435

IN THE COURT OF APPEAL

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON TUEDAY THE 11TH DAY OF MAY, 2021

BEFORE THEIR LORDSHIPS

THERESA ORJI ABADUA	JUSTICE, COURT OF APPEAL
AMINA AUDI WAMBAI	JUSTICE, COURT OF APPEAL
I.A. ANDENYANGTSO	JUSTICE, COURT OF APPEAL

APPEAL NO: CA/ABJ/CV/980/2020

BETWEEN:

INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC) ——— APPELLANT

AND

YOUTH PARTY ——— RESPONDENT

JUDGMENT

(DELIVERED BY AMINA AUDI WAMBAI, JCA)

On the 18/01/2017, the Respondent applied to the Appellant to be registered as a political party. That application was refused by the Appellant vide its letter dated 10/2/2017. The refusal was challenged by the Respondent in suit No: FHC/ABJ/CS/221/2017

instituted before the Federal High Court Abuja. In its judgment delivered on 18/10/2017, the Federal High Court per A. Abdu Kafarati, then Acting Chief Judge, directed the Appellant to register the Respondent as a political party. Following the said order, the Respondent was registered on the 14/8/2018 but was issued with the Certificate of Registration on the 16/8/2018 by the Appellant two (2) days to the commencement of the primary elections.

After the conclusion of the 2019 General Elections, the Appellant made known its intention through some media platforms to deregister some political parties. Apprehensive of the threat, the Respondent approached the lower court by an Originating Summons filed on the 8/1/2020, raising Six (6) questions for determination and seeking Seven (7) Declaratory and Injunctive Reliefs. The Respondent also filed a motion on notice seeking an Injunctive Order restraining the Appellant from deregistering it.

The questions raised for determination by the Originating Summons are;

i. ***Whether the Defendant breached the provisions of the third schedule, paragraph 15(b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act 2010 (as amended)***

when it failed to register the Plaintiff within 30 (thirty) days of the judgment of this Honourable Court in Suit No. FHC/ABJ/CS/221/2017, delivered on the 18th October, 2017.

ii. *Whether the failure of the Defendant to register the Plaintiff in line with the third schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act 2010 (as amended), which requires it to register a political party within 30 days of fulfillment of the constitutional conditions, amount to infringement of the Fundamental Human Rights of freedom of association of the Plaintiff and its members as enshrined in Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)*

iii. *Whether the Defendant acted in bad faith in not complying with the judgment of this Honourable Court in Suit No. FHC/ABJ/CS/221/2017, delivered on 18th October, 2017; the provisions of the Third*

Schedule, Paragraph 15(b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78(4) of the Electoral Act 2010 (as amended), that required it to consider the Plaintiff's application for registration within 30 days until 16th August, 2018, a day before the commencement of the electioneering process for the 2019 General Elections.

iv. Whether the failure of the Defendant to register the Plaintiff in line with the third Schedule, paragraph 15(b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Section 78(4) of the Electoral Act 2010 (as amended) which requires it to register a political party within 30 days of fulfillment of the constitutional conditions, and in disobedience to the judgment of this Honourable Court in Suit No: FHC/ABJ/CS/221/2017, delivered on the 18th October, 2017, until 16th August, 2018, being a day before the commencement of the electioneering process for the 2019 General Elections; amounts to exclusion of the

Plaintiff from all elections conducted after the required registration period including the 2019 general elections.

v. *Whether in the light of the Defendant's failure to comply with the provisions of third Schedule, paragraph 15(b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78(4) of the Electoral Act 2010 (as amended) which requires it to register a political party within 30 days of fulfillment of the constitutional conditions, the Defendant can deregister the Plaintiff for failure to win any seat in the 2019 general elections; pursuant to Section 225A (b & c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 78 (7a & 7) of the Electoral Act 2010 (as amended).*

vi. *Whether having excluded the Plaintiff from participating in all elections conducted after the requires registration period including the 2019 general elections, the defendant can deregister the Plaintiff on the basis on the Plaintiff's failure to win any seat in any*

election; pursuant to Section 225A (b & C) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The Respondent prayed for the following reliefs:

1. ***A DECLARATION that the Defendant breached the provisions of the Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended) when it failed to register the Party within 30 (Thirty) days of the receipt of the Party's application.***
2. ***A DECLARATION that the failure of the Defendant to register the Plaintiff in line with Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended), which requires it to register a political party within 30 days of fulfillment of the constitutional conditions, amounts to a constructive exclusion of the Plaintiff from all subsequent elections after the required registration period including the 2019 general election.***

3. ***A DECLARATION*** *that the Defendant acted in bad faith in to complying with the Judgment of this Honourable Court in Suit No: FHC/ABJ/CS/221/2017, delivered on the 18th October, 2017; the provisions of the Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended), that required it to consider the Plaintiff's application for registration within 30 (Thirty) days until 16th August, 2018, a day before the commencement of the electioneering process for the 2019 general election.*

4. ***A DECLARATION*** *that the provisions of Section 225A (b and c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) cannot be invoked against the Plaintiff in light of the breach of the Defendant of the provisions of section 78 (4) of the Electoral Act, 2010 (as amended).*

5. ***A DECLARATION*** *that the provision of Section 225A (b and c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)*

442

cannot be invoked against the Plaintiff in light of the fact that the Plaintiff has not had the opportunity of participating in elections at all levels of government in Nigeria.

6. ***AN ORDER OF INJUNCTION restraining the Defendant from deregistering the Plaintiff until the Plaintiff is given equal opportunity to freely participate in 2023 general election to be organized by the Defendant.***
7. ***And for such further or other orders as this Honourable Court may deem fit to make in this circumstances of this suit.***

The Appellant filed a 5 paragraphed counter-affidavit to oppose the summons along with a Notice of Preliminary Objection and a further affidavit challenging the competence of the action.

Meanwhile, on the 6th February, 2020, the Appellant deregistered 74 political parties including the Respondent. The court heard and considered the argument of the Counsel on the Preliminary Objection and the Substantive Originating Summons and in a considered judgment delivered on the 12/10/2020, **HON. JUSTICE I.E. EKWO** of the Federal High Court FCT Abuja, dismissed the Preliminary Objection, struck out reliefs I, II & III of the Originating Summons but granted the 6th Relief, set aside

the deregistration of the Respondent and restrained the Appellant from deregistering the Respondent until the Respondent is given opportunity to freely participate in 2023 General Elections.

Thoroughly upset by the decision, the Appellant filed a Notice of Appeal on 2/11/2020, predicated upon 4 grounds of appeal. From the 4 grounds of appeal, **EMEKA OBEGOLU ESQ.** who settled the Appellant's brief of argument filed on the 30/11/2020, nominated 3 issues for determination to wit: -

1. *Whether the trial court can pronounce on an issue not submitted for determination by any of the Parties and substantially different from the issues formulated and adopted by the Court as sole issue for determination by the same Court. (Distilled from Ground 1 of the Notice of Appeal).*

2. *Whether the trial court can grant relief 6 as contained in the Originating Summons after the same court declined the basis for the reliefs as contained in reliefs 1-5 of the Originating Summons. (Distilled from Ground 2 of the Notice of Appeal).*

3. *Whether the trial court can raise the issue of Lis pendens without inviting Parties to address the court on it and proceed to pronounce on same without first considering and pronouncing on the merit of the case. (Distilled from Ground 3 and 4 of the Notice of Appeal).*

JOHN OCHOGWU ESQ. settled the Respondent's brief of Argument filed on the 11/1/2021, and deemed on the 17/2/2021. Therein he distilled a solitary issue for determination thus;

> *"Whether the trial court rightly set aside the deregistration of the Respondent by the Appellant which deregistration happened during the pendency of the suit after hearing from both counsel and whether it was the main issue submitted to Court for adjudication."*

In response to the said Respondent's brief, the Appellant filed a reply brief on the 2/2/2021, a good part of which is merely an adumbration of the brief. I shall however refer to the relevant portions of the reply brief at the appropriate time.

This appeal will be determined on the 3 Issues set out by the learned counsel for the Appellant.

ISSUE NO 1:

Whether the trial court can pronounce on an issue not submitted for determination by any of the parties and substantially different from the issues formulated and adopted by the court as sole issue for determination by the same court. (Distilled from Ground 1 of the Notice of Appeal).

