

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA  
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.  
HON. JUDGE HIGH COURT NO.11  
COURT CLERKS –T.P. SALLAH & ORS  
DATE: 15 /03/2021**

**BETWEEN:**

**FCT/HC/CV/3388/20**

**CHUKWUMA FRANK IBEZIM**

**.....**

**CLAIMANT**

**AND**

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
- 2. SENATOR IFEANYI GODWIN ARARAUME**

**DEFENDANTS**

**JUDGMENT**

The Claimant herein originally commenced this suit against the 1<sup>st</sup> Defendant vide Originating Summons filed on 9<sup>th</sup> December, 2020. Upon his application, the 2<sup>nd</sup> Defendant was joined by order of this Honourable Court made on 18<sup>th</sup> January, 2021, the originating processes were amended. Thus by Amended Originating Summons filed on 20<sup>th</sup> January, 2021, the Claimant seeks determination of the following questions:-

Whether by virtue of the declaration by the Independent National Electoral Commission (INEC) in its Form EC8D that the All Progressive Congress (APC) scored the highest number of votes cast at the Imo North Senatorial District Bye Election conducted by INEC on 5 December 2020, the Claimant, who is the candidate submitted by the All Progressives Congress as its candidate to contest that election and being the candidate who participated in all and every aspect of that election, should not be declared the winner of that election and returned as elected by Independent National Electoral Commission (INEC).

1. Whether by the express provisions of Sections 69, 75 and 143 of the Electoral Act 2010 (as amended), Independent

National Electoral Commission (INEC) is not under a duty to issue the Claimant a Sealed Certificate of Return as the winner of the election into Imo North Senatorial District of the Senate of the National Assembly of the Federal Republic of Nigeria conducted by Independent National Electoral Commission (INEC) on 5 December 2020.

2. Whether as an alternative to the refusal of Independent National Electoral Commission (INEC) to issue the Claimant a Sealed Certificate of Return, the Claimant is in the circumstances of this case not deserving of an Order of this Honourable Court returning him as the duly elected candidate of the Imo North Senatorial District Bye Election conducted by INEC on 5 December 2020.

Based on the foregoing questions, the Claimant seeks the following reliefs against the Defendants:-

1. A declaration that by virtue of the declaration by the Independent National Electoral Commission (INEC) in its Form EC8D that the All Progressives Congress (APC) scored the highest number of votes cast at the Imo North Senatorial District Bye Election conducted by Independent National Electoral Commission (INEC) on 5 December 2020, the Claimant, who is the candidate submitted by the All Progressives Congress as its candidate to contest that election and being the candidate who participated in all and every aspect of that election, should be declared the winner of that election and returned as elected by Independent National Electoral Commission (INEC).
2. A declaration that as the winner of the of the Imo North Senatorial District Bye Election conducted by Independent National Electoral Commission (INEC) on 5 December 2020, which said victory is evidenced in FORM EC8D issued by INEC after the said election, the Claimant is entitled to be issued a Certificate of Return by Independent National Electoral Commission (INEC).

3. A declaration that having regards to the circumstances of the case and in particular sections 75 and 143 of the Electoral Act, 2010 as amended, the Claimant is entitled to be issued a Sealed Certificate of Return by Independent National Electoral Commission (INEC).
4. A declaration that by virtue of sections 75 and 143 of the Electoral Act, 2010 as amended, that Independent National Electoral Commission (INEC) cannot, in the circumstances of this case, lawfully delay, neglect or refuse to declare the Claimant as the winner of Imo North Senatorial District Bye Election it conducted on 5 December 2020.
5. A declaration that, in the circumstances of this case, the delay or refusal or negligence of Independent National Electoral Commission (INEC) to issue the Claimant a Sealed Certificate of Return is unlawful and a willful breach of its statutory duty to the Claimant.
6. A declaration in the alternative that due to the refusal or negligence of Independent National Electoral Commission (INEC) to issue the Claimant a Sealed Certificate of Return, the Claimant is in the circumstances of this case deserving of an Order of this Honourable Court returning him as the duly elected candidate of the Imo North Senatorial District Bye Election conducted by Independent National Electoral Commission (INEC) on 5 December 2020.
7. An order of mandatory injunction directing Independent National Electoral Commission (INEC) to issue to the Claimant a Certificate of Return forthwith for being the winner of the Imo North Senatorial District Bye Election conducted by Independent National Electoral Commission (INEC) on 5 December 2020.

