

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA ON THE 1<sup>ST</sup>FEBRUARY, 2024**

**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/2026/22**

**COURT CLERK: JOSEPH BALAMI ISHAKU.**

**BETWEEN:**

**COL. GEOFFERY O. ONYEJEGBU.....CLAIMANT**

**AND**

**ALL PROGRESSIVE CONGRESS (APC).....DEFENDANT**

## **JUDGMENT**

The Claimant's Originating Summons dated 15/06/22 against the Defendant posits a question for determination which is Whether there was any Gubernatorial Primary Election in Anambra State on the 26<sup>th</sup> day of June 2021 in accordance with provisions of the APC's Guidelines for the nomination of candidate for Anambra State 2021 Gubernatorial Election – Direct Primaries after demanding and receiving from the Claimant the sum of N30 Million Naira for Nomination Form, Expression of Interest Form,

Support for payment of ADHOC Staff for Membership Registration and Admin fee?

Where the Court answers the above stated questions in the negative, the Claimant therefore claims:

- (1) A declaration that by refusing, neglecting and failing to conduct the Anambra State Gubernatorial Primaries in 2021, the Claimant is entitled to a refund of the sum of N30 Million Naira only being the amount paid to allow the Claimant participate in the said Anambra State 2021 Primary Election.
- (2) An Order directing and compelling the Defendant to immediately pay to the Claimant the sum of N30 Million Naira only being the amount demanded and received by the Defendant from the Claimant to allow the Claimant participate in the said Anambra State 2021 Primary Election.
- (3) An Order awarding N100 Million as general damages for failure of the Defendant to conduct 2021 Anambra State Gubernatorial Election.
- (4) N2 Million Naira for legal fees and expenses incurred by the Claimant to prosecute the suit.

(5) 22% interest on the Judgment sum until the Judgment sum is liquidated.

Learned Counsel to the Claimant relies on Claimant's Affidavit in support of the Originating Summons. The Claimant deposes that he is a seasoned Politician from Ichi in Ekwusigo Local Government Area of Anambra State but resident at Apartment White, Games Village Abuja. He is also a registered member of the All Progressive Congress. His annual dues receipt is Exhibit A.

The Defendant published its Guidelines for the Nomination of candidate for Anambra State 2021 Gubernatorial Election direct Primaries in accordance with the provisions of the Defendant's constitution. The Defendant's Constitution and Guidelines are Exhibit B & C respectively. That by the above provision of the Constitution, the purchase of the Expression of Interest Form, Nomination Form and payment for Adhoc Staff for membership registration and Admin fees were all prequalification conditions for participation in the Defendant's Gubernatorial Primary Election in Anambra State.

That account number 1014008105 domiciled with U. B. A was designated for making payments by interested aspirants. Pursuant to his interest, the Defendant demanded and received from him a whopping sum of N22,500,000.00 only for expression of interest and nomination form. He paid N22,5000.00 only into the Defendant designated account number 1014008105 domiciled with UBA PLC in order for the Defendant to let him participate in the Primary Election Exercise.

The Defendant again demanded and received from him the sum of N7.5 Million only as support for ADHOC staff for membership registration and Admin fee to Anambra Chapter in order for the Claimant to participate in the primaries. All the acknowledgment receipts are Exhibit D, E, F, G and H.

He was issued with relevant forms, expression of interest, nomination forms which were timeously filled and submitted to the Defendant. He went through screening and interview process by a Committee constituted by the Defendant. He was adjudged qualified having met the pre-qualification conditions. The Defendant published a list of designated venue in each of the wards in the State for the Primary Election. He campaigned in all

the 326 wards in preparation for actual voting exercise by members of the Defendant.

He spent N100 Million Naira in the cause of electioneering process. That it is to his chagrin that on 26/06/21 being the day fixed for the conduct of the Primary election, no election took place as Defendant's Election Committee were not seen anywhere in Anambra State. No accreditation, no voting occurred in all the 326 wards in Anambra State. That the botched primaries were condemned by leaders of the Defendant in Anambra, Dr Chris Ngige, Publicity Secretary, Mr Okelo Madukaife and Chairmen of the 21 Local Government Chapters of the Defendant.

