

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT LIFE CAMP-ABUJA**

**BEFORE HIS LORDSHIP**

**HONOURABLE JUSTICE B.M.BASSI**

**ON FRIDAY THE 21<sup>ST</sup> DAY OF FEBRUARY, 2025.**

**SUIT NO: FCT/HC/5/2025**

**BETWEEN**

**PRINCE CHINEDU OBI .....**

**CLAIMANT**

**AND**

**1. NATIONAL RESCUE MOVEMENT**

**2. OBIDKE OKOLO, ESQ .....**

**DEFENDANTS**

**JUDGMENT**

The Claimant on the 6<sup>th</sup> of January, 2025 took out an Originating Summons against the Defendants which was amended on the 23<sup>rd</sup> of January, 2025, wherein the Claimant sought the following reliefs:

1. A declaration that the 1<sup>st</sup> Defendant being a registered Political Party, cannot act outside the powers donated to it by the Constitution of the Federal Republic of Nigeria, 1999 as amended, the Electoral Act, 2022, the Regulations and Guidelines for Political Parties, 2022 and the Constitution of the Party.
2. A declaration that the 2<sup>nd</sup> Defendant being the acting National Secretary of the 1<sup>st</sup> Defendant, cannot act outside the powers donated to him by the Constitution of the Federal Republic of Nigeria, 1999 as amended, the Electoral Act, 2022, the

Regulations and Guidelines for Political Parties, 2022 and the Constitution of the Party.

3. A declaration that the decision or resolution of the Defendants to conduct an Emergency National Convention of the Party on the 17<sup>th</sup> of January, 2025, for the purpose of discussing 'fusion' or 'merger' and altering the leadership of the structure of the Party, with other bodies without issuing a proper and valid 21 days mandatory notice to the Independent National Electoral Commission (INEC) is illegal, unlawful, oppressive, unconstitutional, null, void and of no effect whatsoever having not complied with the provisions of the Electoral Act 2022, the Regulations and Guidelines for the Political Parties, 2022 and the established custom and practice of the Party (i.e. NRM)
4. An order nullifying and setting aside in its entirety the purported Emergency National Convention of the 1<sup>st</sup> Defendant of 17<sup>th</sup> January, 2025 which purportedly altered the leadership structure of the party without issuing a valid and proper mandatory 21 days' notice to the Independent National Electoral Commission (INEC) for being illegal, unlawful, oppressive, unconstitutional, null and void
5. An order of perpetual injunction restraining the 1<sup>st</sup> Defendant from conducting any Convention of the Party without first complying with the Electoral Act, 2022, the Regulations and Guidelines for Political Parties, 2022 and the Constitution of the National Rescue Movement.

The Claimant also raised the following questions for determination:

1. Whether upon a proper construction and interpretation of Section 81 (1) of the Electoral Act, 2022, Article 12, of the Regulations and Guidelines for Political Parties, 2022, it was proper, legal and lawful for the Defendants to surreptitiously conduct an Emergency National Convention of the Party (NRM) on the 17<sup>th</sup> of January, 2025 or any other date, for purpose of discussing ‘fusion’ or ‘merger’ and altering the leadership of the structure of the Party, with other bodies without issuing a proper and valid 21 days mandatory notice to the Independent National Electoral Commission (INEC) nor complying with the procedure in the Constitution of the 1<sup>st</sup> Defendant.
2. Whether upon a proper construction and interpretation of Section 81 (1) of the Electoral Act, 2022, Article 12, of the Regulations and Guidelines for Political Parties, 2022, and the Constitution of the 1<sup>st</sup> Defendant, the National Secretary ought to jointly sign any letter to INEC conveying the decision or resolution of the 1<sup>st</sup> Defendant to conduct a National Convention of the Party for purpose of discussing ‘fusion’ or ‘merger’ and altering the leadership structure of the Party, with other bodies.

The Defendants upon service of the Amended Originating Summons filed their counter-affidavits and written addresses on the 29<sup>th</sup> of January, 2025 and 30<sup>th</sup> of January, 2025 respectively.

The Claimant upon service of the Defendants counter-affidavits and written addresses filed a further affidavit and written address.

The Claimant in support of his case deposed to a 37 Paragraphs affidavit, 12 Paragraphs further affidavit and attached the following documents:

- i. Membership Identify Card (Exhibit A)**
- ii. Constitution of the 1<sup>st</sup> Defendant (Exhibit B)**
- iii. Monitoring Report of NEC Meeting of the 1<sup>st</sup> Defendant on 23<sup>rd</sup> October, 2023 (Exhibit C)**
- iv. Terms of Settlement dated 11<sup>th</sup> November, 2024 (Exhibit D)**
- v. Letter dated 21<sup>st</sup> December, 2024 (Exhibit E)**
- vi. A copy of page 12 of the Regulations and Guidelines for Political Parties, 2022 (Exhibit F)**
- vii. A copy of page 6 Of the Saturday Independent Newspaper of January 11, 2025 (Exhibit G)**
- viii. Letter by INEC dated 9<sup>th</sup> January, 2025 (Exhibit I)**
- ix. Letter by INEC dated 10<sup>th</sup> January, 2025 (Exhibit J)**
- x. Letter by S. M Oyeghe Legal dated 13<sup>th</sup> January, 2025 (Exhibit K)**

On the other hand, the Administrative Secretary of the 1<sup>st</sup> Defendant deposed an 11 paragraphs affidavit in opposition to the Claimant's affidavit and attached one document '**copy of page 6 Of the Saturday Independent Newspaper of January 11, 2025**' (Exhibit NRM1).