8. An order of perpetual injunction restraining Independent National Electoral Commission (INEC) or its servants and privies from interfering with the rights of the Claimant as the winner of the Imo North Senatorial District Bye Election conducted by INEC on 5 December 2020.

IN THE ALTERNATIVE. AND ONLY IN THE ALTERNATIVE

7. An order of this Honourable Court returning him as the duly elected candidate of the Imo North Senatorial District Bye Election conducted by Independent National Electoral Commission (INEC) on 5 December 2020.
8. Further or other order(s) as this Honourable Court may deem fit to make in the circumstance.

The Claimant in support of the originating summons, filed an affidavit of 4 main paragraphs attached with exhibits marked 'F1', 'A1', and 'A2' respectively. Learned Counsel to the claimant also filed a written address dated 20<sup>th</sup> January, 2020.

The 1<sup>st</sup> Defendant although it was served with the originating processes and hearing notices in this matter, the 1<sup>st</sup> Defendant did not file anything in response thereto.

However, the 2<sup>nd</sup> Defendant, in his defence to the originating summons, filed his Counter Affidavit of 30 paragraphs along with exhibits marked Exhibits A, B, C, D and E. The learned Silk on behalf of the 2<sup>nd</sup> Defendant filed a written address dated 22<sup>nd</sup> January, 2021.

In response, the Claimant filed a 27-paragraphs further affidavit and a further written address dated 22<sup>nd</sup> February, 2021.

Parties adopted their respective processes at the hearing of this matter on 8<sup>th</sup> February, 2021 and the matter was adjourned for Judgment.

**ISSUES FOR DETERMINATION:**

In his address, learned Counsel to the Claimant appears to have adopted the same questions set out on the face of his

originating summons as his issues for determination. I have earlier set them out and it would amount to repetition to do that again.

For his part, the learned Senior Counsel to the 2<sup>nd</sup> Defendant (in his address) raised the issue of this Court's jurisdiction to entertain the instant suit and argued same under various grounds including and not limited to

- (i) Post-election dispute
- (ii) Abuse of Court process
- (iii) Forum shopping;
- (iv) Want of Territorial jurisdiction
- (v) Suppression of Vital facts and
- (vi) On-grantable reliefs

In any event the issues for determination before this Honourable Court in this case are as follows:-

1. Whether this Court has jurisdiction to entertain and determine the instant suit.
2. Whether by virtue of the declaration by the Independent National Electoral Commission (INEC) in its Form EC8D that the All Progressive Congress (APC) scored the highest number of votes cast at the Imo North Senatorial District Bye Election conducted by Independent National Electoral Commission (INEC) on 5 December 2020, the Claimant, who is the candidate submitted by the All Progressives Congress as its candidate to contest that election and being the candidate who participated in all and every aspect of that election, should not be declared the winner of that election and returned as elected by Independent National Electoral Commission (INEC).
3. Whether by the express provisions of Sections 69, 75 and 143 of the Electoral Act 2010 (as amended), Independent National Electoral Commission (INEC) is not under a duty to issue the Claimant a Sealed Certificate of Return as the winner of the election into Imo North Senatorial District of the Senate of the National Assembly of the Federal Republic

of Nigeria conducted by Independent National Electoral Commission (INEC) on 5 December 2020.

4. Whether as an alternative to the refusal of Independent National Electoral Commission (INEC) to issue the Claimant a Sealed Certificate of Return, the Claimant is in the circumstances of this case not deserving of an Order of this Honourable Court returning him as the duly elected candidate of the Imo North Senatorial District Bye Election conducted by INEC on 5<sup>th</sup> December 2020.

