

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON WEDNESDAY 24TH DAY OF NOVEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 8, MAITAMA, ABUJA

SUIT NO: FCT/HC/CV/2646/2021

BETWEEN:

1. CHIEF DAN OSI ORBIH
2. OGUNNUBI KAYODE
3. HON. MOMODU ABDULKARIM
4. KASSIM ABDULKAREEM
5. HON. EBOZOJE LESLIE
6. HON. OMOREGIE OGBEIDE-IHAMA
7. HON. MR. ODUWA IGBINOSUN
8. MR. FRIDAY ENARUNA IHAMA
9. HON. SAIKI SAMUEL SHEGUN
10. UMORU VINCENT

CLAIMANTS

AND

PEOPLES DEMOCRATIC PARTY DEFENDANT

JUDGMENT

The Claimants are members respectively of the Defendant in this suit, the Peoples Democratic Party (PDP). The 1st Claimant claims to be the South-South Zonal Executive Chairman of the Defendant, by virtue of which he is a member of the National Executive Committee (NEC) of the party. The 2nd – 10th Claimants equally hold very important positions in the Defendant party in Edo State. By Amended Originating Summons filed to commence this suit on 29/10/2021, the Claimants sought the determination of the questions set out as follows:

- 1. Whether upon an interpretation of the provisions of Article 57(1)-(7) of the Constitution of the PDP (the Defendant) herein and Section 36 of the 1999 Constitution, the Plaintiffs who have never been informed in writing of any allegation, infractions, offences, complaints, or any other such similar matter of issues by any Organ or Committee of the Defendant at any of the levels***

recognized by the Constitution of the Defendant can validly be subjected to any form of disciplinary measures without being first heard in defence thereof.

- 2. Whether the failure of the Defendant by itself or its members acting in gross violation of the provisions of Article 57 (1) – (7) of its Constitution and the provisions of section 36 of the 1999 Constitution can validly deprive or prevent the Plaintiffs from exercising their rights, privileges and powers in their various capacities as members and officers of the Defendant herein at the various levels.**
- 3. Whether the failure of the Defendant directly or by its members howsoever acting in whatever capacity in gross violation of the provisions of Article 57 (1) – (7) of its Constitution and Section 36 of the 1999 Constitution or such other related provisions does not render their actions,**

orders, resolutions, touching and concerning the Plaintiffs herein null and void ab initio.

- 4. Whether anybody or organ of the Defendant by whatever name called can purport to ratify the conducts complained of by the Plaintiffs in paragraphs 1-3 above which are contrary to Article 57 (1) – (7) of its Constitution and Section 36 of the Constitution of the Federal Republic of Nigeria.***

Upon the determination of the questions set out in the foregoing, the Claimants thereby claimed against the Defendant the reliefs set out as follows:

- 1.A declaration that the failure to avail the Plaintiffs notice of any allegation of wrongdoing or infraction of the Constitution of the Defendant in writing and availing them the opportunity of presenting their case orally or in writing either in person(s) or through counsel of their choice is a gross violation of their rights under Article***

57(1) – (7) of its Constitution and Section 36 of the Constitution of the Federal Republic of Nigeria.

- 2. A declaration that all orders, resolutions, sanctions, e.t.c. purportedly issued/meted out to the Plaintiffs are null and void ab initio and same be set aside forthwith.***
- 3. A declaration that the purported confirmation or ratification of the vote of no confidence and suspension of the Plaintiffs pursuant to the resolution of the Party Elders in Benin and/or State Working Committee is unlawful, null and void and of no effect whatsoever.***
- 4. An order of perpetual injunction restraining the Defendant herein, its agents or privies at any level of the party from giving effect to, recognizing or acting upon the so-called confirmation of the resolution of the 7th October, 2021 by a so-called enlarged meeting of Party Elders and/or State Working Committee.***
- 5. An order of perpetual injunction restraining the Defendant herein, its agents of privies at any level of***

the Party from giving effect to, recognizing or acting upon the so-called resolution of the so-called Stakeholders of Edo State Branch of the Defendant which purported to suspend the Plaintiffs herein.

6. Such additional or further orders this Honourable Court may deem fit/just to make in the circumstances of this case.

The summary of the Claimants' claim, as gathered from the Affidavit filed in support of the Amended Originating Summons is that on 7th October, 2021, an unknown group that called itself the Edo-North Senatorial Leadership/Stakeholders of the Defendant purported to suspend them, vide a communiqué purportedly issued by the group on the same day, accusing the Claimants of acts of gross misconduct, violation of the Defendant's **Constitution** and acts constituting anti-party activities.