Also, the 2<sup>nd</sup> Defendant deposed to a 6 paragraphs affidavit in opposition to the Claimant's affidavit and did not attach any document

## **CASE SUMMARY**

The Claimant and 2<sup>nd</sup> Defendant are both members of the 1<sup>st</sup> Defendant, the NRM. According to the Claimant, the Defendants surreptitiously and without due regard to the provisions of the law; the Constitution, the Electoral Act and the Regulations and Guidelines for political parties 2022 concluded plans to hold an emergency national convention of the party on 17<sup>th</sup> January, 2025.

The Claimant contends that by the provisions of the law, before the 1<sup>st</sup> Defendant and indeed any registered party can conduct a national convention, it must issue a valid 21 days' notice to the INEC. Furthermore, he contends that Officers of the 1<sup>st</sup> Defendant who were validly elected in 2022 are to hold office for a four year term, the next cabinet reshuffle/elections ought to hold in 2026.

Claimant in opposition to the moves being undertaken by the party wrote a petition exhibit E to the 1<sup>st</sup> Defendant stating the inconsistencies in the procedure being adopted by the party and some of its members. The Claimant also raised the issue of irregularity in the letters sent to INEC purportedly issuing the 21 days' notice to hold an emergency national convention as said letter was not signed by both the Chairman and Secretary as provided. It is on the premise of the facts and infractions allegedly perpetrated by the Defendants as summarized above that the Claimant has approached the Court for redress and interpretation.

Learned Claimants Counsel on behalf of the Claimant raised two issues for determination in the final written address:

1. Whether upon a proper construction and interpretation of section 82(1) of the Electoral Act 2022, Article 12 of the Regulations and guidelines for political parties 2022, it was

proper, legal and lawful for the Defendants to surreptitiously conduct an emergency national Convention of the party (NRM) on 17<sup>th</sup> of January 2025 or any other date, for purpose of discussing fusion or merger and altering the leadership structure of the party with other bodies without issuing a valid mandatory 21 days' notice to the Independent National Electoral Commission (INEC) nor complying with the procedure in the Constitution of the 1<sup>st</sup> Defendant.

2. Whether upon a proper construction and interpretation of Section 82(1) of the Electoral Act 2022, Article 12(3) of the Regulations and guidelines for political parties 2022, and the 1<sup>st</sup> Defendant Constitution, the National Secretary ought to jointly sign any letter to INEC conveying the decision or resolution of the 1<sup>st</sup> Defendant to conduct a national Convention of the party for purpose of discussing fusion or merger and altering the leadership structure of the party with other bodies.

In his submission, Learned Counsel states that originating summons is for the determination of issues where there are no disputes as to facts or likelihood of disputes. He submits that the Constitution of the Federal Republic of Nigeria by its provisions makes it mandatory for political parties to have a Constitution and further stated that the Constitution of the party is supreme and Members are bound by same. He cited the case of **P.D.P v Abubakar (2007) 3 NWLR (Pt.1022) 515 @542, paras g-h**. Learned counsel made copious reference to the provisions of the party constitution in Articles 7.3.18 and Articles 8.1 on when the

convention of the party should be held and tenure of officers of the party. Learned counsel further elucidated on the provisions of Articles 8.1.2 of the Constitution on notice of convention and congress which provides for Seven (7) days'notice, publication and joint signatures to the application. S. 82(1) of the Electoral Act also provides for a 21 days' notice to the Electoral Commission, same as the provisions of Article 12 of the Regulations and Guidelines for Political Parties 2022. Learned counsel submits that there is no legal basis for Defendants to resolve to proceed to conduct a national convention or congress. Furthermore, learned Counsel forcefully submits that the word 'shall' is mandatory hence the failure to comply with S. 82 of the Electoral Act is detrimental, as the requirement of 21 days' notice is mandatory and cannot be dispensed with. Learned Counsel cited and placed reliance on **Akinyele & Anor v Adewale& Ors (2015) LPELR-25718(CA), Labour Party V Wike & Ors (2015) LPELR-25991** and urged the Court to resolve the issues raised in favour of the Claimant/Applicant and grant the reliefs sought.

The 1<sup>st</sup> Defendant filed a counter affidavit of 11 paragraphs dated the 29<sup>th</sup> day of January 2025. The averments therein are to the effect that none of the 1<sup>st</sup> Defendants actions have been inconsistent with either the provisions of the Electoral Act or the party's constitution. 1<sup>st</sup> Defendant stated that the provisions for emergency Convention are in the constitution of the party and they were appropriately utilized. He stated that the National Chairman used his veto power to override both the National Management Committee, the National Executive Committee and all other organs. Further that the Convention was rescheduled twice, fixed initially

for 13<sup>th</sup> January, 2025, shifted to 25<sup>th</sup> January but eventually held on the 17<sup>th</sup> January, 2025.