Having set out the issues for determination in the instant case, in a nutshell, the brief fact of the Claimant's case as per his affidavit in support of his amended originating summons is that he was the only validly nominated candidate of the All Progressive Congress (APC) for the Imo North Senatorial District bye-election of 5<sup>th</sup> December, 2020. That the APC had internally cleared the Claimant's name and submitted same to the Independent National Electoral Commission (INEC) i.e. the 1<sup>st</sup> Defendant, as the party's candidate for the said bye-election. At the conclusion of the said bye-election, the Claimant's political party scored the highest votes but the 1<sup>st</sup> Defendant has refused to issue the Claimant with his certificate of return as winner of the bye-election thereof. According to the Claimant that he had appealed against a Court order disqualifying him from participating at the said bye-election and he exhibited documents marked Exhibits F1, A1 and A2 which are Submission forms, Result sheet and Notice of Appeal.

On the otherhand in his counter affidavit, the 2<sup>nd</sup> Defendant avers to the effect that the 1<sup>st</sup> Defendant ordered a bye-election for the senatorial seat representing the Imo North Senatorial District pursuant to which the All Peoples Congress (APC), through its screening committee, screened eleven of its members as aspirants for the position. That while the 2<sup>nd</sup> Defendant was cleared along with three other aspirants, the Claimant along with four other aspirants were disqualified. That despite being disqualified, the Claimant and one Hon. Mathew Omegara unlawfully participated in the primary election of the

APC and werethe winner and first runner up respectively while the 2<sup>nd</sup> Defendant was in third position. The 2<sup>nd</sup> Defendant thus alleges that he is the rightful candidate of the APC for the Imo North Senatorial District Bye-election. The 2<sup>nd</sup> Defendant avers that he engaged the Claimant in a number of pre-election lawsuits at the Federal High CourtOwerri in Suit No. FHC/OW/CS/101/2020, FHC/OW/CS/102/2020 and currently appeals at the Supreme Court in Appeal Nos. SC/CV/971/2020 and SC/CV/972/2020 on whom is the proper flag-bearer of the APC for the bye-election. That the 1<sup>st</sup> Defendant published the 2<sup>nd</sup> Defendant's name as the APC's candidate for the bye-election pursuant to a Judgment of the Federal High Court in Suit No. FHC/OW/CS/101/2020. That the 2<sup>nd</sup> Defendant also participated at all stages leading to the election. In view of pending lawsuits and being confronted with dilemma over who to recognise as the proper candidate, the 1<sup>st</sup> Defendant simply declared the APC (i.e. the party) as winner of the bye-election. The 2<sup>nd</sup> Defendant deniesand avers that the Claimant was ever declared winner of the bye-election and is therefore not entitled to be issued with any certificate of return.

In his further affidavit, the Claimant essentially denied most of the 2<sup>nd</sup> Defendant's averments as false.

In arguing his jurisdictional issues in his written address, learned senior Counsel, Chief Gordy Uche SAN on behalf of the 2<sup>nd</sup> Defendant submitted that this Honourable Court lacks the jurisdiction to entertain/determine this suit. Firstly, he submittedthat the instant suit is a post-election matter in respect of which jurisdiction is conferred on the election tribunals and not this Court. He relied on the provisions of Section 285(1)(a) of the Constitution and Section 68(1) of the Electoral Act 2010 (as amended) and submitted that any complaint regarding the return of a candidate is subject to review by a Tribunal or Court in an election petition. He submitted that this Court would be dragged into determining whether the Claimant was validly elected at the Bye-election conducted by the 1<sup>st</sup> Defendant as to entitle him to its order

directing the 1<sup>st</sup> Defendant to issue him with a certificate of return. He further relied on the case of **OPIA V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (2014) 7 NWLR (PT. 1407) P. 431** in respect of his position.

