action before a Committee or Tribunal under the Constitution of the Nigeria Labour Congress (NLC) or Trade Union, as the case may be, be admissible in evidence and any Provisions of the Code which appears to the Tribunal or Committee to be relevant to any question arising in the Proceedings shall be taken into account by the Committee in determining the question at issue”.

From the Literal Interpretation of the Constitution of the Radio, Television, Theatre Arts Workers Union of Nigeria (RATTAWU) after the Defendants received the Petition, they were on the right path when they set up an Investigating Committee to deal with the Matter at hand. The Process was clearly still ongoing when the Claimants approached this Court.

Now, based on **Rule 3 Sub viii** of the Association Constitution, the Claimants ought to have initially **sought redress** from their Association by laying their grievances to their Branch/Association. They ought also to have waited for the Investigations to be completed before proceeding to Court, and ought to have followed the laid down Rules of the **RATTAWU Constitution**, which binds them.

There is an Irresistible Presumption that the Claimants must have, not only have read the Constitution, but understood it especially since they were Contestants for the FCT Council. The Claimants ought to have appreciated the importance and implication of what they had subscribed to.

The Provisions of **Preamble C** of their Association's Constitution bound the Claimants, being Voluntary Members of

the Association. They were also bound by **Rules 3 Sub-Rule viii; Rule 17 Sub-Rule vii and viii and Appendix B, 3** (Use of Code for Disciplinary Action) of their Constitution.

Consequently, since all Members of the Union are bound by the Rules and Regulations stated in their Constitution, the Court finds that the Claimants were wrong to have proceeded to Court without first utilizing their Union's Mechanism.

The Court notes that the Leadership of the Union suspended them pending further Investigations by the Committee set up and the Process was still ongoing and very much inchoate and the Claimants ought to have waited for the outcome of the Investigation.

Therefore, this Court cannot grant the Reliefs sought at this stage.

The Third Issue for determination is “Whether it is expedient in the interest of justice to grant the prayers contained in the Motion on Notice seeking for an Interlocutory Application”.

As regards the Interlocutory Injunction, it is worthy to state that the success or failure of the Reliefs sought in the Motion on Notice for Interlocutory Injunction will automatically flow from the above determination under Issue No.2.

It is trite Law that the Power to Grant an Injunction is exercisable under the Inherent Jurisdiction of the High Court, which it to preserve the Subject-Matter of Litigation.

It is important to bear in mind is the fact that to succeed in an Application of this nature, a Legal Right must be deemed to exist. Reference is made to the Case of **QUEEN VS ADAROH (1999) 1 NWLR PT 586 PAGE 330**. Now, what constitutes a Legal Right, Sufficient or Special Interest, or Interest adversely affected, will, depend on the facts of each Case. Whether an Interest is worthy of Protection is a matter of Judicial Discretion, which may vary according to the Remedy asked for.

Other Noteworthy Considerations are the fact that the Right must be threatened or abused and must not be a Completed Act. The Applicant must show Sufficient Interest in the Relief sought and the Court must have jurisdiction.

If a Court lacks jurisdiction to hear the Substantive Suit, it would also lack jurisdiction to make an Order for Interlocutory Injunction. Reliance is placed on the Case of **EZEBILO V. CHIWUBA (1997) 7 NWLR PT. 511 PAGE 108 AT 123-129**.

Therefore, the Claimants Application in the Motion for Notice for Interlocutory Injunction fails accordingly.

In Conclusion, the Case of the Claimants fails and they are encouraged to seek redress from their Association.

1. A Declaration will not be made having regard to the Provisions of **Rules 12, 13, 14 and 15 of the Constitution of Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)**, the Defendants are Constitutionally bound to immediately **recognize** the Claimants as the duly elected Officials of the FCT Council of RATTAWU.

2. The Court declines to declare a Declaration having regard to the **Constitution of Radio, Television, Theatre and Arts Workers Union of Nigeria (RATTAWU)**, the **Suspension** of the outcome of the Election into the FCT Council of RATTAWU held on the 12th of July 2019 by the 1st and 2nd Defendants, and the Constitution, a Caretaker Committee comprising of the 3rd to 8th Defendants **was Unconstitutional, Unlawful**, Null and Void and to no effect whatsoever.
3. A **Declaration** that in view of the 1st and 2nd Defendants Reckless and Undue disregard to obey and comply with the clear **Provisions of the Constitution of RATTAWU**, the Oath of which they fully subscribed to and Swore to uphold as National President and General Secretary of RATTAWU, the 1st and 2nd Defendants **are Unfit, Incompetent and Incapable of holding the exalted Offices of National President and General Secretary of RATTAWU** respectively or any other Office(s) in RATTAWU whatsoever, cannot be made as earlier stated, this Relief deals with Internal Working of the Union and the Court will not delve into this.
4. A **Declaration** that the **Neglect**, Failure and Refusal of the Defendants to allow the Claimants to function as Officials of the FCT Council of RATTAWU despite that they were duly Elected and Swore-in, amounts to a flagrant disregard to the **Constitution of RATTAWU and Due Process** will not be made.
5. An Order of this Court that the 1st and 2nd Defendants shall be immediately **removed, vacate and cease** to hold the Offices of the National President and General Secretary of RATTAWU will not be made as earlier

stated, this Relief deals with Internal Working of the Union.

6. A Mandatory Order of this Honourable Court will not be made **Compelling** the Defendants to proceed immediately to direct the Secretariat of RATTAWU to start paying the stipulated Take-Off Dues to the FCT Council of RATTAWU under the Leadership of the Claimants and to recognize and allow the Claimants to function and operate as the elected Officials of the FCT Council of RATTAWU.
7. An Order **Setting Aside and /or Nullifying** the Letter or purported Suspension of the Outcome of the Election of the FCT Council of RATTAWU held on the 12th of July 2019 dated 18th July 2019 shall not be granted.
8. The Court will not make an Order **Dissolving** the Caretaker Committee of the FCT Council of RATTAWU, which was purportedly constituted by the Letter of 18th July, 2019 comprising of the 3rd to 8th Defendants, and directing them to hand over all RATTAWU Properties in their Possession to the Claimants.

HON. JUSTICE A.A.I. BANJOKO

JUDGE.