There was a written Report from INEC Officials, Election and Party Monitoring etc and Press release/Newspaper publication of all the Chairmen of 21 Local Government Chapters. The report dated 26/06/21 and Newspaper publication/Press release of the Nation published 29/06/21 are Exhibits K & L respectively.

That following the failure of the Defendant to conduct election exercise without any reason, he with 10 others wrote to the Defendant demanding a refund of their monies but the letter was

not honoured with any reply. The letter is Exhibit M. That he has suffered loss and financial damage.

The Defendant filed and relied on its Counter Affidavit sworn to on 18/01/23 sworn to by John Tumba, Secretary in the Legal Department of the Defendant. He deposes that Claimant was one of the members of the Defendant in Anambra State who was successfully screened to participate in the Defendant's Gubernatorial Primary election for the purpose of selecting a flag bearer of the Defendant for the Anambra State Gubernatorial Election Exhibit APC1 is the Report of the Screening Committee. That the election was conducted as scheduled on 26/06/21 and Emmanuel Nnamdi Andy Uba emerged as winner scoring the highest number of votes i.e 230,201 and became the flag bearer of the Defendant. The result dated 27/06/21 and Report of the APC Gubernatorial Primary Election Committee are attached as APC2 and APC3 respectively.

That in line with the Constitution, the Defendant sponsored Emmanuel Nnamdi Andy Uba who participated in the election and was a runner up in the election. That Defendant is not responsible to refund or replace amount allegedly expended by Claimant in

purchasing forms and his campaign. That all fees for nomination expression of interest and sundry donations by the Aspirant and other members of the party were all non-refundable and were for purpose of organization of town hall meetings, printing materials and all other general campaign related activities. It is in the interest of justice to dismiss the suit as it is gold digging.

The Claimant also relied on his Further Affidavit. He deposes further that Defendant manufactured and procured Exhibits APC2, APC3, APC4 and APC5. That Defendant is resident within jurisdiction at No 40 Blantyre Street, Wuse. That all transactions leading to the institution of this action are all conducted at the above address. The guidelines did not say monies paid are non refundable upon default.

The Claimant adopted its Written Address and formulated a sole issue for determination which is whether the Claimant has made out a case entitling him to the reliefs sought.

Learned Claimant's Counsel submits that the Claimant has made out a case entitling him to the reliefs sought in the Summons. It is clear from Section 87(1) (3) and (9) of the Electoral Act (2010) as

amended that it is the duty of the Defendant to conduct Primary election which is the basis why Claimant paid the N30 Million Naira to the Defendant. That Defendant failed to perform. That Defendant breached its contract. That Claimant is entitled to 1<sup>st</sup>&2<sup>nd</sup> reliefs which seeks a refund of the monies paid by the Claimant to the Defendant. That Claimant is also entitled to general damages. It is discretionary. However the Court should exercise the said discretion guided by facts and law. The Claimant has put sufficient materials before the Court that will guide the Court in the exercise of the Court's discretion in the award of damages. The conduct of the Defendant is sufficiently offensive and deserving of punishment to deter it from conducting itself in such cruel, fraudulent and malicious manner towards the Claimant or indeed any other person in future. He urges the Court to resolve the sole issue in favour of the Claimant.

The Defendant's Final Written Address which Defendant's Counsel adopted is dated 17/01/23 but filed on the 18<sup>th</sup>. He formulated a sole issue for determination which is "Whether there was any Gubernatorial Primary Election in Anambra State on the 26<sup>th</sup> day of June 2021 in accordance with the provisions of the All Progressive Congress's Guidelines for the nomination of

candidates for Anambra State 2021 Gubernatorial Election - Direct Primaries after demanding and receiving from Claimant the sum of N30 Million Naira for nomination form, expression of interest form, support for payment of ADHOC staff for membership registration and Admin fees.

Learned Counsel contends that the case is statute barred by virtue of Section 285(9) of the 1999 Constitution. That this suit is a pre election matter. That this suit was filed on 15/06/22 about 12 months after the election. That the High Court of the Federal Capital Territory has no power to look into or determine any question touching upon the conduct of a Primary Election for the selection of the candidate of a party for any election. That aside the above, this Court has no territorial jurisdiction over the cause of the Claimant.