Learned silk's second line of argument in respect of the issue of jurisdiction is that the very same issues which the Claimant has set out in this suit for determination are consequential reliefs which are already before the Federal High Court, the Court of Appeal and the Supreme Court. He relied on the case of **UKACHUKWU V. PEOPLES DEMOCRATIC PARTY (2014) 4 NWLR (PT. 1396) P. 65** to contend that this amounts to abuse of process of Court which is punishable by dismissal. He further posited that the act of filing the instant suit before this Court amounts to forum shopping on the Claimant's part and he cited the case of **PALI V. ABDU (2019) 5 NWLR (PT. 1665) P. 320** support.

Learned Senior Counsel further submitted that this Court lacks the territorial jurisdiction to entertain and determine this suit as it is the High Court and Federal High Court of Imo State that are the proper Courts vested with jurisdiction to entertain same. He referred this Court to Section 9 of the High Court Act, Laws of the FCT, the case of **KRAUS THOMPSON ORG. LTD. V. UNIVERSITY OF CALABAR (2004) 9 NWLR (PT. 879) P. 631** and a plethora of other decided cases. Referring this Court to Order 3 Rule 4(1) of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018. Learned senior Counsel submitted that this provision merely provides for which of the judicial divisions to try a case within the FCT High Court and the Rules of Court do not confer jurisdiction on Courts. He cited the case of **PROF. ALBERT OGUNSOLA V. ALL PEOPLES PARTY (A.P.P.) (2003) 9 NWLR (PT. 826) P. 462.**

The learned SAN further argued on behalf of the 2<sup>nd</sup> Defendant that the Claimant did not approach this Honourable Court with clean hands as he had deliberately suppressed certain facts with the objective of making underserved orders. It is Counsel's



contention that a Court of law should not lend itself as an engine of illegality. He concluded his submission by urging this Court to strike out or dismiss this suit with punitive damages against the Claimant.

Arguing *par contra*, learned Counsel to the Claimant Sam Kargbosubmitted in his further address that the 2<sup>nd</sup> Defendant's position is fundamentally flawed. He contended that the originating summons in the case of **OPIA V. INEC (SUPRA)**, relied upon by learned Silk, challenged the conduct of the supplementary election in that case and as such is not relevant to the instant case before this Honourable Court which is on INEC's duty to issue the Claimant with a Certificate of Return having won the bye/election. He contended that the question of whether regular Courts can entertain a cause of action on the refusal of INEC (the 1<sup>st</sup> Respondent herein) to issue a sealed certificate of return to a candidate was resolved in the case of **AGADA & ANOR V. INEC (2019) LPELR-48476(CA)**. He also cited the case of **ONYIRIMBA V. UWAJUMOGU & ORS (2019) LPELR-49196(CA)**. Learned Counsel to the Claimant submitted that whilst the Claimant's cause of action is a post-election dispute, it is not one that falls within the exclusive jurisdiction of an election tribunal in view of the provisions of Section 285(1) of the Constitution and Sections 133 and 138 of the Electoral Act 2010 (as amended). He submitted further that the principle of abuse of Court process does not apply to the instant case. He also noted that the root of forum shopping is the filing of a suit away from where the cause of action arose to a forum that is reputed for granting the reliefs sought by the Claimant. He contended that the 2<sup>nd</sup> Defendant's claim of forum shopping is not supported by the records before this Court and he urged this Court to discountenance same.

Learned Counsel to the Claimant argued that this Court is firmly clothed with territorial jurisdiction to entertain this suit. He contended that the civil jurisdiction of this Honourable Court is provided for under Section 257 of the Constitution of the Federal Republic of Nigeria 1999. He posited that the Claimant's

cause of action is not about the election that was concluded in Owerri. It is his position that the Claimant's cause of action is the 1<sup>st</sup> Defendant's refusal to issue the Claimant a Sealed Certificate of Return in accordance with Section 75 of the Electoral Act which was a breach of the 1<sup>st</sup> Defendant's statutory duty. He submitted that this Court is thus clothed with jurisdiction to entertain the subject matter in this case by virtue of Order 3 Rule 4 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018 as the 1<sup>st</sup> Defendant (INEC) resides in the FCT, Abuja. He further submitted that the 2<sup>nd</sup> Defendant's allegations that the Claimant suppressed facts is unfounded and unsupported by documentary evidence. He concluded his further address by urging this Court to discountenance the 2<sup>nd</sup> Defendant's assertions.