The Deponent further avers that there was a 21 day notice which was signed solely by the National Chairman and sent to INEC who clearly stated that they would attend and monitor the Convention. This to their own mind dispensed with the need for any proper or valid notice.

The 1<sup>st</sup> Defendant sought for declaratory reliefs in his Counter-claim and the ground upon which the application was sought is that there is an overriding need for the court to ratify the emergency national Convention of the NRM held on the 17<sup>th</sup> January 2025 as valid as the Convention did not violate any law, rule or regulation. Attached to the Counter affidavit is 1 exhibit NRM 1; Notice of rescheduling of the Emergency National Convention.

On behalf of the 1<sup>st</sup> Defendant, Learned Counsel in his final written address raised two issues for determination to wit:

1. Whether the Plaintiff is entitled to the reliefs sought
2. Whether the 1<sup>st</sup> Defendant is entitled to the relief sought in the counter claim or consequential reliefs

In his argument on the issues, Learned Counsel cited Article 7.3.18(a) of Claimants Exhibit B which provides for National Convention, and Articles 8.1 and 8.1.2 which provides for emergency meetings and urged the court to consider Exhibit NRM1 and other facts deposed stating that there was no illegality or violation of any provisions of the laws or guidelines in its call for an emergency meeting. Learned Counsel for the 1<sup>st</sup> Defendant also submitted that the presence of INEC officials automatically ratifies any irregularity in the notices and cited the case of **Ibezim V**

**Elebeke (2022)4 NWLR (Pt.1814)1P.61. PARAS B-C.** while urging the court to grant consequential orders, Learned Counsel cited and placed reliance on the authorities of **Awonniyi v Registered Trustees of AMORC(2000)10 NWLR (Pt.676) 522 @ Pg544 & A.A.Atta Nig. Ltd V Conoil PLc (2018) LPELR-44705 C.A**

**2<sup>nd</sup> Defendant's Counter Affidavit**

The 2<sup>nd</sup> Defendant deposed to a counter affidavit dated and filed the 30<sup>th</sup> day of January, 2025 wherein he stated that he was the acting national Secretary of the 1<sup>st</sup> Defendant at the material time in question. He averred that in December 2024, there were people interested in joining the party and a fusion committee was set up to consider the plans but the talks fell through, as reported by the fusion committee and were abandoned. It is the contention of the 2<sup>nd</sup> Defendant that the National Chairman had a different view and insisted on using his veto powers to declare the emergency national convention and all advice to the contrary was ignored.

The 2<sup>nd</sup> Defendant further avers that to hold a national emergency convention, it ought to be summoned by the National Chairman and Secretary or two thirds of the party's membership which was not done, He stated further that by virtue of his position as the acting national secretary, he ought to be privy to all the plans and it was his duty to send out the requisite notices and append his signature to the publications.

In his written address, Learned Counsel raised a sole issue for the court's determination;

Whether the 1<sup>st</sup> Defendant's purported Convention of 17<sup>th</sup> January, 2025 is a proper, valid and lawful Convention.

Learned Counsel submits that the Constitution of the party is supreme and binding on all its members. He cited a plethora of judicial authorities in support such as **P.DP. V Abubakar (2007) 3 NWLR Pt1022 515@542. PDP v Sherriff & Ors (2017) LPELR-42736(SC) & Aguma V APC (2021) 14 NWLR Pt.1796, 351.**

In response, the Claimant filed a further affidavit dated the 31<sup>st</sup> January, 2025 wherein he averred that the 1<sup>st</sup> Defendant went ahead to organize and hold the emergency convention in-spite of the pendency of the matter and that there is still no evidence placed before the court to show that a valid and proper notice of emergency convention was given. It is the Claimant's contention that the reliefs sought by the 1<sup>st</sup> Defendant are not grantable. Learned Counsel for the Claimant submitted that the 1<sup>st</sup> Defendant made mere denials without documentary evidence and since the evidence of the Claimant is unchallenged, the Court is on firm ground to rely and act upon such unchallenged and uncontroverted evidence. Counsel cited and placed reliance on **SPDCN v EDAMKWE (2009) 14 NWLR (Pt1160) & Esene V State (2017) 8 NWLR (Pt.1568) 337 SC.**

I have carefully considered the totality of the case before me, the affidavits and relevant documents attached as exhibits. I shall make specific reference to the arguments of learned Counsel on both sides of the divide as the need arises in the course of the Judgment.

At this point, it will be important to raise an issue which if determined will affect the jurisdiction of the Court. "Whether or not the Claimant has locus standi to institute this action".

Issue of locus standi is one that affects the jurisdiction of the Court. When a party lacks locus standi in a matter, the Court by implication, will lack jurisdiction to adjudicate on the matter. See the case of **Counsel of Legal Education V Hajia Basirat Mojisola Dange & Ors (2024) LPELR-62578(SC)**.

