

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY THE 22ND DAY OF JANUARY, 2016

BEFORE THEIR LORDSHIPS

MUHAMMAD SAIFULLAH MUNTAKA-COOMASSIE JUSTICE, SUPREME COURT

SULEIMAN GALADIMA

JUSTICE, SUPREME COURT

JOHN INYANG OKORO

JUSTICE, SUPREME COURT

CHIME CENTUS NWEZE

JUSTICE, SUPREME COURT

AMIRU SANUSI

JUSTICE, SUPREME COURT

SC. 504/2015

BETWEEN:

1. OBASI UBA EKAGBARA
2. CHUKWUEMEKA MBAH

} APPELLANTS.

AND

1. CHIEF DR. OKEZIE IKPEAZU
2. PEOPLES DEMOCRATIC PARTY
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC).

} RESPONDENTS

JUDGMENT

(DELIVERED BY SULEIMAN GALADIMA, JSC)

I have had the privilege of reading in draft the judgment of my learned brother MUNTAKA-COOMASSIE JSC just delivered. I agree with

his reasoning leading to the conclusion that the appeal lacks merit and should be dismissed.

It is my considered opinion that the 3 issues submitted by 1st and 2nd Respondents flowing from their grounds of Appeal will determine this appeal.

These are:-

- “(1) Whether the learned Justices of the Court of Appeal were right in their interpretation, application and reliance on the decision of the Supreme Court in **KAKIH v. PDP (2014) 15 NWLR (pt. 1430) 374 at 413**, having regards to the state of pleadings, the reliefs sought by the appellants , as well as the provisions of the Electoral Act 2010 (as Amended) and the Constitution of the Federal Republic of Nigeria, 1999(as Amended) (Distilled from Grounds 1 and 4 of the Notice of Appeal)*
- (2) Whether having regards to the state of pleadings and the reliefs sought by the appellants against the 3rd Respondent (The INEC) the Court of Appeal was right in holding that the trial court lacked jurisdiction. (Distilled from Grounds 2, 3 and 5 of the Notice of Appeal)*
- (3) Whether the learned Justices of the Court of Appeal rightly appreciated the case of the Appellants against the 3rd Respondent. (Distilled from Ground 6 of the Notice of Appeal).”*

I have taken a cursory look at the reliefs sought by the Appellants reproduced in the lead judgment. These reliefs show clearly the nature of the Appellant's complaints:

The reliefs were clearly directed against all of the Respondents. However, relief 5 is an injunctive relief specifically directed at the 3rd Respondent (INEC) herein. It was based on the foregoing in addition to the facts contained in the affidavit of the Appellants without delving into the merits of the case that the learned trial Judge saw clearly that the claims of the Appellants were hinged on the submission of false information which could be instituted under section 31(5) of the Electoral Act 2010 (as amended). The learned trial Judge was right in his stance. The court below maintained that the cause of action was that of personal income tax issue by Abia State Government and not whether Form CF 001 as a form which did not carry the information complained about by the appellants cannot rely on section 31 of the said Electoral Act. I am of the opinion that there are clear distinctions which did not align the facts or issues for determination in the case of **KAKIH v. PDP (2014) 15 NWLR (pt. 1430) 374 at 413**. Appellant's case has always been quite clear from their Amended Originating Summons filed at the trial Court. Therefore efforts of the 1st Appellant herein to change the nature and character of the reliefs of the appellants by their own understanding of the interpretation is of no moment. This would mean

placing the cause of action in this case completely outside the claims and reliefs of the Appellants. The matter is simply that the 1st Respondent submitted false information to the 3rd Respondent in its Form CF 001. The procurement of particulars such as tax receipts does not, in my view change the subject matter for determination or the cause of action. The Appellants have always made it clear from the trial Court that their claims are based on section 31 of the Electoral Act and not section 87 of the Act.

It is noteworthy that the basis of the decision of the Court below was firstly that the case of **KAKIH v. PDP** (supra) was later in time in comparison with other cases having been decided on 11/7/2014.

It was also argued that the principal reliefs of the Appellants were only reliefs 1 and 2 and as a result 5 which is an injunctive relief against the 3rd Respondent was an ancillary relief. However what the Court did not consider is the difference in the state of pleadings as brought by the Appellant in KAKIH's case and those of the Appellants herein. It was clear from the reliefs sought by the Appellants as provided in the Amended Originating Summons and reproduced herewith are as follows:-

- "1 A declaration that the 3rd Defendant's INEC FORM CF001 and the tax payment receipts and Tax Clearance Certificate of the

3rd defendant attached therewith submitted to the 2nd Defendant by the 1st and 3rd Defendants contain false information regarding the 3rd Defendant's tax payment.

2. A Declaration that having regard to the clear, unambiguous and sacrosanct provisions of Section 31(1),(2),(3),(4),(5),(6) and (8) of the Electoral Act, CAP 15 Laws of the Federation of Nigeria 2010 and INEC FORM CF001 and the tax payment receipts and tax clearance certificate attached therewith submitted by the 1st and 3rd Defendants to the 2nd defendant, the said 3rd defendant is disqualified from contesting the Abia State Governorship election for submitting to the 2nd defendant false information regarding his tax payment.
3. An Order that the 3rd Defendant having failed and/or refused to pay his income tax promptly as and when due for the years 2011, 2012 and 2013 and falsely stating in his INEC FORM CF001 and the documents attached therewith that he paid the said tax as and when due is not a fit and proper person to contest the gubernatorial election of Abia State in the 2015 general election.
4. An Order disqualifying the 3rd defendant from contesting the said 2015 Abia State gubernatorial election for submitting to the 2nd defendant in his INEC FORM CF001 and the documents attached therewith false information concerning his tax payment contrary to clear, unambiguous and sacrosanct

provisions of section 31(5) of the Electoral Act 2010 (as amended).