In the determination of the first issue herein, it is necessary to note that jurisdiction is the authority of the Court to decide matters before it and thus, it is the bedrock of adjudication in Courts. Jurisdiction is fundamental and goes to the very root and competence of a suit such that where a Court has no jurisdiction to hear and determine a case, the proceedings are a nullity ab initio however well conducted and brilliantly decided they are. It is therefore imperative that once jurisdiction is challenged, the Court must first determine whether it has jurisdiction before proceeding to take any step in the matter. See the cases of **GTB PLC V. OBOSI MICRO FINANCE BANK LTD (2018) LPELR-44518(CA)** and **ANIYANGHAN & ORS V. SEIYABAKORU & ORS (2017) LPELR-43383(CA)**.

For a Court of law to be vested with the jurisdiction to hear and determine any suit, three basic requirements must be met or satisfied i.e.

- (a) It is properly constituted as regards numbers and qualification of the members of the bench and no member is disqualified for one reason or other.

- (b) The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and
- (c) The case comes before a Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

See the Supreme Court's decision in the case of **MADUKOLU & ORS V. NKEMDILIM (1962) LPELR-24023(SC)**.

It is also trite law that it is the plaintiff's pleadings that determines the jurisdiction of the Court over a matter before it. Consequently, in the determination of cause of action and its jurisdiction, a Court is restricted or should be confined to the consideration of the plaintiff's originating processes (which are the Amended Originating Summons and Affidavit in Support filed by the Claimant in the instant case). See the cases of **ABUBAKAR V. BEBEJI OIL & ALLIED PRODUCTS LTD & ORS. (2007) 18 NWLR (PT. 1066) P. 319** and **OGUNDIPE V. NDIC (2009) 1 NWLR (PT. 1123) P. 473**.

In the instant case, the 2<sup>nd</sup> Defendant has contended that the subject matter is not within the jurisdiction of this Honourable Court. He has partly contended that this Court lacks the jurisdiction to entertain the instant suit being a post-election matter.

Now, pre-election matters have been described as complaints in respect of issues which arise *before* and therefore precede the holding or conduct of an election. On the other hand, post-election matters are matters which arise from or relate directly to the actual holding or conduct of an election about which candidates and political parties who contested the election are dissatisfied with on any of the cognizable grounds stipulated in the Electoral Act. See the Court of Appeal's decision in the case of **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & ANOR V. HON. (BARR) JOE ETENE (2013) LPELR-22108(CA)**.

The Claimant's complaint in this suit is that he ought to be declared winner of the Imo North Senatorial District bye-election conducted by the 1<sup>st</sup> Defendant on 5<sup>th</sup> December, 2020 on grounds that he was the candidate of the APC that won same. It is clear that the Claimant's matter is a post-election dispute. Parties to this suit appear to be in agreement about this.

**Section 285(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** specifically provides that the Election Tribunal shall have exclusive jurisdiction in respect of issues relating to whether a person has been validly elected. It follows therefore that post-election matters are within the purview of the exclusive jurisdiction of the Election Tribunal. The general position therefore is that the regular Courts (such as this Honourable Court) lack the necessary jurisdiction to entertain such post-election matters. See the cases of ***APC & ORS V. INEC & ORS (2018) LPELR-44286(CA)*** and ***KASSIM V. APC & ORS (2018) LPELR-44726(CA)***.

The Electoral Act is however specific on the grounds upon which an election may be questioned or challenged before an Election Tribunal. They are exhaustive. See **Section 138(1) of the Electoral Act 2010 (as amended)**.