Locus standi and jurisdiction are interwoven, in the sense that where a party lacks the locus standi to institute an action before a Court of law, the Court has no jurisdiction to entertain or adjudicate over the case. See the case of **Agatha Gardens Hotels and Investment Limited & Ors V Administrator-General and Public Trustee, Akwa Ibom State & Ors (2024) LPELR-61979(CA)**.

In **Central Bank of Nigeria v Inalegwu Frankline Ochife & Ors (2025) LPELR-80220 (SC)** the Apex Court held; it is correct that this question of the jurisdiction of the lower court to adjudicate on the issue of failure to obtain fiat is being raised and determined by this court suo motu. The law is that, being an issue touching on the substantive jurisdiction of the lower court, it is one that this court can so raise and so determine. See the case of **Akingbulugbe v Nigerian Romanian Wood Industries Ltd (2023)11 NWLR(pt 1895)339, Ashaka v Nwachukwu(2024)8NWLR (Pt1942)149, Per ABIRU JSC in CBN v Ochife& ORS(Pp20-21 paras D)**.

It is important to note also that locus standi, being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit, even on appeal at the Court of Appeal by any of the parties without leave of court, or by the Court itself Suo motu. See the case of **Agatha Gardens Hotels and Investment Limited & Ors V Administrator-General and Public Trustee, Akwa Ibom State &**

**Ors (supra); A. G. Akwa Ibom State V Essien (2004) 7 NWLR (Pt. 872) CA.**

Locus standi is the legal capacity of a party to initiate an action in a court of law. It is the standing to sue or the competence of a party to sue. For a person to approach a Court, he must be able to show that his civil rights and obligations have been or are in danger of being violated or infringed upon. See the case of **Access Bank Plc V Mr Olumide Onanubi & Ors (2022) LPELR-56555(CA); Counsel of Legal Education V Hajia Basirat Mojisola Dange & Ors.**

The law is that the test to determine locus standi is that: a. The action must be justiciable, and b. there must be a dispute between the parties. See **Adesanya V President of the Federal Republic of Nigeria (1981) LPELR-147(SC)**. In order to determine the standing of a Plaintiff, it is the cause of action that has to be examined.

In the instant matter which was commenced by originating summons, the Court is to examine the questions raised and the reliefs sought as well as the facts deposed to in the affidavit in support of the originating summons. It is the complaint of the Claimant that the Defendants did not issue to INEC the mandatory 21 days' notice for the conduct of the 1<sup>st</sup> Defendant's Convention as provided by Section 82(1) of the Electoral Act, 2022 and Article 12 of the Regulations and Guidelines for Political Parties, 2022. Secondly, the said notice to INEC ought to be jointly signed by the Chairman and Secretary of the 1<sup>st</sup> Defendant.

I have carefully considered the provisions of Section 82 (1) of the Electoral Act, 2022 and Article 12 of the Regulations and Guidelines

for Political Parties, 2022 that the said notice is to be given to the Independent National Electoral Commission[INEC].

The Court of Appeal per **Ekanem, JCA** in the recent case of **PDP & Anor V Chief Stanley Okoche Nkaa & Ors (2024) LPELR-61841(CA)** while deciding on the issue of “**who can complain where inadequate notice is given for the holding of convention, congress or meeting of a political party**” held thus;

*“It was the case of the 1<sup>st</sup>-5<sup>th</sup> respondent that the 1<sup>st</sup> appellant did not give INEC 21 days’ notice for primary election as prescribed by Section 82(1) of the Electoral Act, 2022. Question 2 and Relief 2 in the originating summons relate to this claim of the said respondents. It is only INEC that has the right to be given such notice and not the said respondents. The 1<sup>st</sup>-5<sup>th</sup> respondents, like knights-errant, took it upon themselves to fight for what belongs to INEC. In Attorney-General of Cross River State VFRN supra 440, Ariwoola, JSC (as he then was) held that “It is trite law that it is only the person in whom is vested the aggregate of the enforceable right in a cause of action that has the standing to sue. Therefore, where a person commences an action to claim a relief which on the facts of the matter is enforceable to another person, then the former person cannot succeed, for want of locus standi. The reason being that there is no dispute between them.” See also Oloriode v Oyebi (1984) 5 SC 1, 30 and 31 and Bewaji v Obasanjo (2008) 9 NWLR (Pt. 1093) 540, 573. The 1<sup>st</sup> - 5<sup>th</sup> respondents had no standing to take up the claim that the 1<sup>st</sup> appellant did not serve the 6<sup>th</sup> respondent with the prescribed notice. They were simply acting like busybodies and meddling interlopers in that regard. Even if it is correct, as held by the lower Court (with which I do not agree) that the 1<sup>st</sup>-5<sup>th</sup> respondents were challenging the ward congress for which they purchased forms and were denied participation, the claim would still not be justiciable as it falls exclusively within the domestic affair of the party. The said respondents have no standing to approach the Court in such a matter. See Osagie v Enoghama (2022) LPELR-57662(CA). It is therefore clear that from whichever angle one looks at the matter, the 1<sup>st</sup>-5<sup>th</sup> respondents had no locus standi to institute and maintain the*

*suit leading to this appeal. The lower Court consequently had no jurisdiction to entertain and decide the same."*

The doctrine of Judicial Precedent/Stare decisis postulates that a point of law that has been settled by a superior Court should be followed. There is sense in it to avoid confusion. It is not proper to refuse to follow the decision of a superior Court where same is apt. a lower Court should tow the line, as it were. See the case of **Power Holding Company of Nigeria, Plc V Mr. I. C. Offoelo (2012) LPELR-19717(SC)**. The decision of a superior Court is binding on all Courts bellow it. This applies even if the decision was wrongly reached, as long as it has not be set aside by a Court of competent jurisdiction. See the case of **Kerian Ikpara Obasi V Mikson Establishment Industries Limited (2016) LPELR-40704(SC)**.