The cause of the Claimant is the Gubernatorial Primary Election held in Anambra State on the 26/06/21 which is outside the territorial jurisdiction of this Court. That political questions are generally not justiciable except where there are special statutory exceptions to the general rule.

That there is no statute permitting an unsuccessful aspirant to apply and get a refund of any financial condition which he met in the process of participating in the political processes. The internal affairs of a political party is exclusive to the parties. That it is a domestic affairs of the political party. That the evidence of the Claimant do not have any probative value. That political participation does not create a contract capable of enforcement or specific performance.

I have read the evidence and considered the Written Addresses of Counsel as adopted. The issue for determination as propped up by evidence and argument of parties is Whether there was any gubernatorial primary election in Anambra State on the 26<sup>th</sup> day of June 2021 in accordance with the provisions of the APC Guidelines for the nomination of candidates for Anambra State 2021 Gubernatorial Election after demanding and receiving N30 Million Naira from Claimant.

The Claimant's evidence is that he is a politician and a member of the Defendant. He showed interest to contest and in furtherance paid N22.5 Million Naira for expression of interest and nomination forms. He also paid N7.5 Million Naira as support for

payment of ADHOC Staff for membership registration and administration fee to Anambra Chapter in order for Defendant to allow him participate. He filled and submitted the forms to the Defendant. He went through screening and interview and was adjudged qualified. The Primary Election scheduled for 26/06/21 never took place and he now demand a refund and damages for non performance. The Defendant says the aforesaid election was conducted as scheduled. Can this case as summarized above be a contract? I think not. It is a Pre-Election matter of a political party. The election was about the Anambra State Gubernatorial Candidate Election to be held in Awka Anambra State. All the processes and procedure participated in by the Claimant are pre election matters including the alleged failure to conduct the said primaries.

What is a pre election matter?By Section 285(14) of the (1999) Constitution, a Pre-Election matter means any suit by

(a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the

selection or nomination of candidates for an election. It goes without much stress that the case of the Claimant is on all fours with the provision of the 1999 Constitution as cited above. His contention is that the Defendant failed to conduct the party primaries in accordance with the extant law and party guidelines.

It is therefore my humble view that this case is a Pre-Election matter.

By Section 285(9) of the 1999 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. The alleged Primary was to take place in Awka Anambra State on the 26/06/21. This suit was filed 15/06/22. The suit was filed 12 months after the occurrence of the event complained of. The cause of action expired after 14 days of the alleged non conduct of the primaries. It is a constitutional provision. It overrides the statute of limitation. Election cases are sui generis .

In the circumstance of this case, the Claimant has no reasonable cause of action.

Can this Court in the light of the above assume jurisdiction to adjudicate on this matter?

Aside the fact that there is nothing to determine as the subject matter has expired. I have taken a cursory look at Section 84(14) of the Electoral Act 2022. It states:

***“Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and Guidelines of a political party have not been complied with in the election or nomination of the candidate of a political party for election, may apply to the Federal High Court for redress”.***

Jurisdiction is pivotal. It is fundamental to assumption of authority to adjudicate. The jurisdiction of this Court has been ousted by statute. The alleged failure of the Defendant to conduct Gubernatorial Primary Election in Awka Anambra State is a Pre-Election matter and the Claimant should have approached the Federal High Court for redress.

In respect to territorial jurisdiction, this Court deals with matters which arise out of the Federal Capital Territory Abuja, the money paid by the Claimant even if payment was made in Abuja. The

forms filled are towards the election in Awka, Anambra State. The Election fixed was to be conducted on 26/06/21 in Anambra State.

However, it no longer matters. The subject matter is dead. This Court does not have substantive jurisdiction, its jurisdiction having been ousted by the Electoral Act. This Court will not assume jurisdiction in the interest of justice.

In the circumstance, delving into the merit of the case will be an exercise in futility. The suit is therefore struck out for lack of jurisdiction.

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**HON. JUSTICE U.P. KEKEMEKE**  
**(HON. JUDGE)**  
**01/02/2024**