I have looked at the Claimant's claim in the instant suit. Even though it is a post-election matter, the Claimant is NOT questioning or challenging the Imo North Senatorial District bye-election conducted by the 1<sup>st</sup> Respondent on 5<sup>th</sup> December, 2020. Rather, he seeks to enforce a perceived consequential right as the alleged candidate of APC and winner thereof. It follows therefore that the Claimant's action, even though a post-election dispute, does not fall within post-election matters for which exclusive jurisdiction is reserved for the Election Tribunal under the Constitution and the Electoral Act.

Without mincing words and dissipating unnecessary energy on this issue, I do believe the Court of Appeal has settled this issue in the cases of **AGADA & ANOR V. INEC (2019) LPELR-48476(CA) and ONYIRIMBA V. UWAJUMOGU & ORS (2019) LPELR-49196(CA)**. The position was held in those cases that even though a post-election matter, where the contention is the refusal of the INEC to carry out its statutory duties such as issuing out a certificate of return to a person declared winner at the election in accordance with Section 75 of Electoral Act 2010 (as amended), the regular Courts and not the Election Tribunal would have jurisdiction.

I have noted that the Claimant has not exactly alleged that the 1<sup>st</sup> Defendant declared him winner of the Imo North Senatorial District bye-election conducted by the 1<sup>st</sup> Defendant on 5<sup>th</sup> December, 2020. He did allege that he was the APC's candidate and the APC was declared winner. By a combination of facts alleged by the Claimant, he contends that he is the winner on the platform of APC who was declared winner, and should therefore be issued with a certificate of return. The reliefs sought by the Claimant is essentially for enforcing the 1<sup>st</sup> Defendant's statutory duties as provided by law. Now whether these allegations are true and whether the Claimant would be entitled to the reliefs he claims would go to the merits of the substantive suit. But as far as jurisdiction goes, on the authority of the Court of Appeal decisions in the cases of **AGADA & ANOR V. INEC (SUPRA) and ONYIRIMBA V. UWAJUMOGU & ORS (SUPRA)**, I hold the view that regular Courts of law (such as this Honourable Court) have appropriate jurisdiction to entertain the Claimant's claim and I so hold.

The 2<sup>nd</sup> Defendant has also raised the issue of this Court's territorial jurisdiction to entertain the Claimant's suit.

The position of the law is that a Court can only assume jurisdiction over a matter where the cause of action arose from within its territorial jurisdiction. Therefore, a Court in one state does not have jurisdiction to hear and determine a matter which

is exclusively within the jurisdiction of another State. See the cases of ***RIVERS STATE GOVT. V. SPECIALIST KONSULT (2005) 7 NWLR (PT. 923) P. 145, ECONOMIC AND FINANCIAL CRIMES COMMISSION & ORS V. PHILIP ODIGIE (2012) LPELR-15324(CA) and LEMIT ENGINEERING LTD V. RCC LTD (2017) LPELR-42550(CA).***

Now, the Claimant in the instant suit pleaded that he was the APC's candidate at the Imo North Senatorial District bye-election conducted by the 1<sup>st</sup> Defendant on 5<sup>th</sup> December, 2020 and is the winner thereof on grounds that the APC was declared winner. He seeks reliefs that he should be declared winner thereof by the 1<sup>st</sup> Defendant and issued with a certificate of return.

It cannot be in dispute that Imo North Senatorial District is in Imo State and pertains to Imo State. Imo State is however outside the territory of the FCT and therefore outside the territorial jurisdiction of this Honourable Court. It follows therefore that the appropriate Court with territorial jurisdiction to entertain complaints regarding the 1<sup>st</sup> Defendants activities in respect of the Imo North Senatorial District bye-election is the High Court of Imo State (or the Federal High Court sitting in Imo State).

Apparently recognising the folly of his case, the Claimant has sought to dissociate his cause of action from Imo State. The Claimant's learned Counsel has argued that the Claimant's cause of action does not centre on the Imo North Senatorial District bye-election conducted by the 1<sup>st</sup> Defendant on 5<sup>th</sup> December, 2020 as he has no complaints against the conduct of same. He contends that the Claimant's cause of action is actually in respect of the 1<sup>st</sup> Defendant's refusal to issue him with a certificate of return in accordance with the law. I will reject this position as a red herring and would therefore refuse the bait as it does not accord with either logic or the law.