The Supreme Court in **University of Lagos & Anor V C. I. O. Olaniyan & Ors (1985) LPELR-3419(SC)** held thus

*"I hold the view that when a lower Court is faced with the construction of a rule in pari-material with one that has been construed by this Court, the lower Court has no option but to follow the principle laid down by this Court to the peculiar facts of the case before it. The lower Court has no business with whether or not the decision of this Court therein is right or wrong. In the hierarchy of Courts, one principle has been established beyond par and that is, that a lower Court is bound by the decision of the higher Court."*

Both the instant suit and the case of **PDP & Anor V Chief Stanley Okoche Nkaa & Ors(supra)** mainly borders on non-issuance of 21 days' notice to INEC before the conduct of congress, convention or meetings as provided by Section 82(1) of the Electoral Act, 2022 and Article 12 of the Regulations and Guidelines for Political Parties, 2022. The Claimant in this matter just like it was stated in **PDP & Anor V Chief Stanley Okoche Nkaa & Ors(supra)** lacks capacity to complain about the 1<sup>st</sup> Defendant's non-compliance with Section 82(1) of the Electoral Act, 2022 and Article 12 of the Regulations and Guidelines for Political Parties, 2022.

The issue of locus standi is a condition precedent to the determination of a case on merit. Where a plaintiff has no locus standi to bring a suit, the suit becomes incompetent and the Court lacks jurisdiction to entertain it, the only order the Court can make in the circumstance is to strike out the claim/suit. See the case of **Chief Maxi Okwu & Anor V Chief Victor Ume & Ors (2015) LPELR-26042(SC); Bureau for Local Government and Chieftaincy Affairs, Benue State & Anor V Barr. Gabriel Allahnana Onu & Ors (2022) LPELR-58227(CA).**

Having found that it is the INEC who is entitled to the 21 days' notice, the Claimant herein lacks the locus standi to institute this suit. The effect is that this suit was incompetent ab initio, thus depriving the Court the requisite jurisdiction to entertain same. In view of that, this Court is compelled to strike out this suit for lack of jurisdiction and it is accordingly struck out.

The Court will however proceed to consider the questions raised in the originating summons in the event that the matter goes before the appellate court for a determination on the merit.

The first question for determination is

- 1. Whether upon a proper construction and interpretation of Section 81 (1) of the Electoral Act, 2022, Article 12 of the Regulations and Guidelines for Political Parties, 2022, it was proper, legal and lawful for the Defendants to surreptitiously conduct an Emergency National Convention of the Party (NRM) on the 17<sup>th</sup> of January, 2025 or any other date, for purpose of discussing 'fusion' or 'merger' and altering the leadership of the structure of the Party, with other bodies without issuing a proper and valid 21 days mandatory notice to the Independent*

*National Electoral Commission (INEC) nor complying with the procedure in the Constitution of the 1<sup>st</sup> Defendant.*

The Claimant's case is hinged on the alleged non-compliance with the Electoral Act, The Regulations and Guidelines for Political Parties and the Constitution of the NRM in the conduct of the National Convention of the NRM which held on the 17<sup>th</sup> January, 2025. Let us consider the relevant provisions:

**Section 82 of the Electoral Act, 2022** provides thus:

*(1) Every registered political party shall give the Commission at least 21 days' notice of any convention, congress, conference or meeting convened for the purpose of "merger" and electing members its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under this Act.*

*(5) Failure of a political party to notify the Commission as stated in subsection (1) shall render the convention, congress, conference or meeting invalid.*

**Article 12 (1) of Regulations and Guidelines for Political Party, 2022** provides thus: *Every political party shall give the commission at least 21 days' notice, through a dedicated portal created for that purpose by the commission, of any convention, congress, conferences or meeting conveyed for the purpose of merger and electing members its executive committees, other governing bodies or nominating candidates for any of the elective offices specified in the Electoral Act 2022. A hard copy of the notice may be submitted to the commission through a registered mail.*

Section 82(1) and (5) of the Electoral Act, 2022, and Article 12(1) of the Regulations and Guidelines for Political Parties, 2022, both

address the requirement for political parties to provide the Independent National Electoral Commission (INEC) with a 21-day notice before holding a convention, congress, or meeting for the purpose of merger and electing members of executive committees or nominating candidates for elections.

Parties in the suit are ad idem that the purpose of the said National Convention was fusion or merger and cabinet reschedule/filling of vacant positions/altering leadership structure, as contemplated by Section 82 (1) of the Electoral Act, 2022.