The Claimants contend that they were neither informed either orally or in writing of any infractions they allegedly committed and were also not availed any opportunity to respond to the allegations, either in writing or orally before the purported communiqué conveying the resolution to suspend them was purportedly issued. The case of the Claimants is further that the persons that constituted themselves to the said unknown group that purported to suspend them were not known executives or officers of the Defendant in any capacity, at any level or organ of the party; and neither did they state what offices or positions they held in the Defendant, other than stating their names and appending their signatures to the said communiqué.

The Claimants' case is further that the Defendant, by its **Constitution**, has a mechanism to deal with any disciplinary issue but that no such procedure was followed or undertaken by the Defendant or the said

unknown group before issuing the said communiqué containing the resolution to suspend them.

The Claimants' case is further that the National Working Committee (NWC) of the Defendant; the National Publicity Secretary and the Edo State Press Secretary of the Defendant had respectively issued Press Statements to disclaim the said unknown group; and also to debunk their claims of exercising any powers to purport to suspend them.

The Claimants further contended that not only is the said group called the Edo North Senatorial Leadership/Stakeholders unknown to the Defendant's **Constitution**; but also that the provision of **Article 57** of the Defendant's said **Constitution** that recognizes a party member's right to be heard before any disciplinary measures can be taken against him was also clearly violated in the circumstances of the present case.

It was on the basis of these briefly stated facts that the Claimants have approached this Court for redress.

Now, the records of proceedings bear out that the Defendant was properly served with the originating processes of this suit as well as hearing notice for the scheduled hearing date; but opted neither to enter appearance to the suit nor file a defence thereto. Nevertheless, the matter was heard on 11/11/2021 after which judgment was reserved.

I should state that I had carefully considered the totality of the Claimants' case, as made out in the Affidavit filed to support the instant action. I had equally taken due benefit of the written arguments canvassed by the Claimants' learned senior Counsel, **Dr. J. Y. Musa, SAN**, in the written address filed to accompany the originating processes.

I am mindful that apart from the four (4) questions set down for determination in this suit, the Claimants also

prayed the Court for three (3) substantive declaratory reliefs. This presupposes, as it is trite, that in order for the Claimants to establish their entitlement to the said declaratory reliefs, it would not matter that the Defendant did not defend the action. It also would not matter that the Defendant had technically admitted the Claimants' case. This is so because in an action in which the Claimant claims declaratory reliefs, he has a bounden duty to lead credible evidence in proof of the declaration sought from the Court. The implication is therefore that, whether or not the Defendant filed a defence, the focus of the Court will be on the evidence adduced by the Claimant in support of his claim and that the Claimant will only be permitted to take advantage of the weakness in the Defendant's case, only where such weakness supports his case. See Gambo Vs. Turdam [1993] 6 NWLR (Pt. 300) 500; Uchendu Vs. Ogbuni [1999] 1 NWLR (Pt. 603) 337;

Dumez Nigeria Ltd. Vs. Nwakhoba [2009] All FWLR (Pt. 461) 842.

Being mindful of the clear legal principle as set out in the foregoing, therefore, I had proceeded to carefully examine the totality of the case made out by the Claimants as set out in detail in the Affidavit filed to support the instant Amended Originating Summons. On that basis, I find the following facts as firmly established:

1. That a group called PDP Edo North Leaders/Stakeholders, on Thursday, October 7, 2021, issued a communiqué in which it is resolved the 1st Claimant, **Chief Dan Orbih**, the Senatorial Chairman and the 5 Local Government Party Chairmen and other leaders of the party, instigated by the 1st Claimant, boycotted an all-important stakeholders' meeting called by the Governor of Edo State on

Saturday, October 2, 2021; which action was viewed by the group as ***“an act of gross misconduct and a violation of the party’s Constitution and by extension, an act of anti-party activity;”*** and that as a result it was further resolved that ***“a vote of no confidence and suspension was passed on Chief Dan Orbih, the Senatorial Chairman and the 5 PDP Chairmen in Edo North.”*** See the document attached as **Exhibit D3** to the Affidavit in support.

2. That the said group, PDP Edo North Leaders/Stakeholders, is not shown to be a statutory organ or committee of the Defendant, either at the national or State level, recognized by the Defendant’s **Constitution**.
3. That the 15 persons that endorsed the said communiqué, **Exhibit D3**, did not state the

constitutionally-recognized positions they held in the Defendant, either at the national or State levels; and they did not also state in what constitutionally-recognized capacities they held the meeting at which the said resolutions contained in the communiqué were passed.