On the definition of cause of action, the Court of Appeal in the case of **SORO V. GALADIMA & ORS (2019) LPELR-49092(CA)** held as follows-

*"A cause of action is constituted by the bundle or aggregate of facts which the law will recognize as giving a plaintiff a substantive right to make the claim against the relief or remedy sought. It is the factual situation on which the Plaintiff relies to support his claim or remedy being bundle or aggregate of facts sought."*

From the definition of cause of action, it is clear that the Imo North Senatorial District bye-election conducted by the 1<sup>st</sup> Defendant on 5<sup>th</sup> December, 2020 constitutes part of the Claimant's cause of action in this case. It is upon the said bye-election that the Claimant's claim is based. He pleaded same and without it, he cannot approach this Court to enforce his claim against the 1<sup>st</sup> Defendant. The Claimant's Counsel cannot therefore purport to proffer arguments dissociating the Claimant's instant suit and cause of action from the said bye-election.

The Claimant's Counsel has also relied on Order 3 Rule 4 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018 to contend that this Court has territorial jurisdiction to entertain this suit because the 1<sup>st</sup> Defendant resides in the FCT, Abuja.

**Order 3 Rule 4 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** provides as follows:-

4.

- (1) *All other suits may be commenced and determined in the judicial division in which the defendant resides or carries on business.*
- (2) *Where there are several defendants who reside or carry on business in different judicial divisions, the suit may be commenced in any one of those judicial divisions subject to any order or direction the*

*Court may make or give as to the most convenient venue for trial of the suit.*

I have looked at the provisions of **Order 3** of the Rules of this Court. It provides for the place of institution and trial of suits within the various judicial divisions of the High Court of the FCT. My interpretation therefore is that where the cause of action arises within the FCT in the first place, then **Order 3** applies as to which judicial division of the FCT High Court to conveniently institute and try the matter. There is nothing in the provisions of **Order 3** of the Rules of this Court which gives this Court jurisdiction over causes of action that arose outside the territorial jurisdiction of this Court. This is precisely the position of the Supreme Court in the cases of **DALHATU V. TURAKI (2003) 15 NWLR PT. 843 P. 310** and **MAILANTARKI V. TONGO & ORS (2017) LPELR-42467(SC)**. The established position of the law is that Rules of Court do not determine the territorial jurisdiction of the Court in the first place. See **DALHATU V. TURAKI (SUPRA), MAILANTARKI V. TONGO & ORS (SUPRA), DAIRO V. U.B.N. PLC. (2007) 16 NWLR (PT. 1059) P. 99, INTERNATIONAL NIGERBUILD CONSTRUCTION CO. LTD. V. GIWA (2003) 13 NWLR (PT. 836) P. 69, MOHAMMED V. GOLOLO & ORS (2019) LPELR-49042(CA) and SORO V. GALADIMA & ORS (SUPRA)**.

Consequently, the Claimant cannot rely on **Order 3** of the Rules of this Court or any provision of the Rules for that matter to determine the territorial jurisdiction of this Honourable Court over the instant suit.

Now **Section 299 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** limits this Honourable Court's territorial jurisdiction to causes of action that arose within the boundary of the territory known as the FCT. Consequently, the Claimant's cause of action in this case which pertains to the Imo North Senatorial District bye-election conducted by the 1<sup>st</sup> Defendant on 5<sup>th</sup> December, 2020 is outside the territorial jurisdiction of this Honourable Court and



within the exclusive territorial jurisdiction of the High Court of Imo State. This Court thus lacks the territorial jurisdiction to entertain the Claimant's cause of action and the necessary jurisdiction to entertain this suit.