The Cardinal principles in the interpretation of statutes is that the meaning of a statute or legislation must be derived from the plain and unambiguous expressions or words used therein rather than from any notion that may be entertained as to what is just and expedient. The literal rule of interpretation is always preferable unless it would lead to absurdity and inconsistency with the provisions of the statute as a whole. See the case of **PDP V INEC (2014) 17 NWLR (Pt. 437) 525**.

The use of the word SHALL in Section 82(1) of the Electoral Act, 2022 and Article 12(1) of the Regulations and Guidelines for Political Parties, 2022 show that the requirement of the 21 days' notice is not optional but absolute and mandatory. Generally, when the word 'shall' is used in a statute, it is not permissive. It is mandatory. The word shall in its ordinary meaning is a word of command, which is normally given a compulsory meaning because it is intended to denote obligation. See the case of **Ugwu V Ararume (2007) 12 NWLR (Pt. 1048) 365**. It has become clear that the word shall when used in a legislation unless the context within which it

is used suggest otherwise, is taken to mean a command or imperativeness and compulsion. See the case of **Ibeziako V Ibeziako (2016) LPELR-40958(CA)**.

The Electoral Act, 2022 further provides in S82(5) that failure of a political party to notify the Commission as stated in subsection (1) shall render the convention, congress, conference or meeting invalid.

The use of the word 'shall' to my mind conjures a condition which must be met and satisfied.

The Court of Appeal in **Sani & Ors V APC & Ors (2022) LPELR-59005(CA)** per Abba Bello Mohammed held thus;

*“It is important to state that Section 228(b) of the Constitution of the Federal Republic of Nigeria, 1999 empowers the National Assembly to make laws conferring upon the Independent National Electoral Commission (INEC) the powers necessary or desirable for enabling the Commission to effectively ensure that political parties observe the practices of internal democracy, including the fair and transparent conduct of party primaries, party congresses and party conventions. Now by Section 82(1) and (2) of the Electoral Act, 2022 [which was Section 85(1) and (2) of the old Electoral Act, 2010], every political party is mandated to give to the Independent National Electoral Commission (INEC) at least 21 days’ notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under the Act, and the Commission is empowered to attend and observe*

*such conventions, congresses, conferences or meetings with or without prior notice."*

The Claimant avers that he drew the attention of the 1<sup>st</sup> Defendant by a petition marked Exhibit E, but the 1<sup>st</sup> Defendant went ahead to publish the notice of the emergency national convention and conduct same. The Claimant further exhibited letters from the INEC dated 9<sup>th</sup> January and 10<sup>th</sup> January respectively (Exhibits H & I) stating that their notices for a planned emergency national convention were not valid. The 1<sup>st</sup> Defendant contends in paragraph 7e that the requisite notice was sent to the INEC, having been signed by the National Chairman alone. The Defendant further stated in paragraph i that the INEC had stated that it would attend and monitor the Convention which dispenses with the need for any proper or valid notice. If a valid 21 days-notice was sent, what would be the need to dispense with same?

The 1<sup>st</sup> Defendant in this suit did not exhibit or attach to its affidavit any Notice or letter showing that it gave INEC the required 21 days' notice of its Convention of 17<sup>th</sup> January, 2025 in line with Section 82(1) of the Electoral Act, 2022. However, the 1<sup>st</sup> Defendant stated in its affidavit that the essence of a valid 21 Days' Notice to INEC is to enable sufficient time to prepare and monitor the Convention.

Furthermore, no evidence was put before the court to show that INEC officials were present during its National Convention of 17<sup>th</sup> January, 2025.

The content of the letters Exhibit H & I (Letters by INEC dated 9<sup>th</sup> & 10<sup>th</sup> January, 2025 respectively) show that the 1<sup>st</sup> Defendant issued a Notice to INEC of its planned Emergency Convention on 13<sup>th</sup>

January, 2025. The INEC acknowledged the receipt of the 1<sup>st</sup> Defendant's letters on its planned Emergency Convention and also went further to state that the said notices were not proper.

The Court of Appeal in **Hassan & Anor V Ojo (2015) LPELR-50801** held, "*The Electoral Act is replete with provisions directing INEC to do one thing or the other. Assuming therefore, that the political party fails to give the required 21 days' notice and proceeds to hold a convention where candidates emerge and in the presence of INEC officials, would such be valid primaries because of the mere presence of INEC officials? The obvious answer is NO. The presence of INEC officials has nothing to do with the statutory requirement for 21 days' notice which must be given. It is a command to give the notice. I am of the strong view that 21 days' notice is the foundation for valid primaries that can produce candidates for a political party wanting to contest general elections in this Country.*" See also the cases of **Munir & Anor V Emmanuel & Ors (2015) LPELR-25970(CA)** and **Samuel & Anor V Lanre & Ors (2015) LPELR-25982(CA)**.

On the strength of the above cited authority, it is clear that the presence of officers of INEC cannot validate an invalid notice nor dispense the need for the said 21 days' notice.

**Section 82(5)** explicitly states that failure to notify INEC within the stipulated 21 days period renders the convention, congress, conference, or meeting invalid. This underscores the importance of the notice requirement as a condition precedent for the validity of such events.