4. That there is nothing on the face of the said communiqué to show that the 1st Claimant, or any of the other Claimants, against whom a vote of no confidence was passed and who were purportedly suspended, were notified of their purported infractions or given any opportunity to respond to or defend the purported infractions, before the resolutions were passed.
5. That reports of the Claimants' purported suspension were also carried in the Nation newspaper publication of October 12, 2021; the Punch newspaper publication of October 12,

2021, and the New Telegraph newspaper publication of October 12, 2021 respectively. I make reference to **Exhibits D4, D5 and D6** attached respectively to the Affidavit in support.

6. That on the same October 7, 2021, the Defendant, Edo State Chapter, issued a Public Service Announcement through its State Publicity Secretary, **Chris Osa Nehikhare**, declaring the said communiqué, **Exhibit D3** as ***“unauthorized, illegal, unconstitutional and irresponsible..”*** and thereby calling on Nigerians to ignore the same. See **Exhibit D8**.

7. That again on October 8, 2021, the National Publicity Secretary of the Defendant, **Kola Ologbondiyon**, issued a Press Statement, in which it is stated, on behalf of the National Working Committee (NWC), of the Defendant that ***“the purported suspension of the National***

Vice Chairman, South-South, Chief Dan Orbih, a member of the National Executive Committee (NEC) of our party (PDP), by the Edo North Senatorial leadership of the party, is statutorily beyond its powers, and to that effect a nullity.’’

I had noted and taken account of the issues formulated for determination by the Claimants’ learned senior counsel. Going straight to the point, however, I consider that the focal issue that seems germane for determination, on the basis of the evidence adduced by the Claimants as contained in the facts deposed to in support the Amended Originating Summons and the exhibits attached, is as to whether the Edo North Leaders/Stakeholders of the Defendant is recognized by the Defendant’s **Constitution** and as such had the *vires* or the competence or the capacity to issue the communiqué of October 7, 2021, purporting to suspend the Claimants?

In dealing with this issue, I must quickly note that since the said Edo North Leaders/Stakeholders are said to be members of the Defendant, it is considered not improper for the Claimants to have sued the Defendant, being the umbrella body and invariably their principal, to seek redress as has been done in the present action. I so hold.

Now, the Claimant's learned senior counsel made copious reference to **Article 57(1) – (7)** of the Defendant's **Constitution**, which is attached as **Exhibit D9** to the Affidavit in support of the Amended Originating Summons. Apparently, these provisions go to the heart of the Claimants' case. **Article 57** sets out the composition and membership of the disciplinary committee at every level of the party. It further sets out the procedure to be followed for purposes of disciplining an erring member of the party. It is significant to note that **“suspension”** is one of the disciplinary measures permitted to be meted out to an

erring member *vide* **Article 57(3)** of the Defendant's **Constitution**.

It is significant to further note that the Defendant's **Constitution** recognizes and preserves the *audi alteram partem* principle of justice, in that, by **Article 57(4)** and **(5)** thereof, it affords a member, who is subject of disciplinary action, to be given fair hearing, by being notified of the allegation made against him in writing and that such a member shall be given an opportunity to present his case either orally or in writing and shall be allowed to be represented by counsel of his choice and could also call witnesses.

It is also very pertinent to note that by **Article 57(7)**, it is only the National Executive Committee (NEC) of the Defendant that has the powers to entertain any disciplinary issue as relating to a member of that committee, *inter alia*. In other words, no other organ of the party, except the National Executive Committee

(NEC), could entertain any disciplinary issue against the 1st Claimant, who is shown, at the material time, to be a member of the National Executive Committee (NEC), by virtue of his being the South-South Zonal Executive Chairman of the Defendant.

I should state that the fact of the 1st Claimant being the National Vice Chairman, South-South; and member of the National Executive Committee (NEC) of the Defendant, is confirmed by the document, **Exhibit D2**, issued by the National Chairman and National Secretary respectively of the Defendant, on March 18, 2021; and the Press Release issued by the Defendant's National Publicity Secretary, **Kola Ologbondiyon**, on October 8, 2021, **Exhibit D7**.

Flowing from the state of the clear provisions of **Article 57** of the Defendant's **Constitution**, the question that follows is whether the said PDP Leaders /Stakeholders from Edo North is a creation of the Defendant's

Constitution and if so, whether they derived powers to so issue a communiqué to suspend the 1st Claimant in particular; and the other Claimants, as the case may be, from the said **Article 57** of the party's **Constitution** or any other provision whatsoever of the party's **Constitution**?