Learned Counsel to the Claimant has suggested in his further address that it appears in some decided cases in which the enforcement of the 1<sup>st</sup> Defendant's statutory duty was involved, the cases were filed in the FCT away from where the election itself was conducted. This however does not make such a procedure proper and the Claimant has not directed this Court's attention to any decided authority in which the issue of the FCT High Court's territorial jurisdiction to entertain such a matter was raised and affirmed by any superior Court. In fact, intentionally filing an action away from where the cause of action arose as in the instant case amounts to forum shopping. See the Supreme Court's decision in the case of **MAILANTARKI V. TONGO & ORS (SUPRA)**. Furthermore, it would amount to judicial rascality for any judge of the FCT High Court to entertain actions that they do not have territorial jurisdiction in clear violation of the principle of stare decisis

The position of the Constitution and case-law (which I cited earlier) is to the effect that this Court lacks the jurisdiction to entertain the instant suit as the cause of action therein falls within the exclusive territorial jurisdiction of the Imo State High Court. In **DALHATU V. TURAKI (2003) 15 NWLR (PT. 843) P. 310** the Supreme Court held per Ejiwunmi JSC as he then was as follows:-

*"It is undeniable that the events that led to that action had to do with the governorship of Jigawa State. It is of course not debatable that Jigawa State is totally distinct and different from the Federal Capital Territory, Abuja. It seems to me that if any action was to be properly commenced, that action should have been initiated in the Court in Jigawa State. In this respect, I think it must be remembered that by our Constitution, each State of the*

*Federation is independent of the other and the jurisdiction of each State is limited to matters arising in its territory. Hence the Court below per Oguntade JCA, was right when it held: -*

*"The evidence called by the 1st Respondent upon which the judgment of the lower Court was hinged clearly shows that nothing in connection with the primaries the subject matter of this dispute took place in Abuja. It is irrelevant that the Defendants resided or had offices in Abuja. Would the 1st Respondent have sued in Lagos or Port-Harcourt if the defendants had offices or reside in either of the two cities? There was no reason sustainable in law why the suit could be initiated in any venue other than Dutse or Kano. There was no jurisdiction in the Abuja High Court to entertain this suit. The lower Court have (sic) struck out the suit."*

*I think what I have said above is to make it clear that Courts ought to bear in mind that jurisdiction is not to be assumed, but must be based on the constitutional provisions that established the Court."*

In that same case Ogundare JSC stated thus **at PP. 339-340 Paragraphs G-A;**

*"I have taken pains to discuss this judgment on territorial jurisdiction of a Court in view of recent development whereby litigants rather than suing in the proper Courts come to the High Court of the Federal Capital Territory Abuja. I think their Lordships of the High Court of the Federal Capital Territory ought to be circumspect before deciding whether or not it is wise and correct to exercise jurisdiction in matters outside the territory of the Federal Capital Territory. Their Court, unlike the Federal High Court has jurisdiction only in matters arising out of the Federal Capital Territory Abuja."*

In conclusion, I say no more. Hence the first issue for determination of the instant suit is hereby resolved in favour of the 2<sup>nd</sup> Defendant and against the Claimant. This Court thus lacks the competence to determine the remaining three issues for determination which are in respect of the merits of this suit having found that this Court lacks the territorial jurisdiction to entertain the Claimant's instant suit. Thus the consequential order to make therefore is one striking out this suit as it is incompetent before this Court.

Accordingly the suit of the Claimant is hereby struck out with cost assessed at N250, 000.00 in favour of the 2<sup>nd</sup> Defendant and against the Claimant.

And that is the position of this Court.

-----  
**HON. JUSTICE D.Z. SENCHI**  
**(PRESIDING JUDGE)**  
**15/03/2021**

Parties:- Absent.

Sam Kargbo:- With me is Ahmed SidiBello for the Claimant.

Francis Nsiegbunam: - For the 2<sup>nd</sup> Defendant.

1<sup>st</sup> Defendant: - not represented by Counsel

Sam: - I sincerely thank the Court for a well reserved Judgment.

Francis: - We thank the Court for a brilliant and well reserved Judgment

**Signed**  
**Judge**  
**15/03/2021**