5. An Order barring the 2nd defendant from accepting the 3rd defendant as a candidate to contest the Abia State 2015 gubernatorial election.”

The foregoing glaringly reveals that Relief No. 5 of the principal relief fought by the Appellants was against the 3rd Respondent herein.

When it becomes necessary to sieve ancillary relief from principal as demands by circumstance, it is done roughly to give mathematical answer to effect a purpose. The law allows it. See: **COTECNA INT’L LTD. v. IVORY MERCHANT BANK LTD.(2006) ALL FWLR (Pt. 315) 26 at 38; TUKUR v. GOVERNMENT OF GONGOLA STATE (No. 2) 1989(4 NWLR) (pt. 117) 517.** Here in this case the injunctive reliefs claimed against the 3rd respondent cannot be said to be ancillary as without the declaratory reliefs become ineffective. This relief is against the 3rd Respondent. The Court below, with due respect, erred to have held otherwise.

I have carefully gone through the set of reliefs sought by the appellant in **KAKIH v. PDP (2014) 15 NWLR (pt. 1430) 374 at p. 413.** The facts and the prevailing circumstances in KAKIH’s case (supra) and the case at hand are quit distinguishable: Firstly, the principal reliefs in KAKIH’s case encompassed the declaratory reliefs and the attendant

orders flowing from it. Care should be taken to juxtapose the reliefs sought in the two cases. Besides, there are other peculiarities distinguishing this present case from the decision in KAKIH's case. Those factors are: Firstly, that the parties to the suit were participants of the primaries in dispute. Secondly, that the principal reliefs were centered on the primaries and the result of the primaries. Thirdly, the basis of the principal reliefs sought was predicated on section 87 of the Electoral Act, 2010 (as Amended). Fourthly and finally, none of the principal reliefs were directed at any of the agencies of the Federal Government. By contrast, the clear examination of the case of the Appellants herein show how different the claims and reliefs are from that in KAKIH's case. An overview of the Appellants claim in the Amended Originating Summons reveals that they are unhappy because the 1st Respondent had submitted false information to the 3rd Respondent, being a Federal Government Agency responsible for acting on such document.

Sections 31(5), 87(9) of the Electoral Act, (2010) (as amended) and S. 251 of the 1999 Constitution (as amended) revisited.

Section 31(5) of the Electoral Act (supra) did not envisage the nature of claim to determine the jurisdiction of the Court. The nature of the information envisaged is false information in the relevant form

submitted to INEC, a Federal Government Agency, which can be instituted by “any person” but for which on the contrary, Section 87(9) (supra) restricts the exercise of such right to institute to “an aspirant who complains that any of the provisions of the Act has not been complied with.” It is in the light of the foregoing I agree with the learned Counsel for the Appellants that the cases of **JEV v. IYORTYOM 92014) 1 NWLR (pt. 1428) 575 and KAKIH v. PDP** (supra) are not conflicting to warrant the Learned Justices of the Court below prefer the decision in KAKIH’s case. The claims and issues before the Court in the case of **JEV v. IYORTOM** (supra) are based on Section 87(9) of the Act supra. It is noteworthy to state that in both cases the unique position of section 31(5) of the Act was not the issue before the Court. The issue before the Court in both cases were based on persons who participated in the primaries.

Now to the jurisdiction of the Federal High Court under Section 251 of the 1999 Constitution (as amended) read in line with section 31 of the Electoral Act (supra).

A chronological provisions, the Electoral Act and case laws show this quite clearly.

Section 251 (r) of the 1999 Constitution (as amended) states thus:-

“251 (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.”

Section 31(5) of the Act confers additional jurisdiction on the Federal High Court (as amended) to entertain matters brought by any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false.

The function or duty of the 3rd Respondent (INEC) in accepting and acting on documents from candidates or rejecting such documents that may not have been properly filed can be classified as function falling within the executive or administrative action or decision. This administrative function which the appellant have sought an injunctive

relief to redress or cure, clearly brings this matter under the jurisdiction of the Federal High Court.

On the second issue having said that the relief 5 of the principal reliefs as an injunctive relief was directed at the 3rd Respondent, I have no difficulty in concluding that based on the claims of the Appellants as contained in their Amended Originating Summons, the 3rd Respondent is a necessary party to this Suit, who should be bound by the outcome or result of the action.

On the third issue I am of the opinion that the learned Justices of the Court below went beyond the issues canvassed before them. They should have confined themselves only to the issue canvassed by the parties. By their so doing this has occasioned miscarriage of justice.

In view of the foregoing few remarks and comments and/or the fuller reasons given in the lead judgment, I too allow this appeal and set aside the judgment of the court below. I order for the remittance of this Suit to the learned Chief Judge of the Federal High Court for immediate assignment to another Judge for expeditions determination. I make no order as to costs, in the circumstance.



SULEIMAN GALADIMA

JUSTICE, SUPREME COURT


Certified True Copy
Moh'd A. Dikko
REGISTRAR
SUPREME COURT OF NIGERIA

Official

Appearances

Dr. Alex Izinyon, SAN, for the 1st and 2nd Appellants, with him, O. J. Nnadi (SAN), Femi Falana (SAN), Orji Nwafor-Orizu Esq. L. Oghojafor Esq., Victor Muoneke Esq., L. O. Eagbemi Esq., Alex Izinyon II Esq., Samuel OGALA Esq., Elum Wisdom Esq., Ernest Olawanle Esq., and Martin Ozoaka Esq.,

Eyitayo Fatogun, with him, Akinyosoye Arosanyin, for the 1st Respondent.

Oladipo Olasofe for the 3rd Respondent.