Based on the clear and unambiguous provisions of **Section 82(1) & (5) of the Electoral Act, 2022** and **Article 12(1) of the Regulations and Guidelines for Political Parties, 2022**, as well as the judicial authorities cited herein, the 21 days' notice requirement is mandatory and was not complied with by the 1<sup>st</sup> Defendant and the conduct of the Emergency National Convention was not proper or lawful. I so hold.

The second question for determination is *whether upon a proper construction and interpretation of Section 81 (1) of the Electoral Act, 2022, Article 12 of the Regulations and Guidelines for Political Parties, 2022, and the Constitution of the 1<sup>st</sup> Defendant, the National Secretary ought to jointly sign any letter to INEC conveying the decision or resolution of the 1<sup>st</sup> Defendant to conduct a National Convention of the Party for purpose of discussing 'fusion' or 'merger' and altering the leadership structure of the Party, with other bodies.*

The relevant provisions of the 1<sup>st</sup> Defendant's Constitution, and the Regulations and Guidelines for Political Parties, 2022, state respectively;

Article 8.1 Constitution;

8.1.1 *The Convention, Congress and General Meetings of the Party at the National, State, Local Government, Ward, and Polling Unit levels shall be held once a year at a venue and time to be decided by the appropriate Executive Committee.*

8.1.2. a. *Without Prejudice to the above provisions, the Executive Committee may summon an emergency meeting of the National*

*Convention or Congress at any time, provided at least seven days' notice of the meeting is given to all accredited delegates.*

*(b) The Chairman of the Executive Committee of the Party at any level shall direct the Secretary of that Organ to summon a meeting of the Executive Committee as the situation may require or by a joint application made in writing by at least two-thirds of Members of that Organ.*

*(c) Where the Chairman and the Secretary fail or refuse to convene the meeting within 21 days of the receipt of the application, a meeting may be convened vide a publication in at least two national newspapers made by the signatories to the joint application.*

The 2<sup>nd</sup> Defendant in paragraph 9(m)&(n) of his affidavit stated that to hold a National Convention of any sort whether emergency or otherwise, a 21 Days' Notice duly signed by the Chairman and Secretary, duly sent to INEC is required. And as the Acting National Secretary, he never authored no signed, nor co-signed any Notice to INEC informing them of an Emergency Convention for 17<sup>th</sup> January, 2025 or any other date, whether for purposes of fusion, altering leadership structure, any purpose at all.

The 1<sup>st</sup> Defendant's Constitution in its Article 8 made provision for the issuance of at least seven Days' Notice to delegates in the case of Emergency National Convention.

From the 1<sup>st</sup> Defendant's Constitution, it is within the powers of the National Executive Committee of the 1<sup>st</sup> Defendant and two third of members of the National Executive Committee to summon an

Emergency National Convention. What this means is that any notice concerning the 1<sup>st</sup> Defendant's National Convention ought to emanate from either the National Executive Committee or two-thirds of members of the National Executive Committee.

The provisions of **Article 12 of the Regulations and Guidelines for Political Parties 2022** state that:

*(1) Every political party shall give the commission at least 21 days' notice, through a dedicated portal created for that purpose by the commission, of any convention, congress, conferences or meeting conveyed for the purpose of merger and electing members its executive committees, other governing bodies or nominating candidates for any of the elective offices specified in the Electoral Act 2022. A hard copy of the notice may be submitted to the commission through a registered mail.*

*(3) The National Chairman and National Secretary of the political party shall jointly sign the notice of convention, congress, conference or meeting and submit same to the commission*

*The important question to be answered at this juncture is who ought to sign the required notice?*

Relying on the above provisions of Article 12(3) of the Regulations and Guidelines for Political Party, 2022, the Claimant contends that all such letters of notification which were not cosigned by the Chairman and Secretary are not valid.

The 1<sup>st</sup> Defendant in his affidavit stated that a 21 days' notice/letter to INEC was sent, signed by only the National Chairman, as the 2<sup>nd</sup> Defendant who the Acting National Secretary refused to sign. The 1<sup>st</sup> Defendant in its written address also placed reliance on its

Exhibit NRM1 to state that there is no illegality, wrongdoing or violation of any statute in its call for an Emergency Convention.

The 2<sup>nd</sup> Defendant in his affidavit stated that the National Chairman of the 1<sup>st</sup> Defendant said he would unilaterally sign the 21 days' notice of the emergency convention to INEC.

I have considered the letter by INEC dated the 10<sup>th</sup> day of January 2025 wherein the Commission stated that the notice sent by the 1<sup>st</sup> Respondent was not valid notice as the provisions of Article 8.1.2(a-c) were not complied with.

The 1<sup>st</sup> Defendant's Exhibit NRM1 (copy of page 6 Of the Saturday Independent Newspaper of January 11, 2025) is only in compliance with Article 8.1.2(a) of its Constitution and Article 13(3) of the Regulations and Guidelines of Political Party, 2022 which provide for notice of change of date, venue, and time for convention to be communicated to all relevant members of the Party.