The obvious negative answer to this poser is clearly inherent in the communiqué itself, **Exhibit D3**, which failed to disclose howsoever from where the signatories to the said communiqué derived powers to act, in suspending the Claimants. There is no record of appointment of the said Edo North Leaders/Stakeholders by the Edo State Executive Committee of the Defendant, as required by **Article 57(2)** of the party's **Constitution** to undertake any disciplinary actions against the Claimants.

To further establish that the said PDP Edo North Leaders/Stakeholders did not exercise any lawful

authority of the party in issuing the communiqué, **Exhibit D3**, I again make reference to the two Press Statements made by the respective Edo State Publicity Secretary of the Defendant on 7 October, 2021, **Exhibit D8** and the one issued on 8 October, 2021, by the National Publicity Secretary of the Defendant, **Exhibit D7**. The two press releases, issued by statutory functionaries of the Defendant both at the state and national levels, not only dissociated the Defendant from the communiqué of October 7, 2021, purporting to suspend the Claimants; but went further to declare that the said action of the said PDP Edo North Leaders/Stakeholders was beyond their powers and to that extent was a nullity.

The law is well settled that a political organization is bound by its own **Constitution** and that all members of the political organization are bound by its **Constitution**; and that any actions taken in breach of the **Constitution** are null and void to that extent. See

Gana Vs. SDP [2019] 11 NWLR (Pt. 1684) 510;
Knight Frank & Rutley (Nig.) Vs. A.-G., Kano State
[1998] 7 NWLR (Pt. 556) 1.

In the instant case, the provision of **Article 2** of the Defendant's **Constitution**, alluded to by the Claimants' learned senior counsel, is also clear to the extent that, subject to the **Constitution** of the Federal Republic of Nigeria, 1999, the Defendant's **Constitution** is supreme and shall have binding force on all members and organs of the party.

It is therefore very clear, and to that extent I hereby hold that said PDP Edo North Leaders/Stakeholders, is not an organ of the Defendant, recognized either at the national or state level by the party's **Constitution**; or clothed with powers to exercise the disciplinary functions of the Defendant, in accordance with the provisions of **Article 57** of the Defendant's **Constitution**.

Again, it is pertinent to note that **Article 57** of the Defendant's **Constitution**, already made abundantly clear the effect of failure to follow the procedure laid down for disciplinary proceedings, which, by **Article 57(6)** is to the effect that ***“Any decision taken against a member who has not been informed of the charge against him or has not been given any opportunity of defending himself shall be null and void.”***

This being so, even if the said PDP Edo North Leaders/Stakeholders, is properly constituted by the Defendant; failure however to comply with the clear provisions of **Article 57(4), (5) and (7)** of the Defendant's **Constitution**, before issuing a communiqué on October 7, 2021, purporting to suspend the Claimants, renders the content and intended effects of the said communiqué, as concerning the Claimants, null, void and of no legal consequences whatsoever. I so declare.

I do not consider it any more necessary to delve into whether or not the Claimants were accorded fair hearing since the body that purported to have issued the said communiqué has been declared unlawful. In any event, I had found in the foregoing that the provisions of **Article 57(3), (4) and (7)** of the Defendant's **Constitution**, which demanded that the Claimants be given an opportunity to respond to whatever allegations are leveled against them; and for the 1st Claimant, that it is only the National Executive Committee (NEC) of the party that is empowered to exercise disciplinary sanctions over him; have not be followed or complied with in the issuance of the said communiqué.

In view of the Court's findings and conclusions in the foregoing therefore, I must further hold that the Claimants cannot be deprived or prevented from exercising or continuing to exercise their rights, privileges and powers in the various capacities as they

are entitled under the Defendant's **Constitution**, having not been subjected to any form of disciplinary actions in accordance with the due process of law and the party's **Constitution**.

In the overall analysis, therefore, I hereby resolve all the four (4) questions set down for determination by the Claimants in their favour. Accordingly the Claimants' claim succeeds and I grant **reliefs (1), (2), (3) and (5)** as endorsed on the Amended Originating Summons. **Relief (4)** is already overtaken by events and it is accordingly struck out. I make no orders as to costs.

OLUKAYODE A. ADENIYI

(Presiding Judge)

24/11/2021

Legal representation:

Dr. J. Y. Musa, SAN (with **Steve Adehi, Esq., SAN; M. O. Onyilokwu, Esq.; Eko Ejembi Eko, Esq.; John Eche Okpe,**

**Esq.; G. O. Elaiwu, Esq.; Frank Ojo, Esq.; Peter Onuh, Esq.
& I. X. O. Imbu, Esq.) – *for the Claimants***

Defendant unrepresented