The Courts have held on the need for party members to obey its constitution as follows; 'The Constitution of a political party is binding on its Members. Simply put, the party and its members are bound by the provisions of its constitution and the rights and obligations created therein. There will therefore be remedies as provided by the Constitution if there is a breach either by the party or any of the members of the party. See *Gana v SDP & Ors* (2019) LPELR-471-53 S.C.

The Apex Court also held in **Ugwu v Ararume (2007)12NWLR(pt.1048)486** that a political party should be disciplined enough to obey the laws of the land and their own

constitution so as to assure the people of its readiness to defend the Constitution of Nigeria, if entrusted with political power.

Without much ado, Article 12(2) of the Regulations and Guidelines for Political Party, 2022 is devoid of any ambiguity, and thus it is the National Chairman and National Secretary of the 1<sup>st</sup> Defendant that ought to sign the notice to INEC of its Convention. I so hold.

On the whole, the Court hereby resolves the issues raised for determination in favour of the Claimant. Judgment is hereby entered in favour of the Claimants as claimed in Reliefs 1,2,3 4&5 Relief 6 is refused.

### **COUNTERCLAIM**

**The 1<sup>st</sup> Defendant embedded a Counter-Claim in its Counter Affidavit and prays the Court as follows:**

- 1. A declaration that the 1<sup>st</sup> Defendant's Emergency National Convention of 17<sup>th</sup> January, 2025 is proper, valid and lawful.**
- 2. Such further Order(s) as the Honourable Court may deem fit to make.**

A Counter affidavit in the Originating Summons procedure is synonymous with statement of Defence in pleadings under the Writ of Summons procedure. It follows logically in originating summons procedure, the counter-claim has to be contained in the Counter-Affidavit as Counter-Claim is contained in Statement of Defence in Writ of Summons procedure. See the case of **Ituen V Speaker, Akwa Ibom State House of Assembly & Ors (2021) LPELR-53318(CA)**.

It is trite law, that for all intents and purposes, a counter-claim is a separate independent and distinct action and the counter-claimant, like all other Claimants in action, must prove his claim against the person counter-claimed against before obtaining judgment on the counter-claim. See the case of **Jeric (Nig.) Ltd V UBN Plc (2000) LPELR-1607(SC)**.

The Court of Appeal in **Ituen V Speaker, Akwa Ibom State House of Assembly & Ors (Supra)** held thus: “*Where a Defendant files a counter claim, there must be pleadings upon which his case is founded, as it is those pleadings and the evidence led in respect thereof that the Court would consider in determining the merit or otherwise of his counter claim. Being a separate claim, if there are no pleadings to support it, it would certainly fail. It is often the case that the facts relied upon by the Defendant in defence of the main action are the same facts being relied upon in support of the counter claim. In such circumstances, as long as the counter claimant sufficiently indicates an intention to rely on the same pleadings in support of his counter claim, those pleadings would satisfy the requirement of pleadings in support of the counter claim*”

The 1<sup>st</sup> Defendant in its depositions in support of its counter-claim stated as follows:

1. Hence the 1<sup>st</sup> Defendant counter-claims against the Claimant and states that:
  - a. From the facts stated above there is overriding need for the Hon. Court to hold the 1<sup>st</sup> Defendant emergency national

convention of the National Rescue Movement held on the 17<sup>th</sup> of January, 2025 as valid.

- b. Setting aside the National Convention would work hardship for the Party in view of the time, resources and planning invested in carrying out the Convention.
- c. The Convention did not violate any Law, Rule or Regulation as the Chairman only exercised his veto powers.

It is trite law, that Where a Defendant files a counter claim, there must be pleadings upon which his case is founded, as it is those pleadings and the evidence led in respect thereof that the Court would consider in determining the merit or otherwise of his counter claim. Being a separate claim, if there are no pleadings to support it, it would certainly fail.

The question now is “is the 1<sup>st</sup> Defendant/Counter-claimant’s depositions (paragraphs 8(a)-(c) of its counter-claim) in support of its counter-claim sufficient enough to sustain the reliefs sought?

Considering the relief sought in its counter-claim, no compelling evidence has been placed before the court to sustain same. It is not the duty of the Court to manufacture facts for the 1<sup>st</sup> Defendant/Counter-Claimant. There is nothing to show that the said Emergency National Convention of 17<sup>th</sup> January, 2025 which it wants the Court to declare proper, valid and lawful was conducted in line with the 1<sup>st</sup> Defendant’s Constitution, the Electoral Act, 2022 and the Regulations and Guidelines for Political Party, 2022.

The counter-claimant therefore must succeed on the preponderance of evidence they adduced during trial and not on the weakness of the Claimants claim unless where the evidence of the defendant strengthens his claim. See the case of **Magnus & Anor V Okpoto & Ors (2018) LPELR-45618(CA)**. The 1<sup>st</sup> Defendant/counter-claimant having not proven his Counter-Claim, same is bound to fail. The Counter claim fails and is accordingly dismissed

In the final analysis and for the avoidance of doubt, the suit is hereby struck out for want of jurisdiction.

I make no order as to cost.

BUETNAAN M.BASSI  
(HON.JUDGE)

#### APPEARANCES

Dr. S.M.Oyeghe Esq for the Claimant

I.Musa for the 1<sup>st</sup> Defendant