APPELLANT'S SUBMISSION

Arguing this issue and reproducing the issues formulated by both parties at the trial court and juxtaposing those with the sole issue formulated by the court as the relevant and sufficient issue to determine the case, learned counsel while conceding the trite position of law that the court is empowered to reformulate issues for determination, posited that such right must be exercised only for the purpose of enabling the court to deal with the real issues between the parties, and thus the court is not permitted as the lower court did to formulate an issue different from the issue in controversy between the parties since the purpose of formulating

or reformulating issue(s) for determination is to accentuate the real question in controversy, Citing in support the case of **OLOWOSAGO v. ADEBANJO (1988) 4 NWLR (PT. 88) 275, 283 SC.**

He contended that while the Respondent's case at the trial (lower) court centers on the failure of the Appellant to register it in line with the provision of Third Schedule Paragraph 15(b) 1999 Constitution of the Federal Republic of Nigeria (as amended) and section 78(4) Electoral Act 2010 (as amended), the sole issue reformulated by the lower court which centers on the Respondent's deregistration and which was not a live issue before the court, is outside the purview of the controversy between the parties and was perverse thus occasioned a miscarriage of justice, more so that the court went outside the issue at hand formulated. Learned Counsel referred to the Judgment of the court at pages 259-260 to submit that the issue of arbitrariness or otherwise of deregistration of the Respondent pronounced upon by the learned trial Judge was not a live issue before the court. He called in aid the cases of **OLOOKANA & ANOR vs. FRSC & ORS (2019) LPELR-47871 (CA); NGERE v. OKURUKET 'XIV' (2017) 5 NWLR (PT. 1559) 478, PARAS. A-D.**

447

Contrarily, the Respondent's counsel after restating the trite law that the trial court is at liberty to either choose the issues formulated by parties or reorganize them for meeting the ends of justice, wandered why the Appellant's Counsel who has joined issues with the Respondent at the trial court on the question of deregistration would turn around in somersault to argue that the issue of deregistration is no longer central to the dispute between the parties, stressing that parties must be consistent with the case they presented at trial and at the Appellate Court. He cited the cases of **OKEKE v. STATE (2016) LPELR-26057 SC; EMENIKE v. P.D.P. (2012) 12 NWLR (PT. 1315) 556 AT 592 PARAS. C-D.**

To buttress his position that the Appellant's Counsel has in his brief of argument agreed that the central issue for determination was the issue of deregistration, reference was made to the Appellant's submission at Paragraph 4.15 of the Appellant's brief of argument wherein the Appellant submitted that had the learned trial judge restricted himself to the sole issue as adopted, the judgment would have been significantly different from what it was, thus belieing the Appellant's contention as being a contradiction in terms that the issue formulated by the lower court is materially different from the issue in controversy.

On the submission that the lower court *suo motu* raised the issue of the deregistration, our attention was drawn to paragraph 31 of the affidavit in support of the Originating Summons wherein the Respondent raised the issue of the Appellant's arbitrariness and absence of fairness on the part of the Appellant with the way the Respondent was deregistered in contravention of section 225A (b) & (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The case of **ADIGUN vs. A.G. OYO STATE (1987) 1 NWLR (PT. 53) 678** was called in aid.

RESOLUTION OF ISSUE NO. 1

The issue here questions the propriety of the learned trial judge formulating an issue and resolving the dispute on the reformulated issue outside the issues formulated by the parties rather than adopting the issues distilled by the parties.

The contention of the counsel for the Appellant is that the learned trial judge veered off by the sole issue he formulated from the live issue in controversy between the parties; that the reformulated issue is perverse and the resolution of the case thereon occasioned a miscarriage of justice

It is now beyond any argument and peradventure that a court of law can and is indeed entitled to formulate or reformulate issues for determination. This position has long been settled. That every

court is empowered to formulate or reformulate issues for determination is now axiomatic. Instructively, this much the learned counsel for the Appellant concedes.

Therefore, and going forward, any argument that directly or indirectly posits or suggests that a court of law is precluded from formulating issues or reformulating issues from issues formulated by parties will amount to an affront on the inherent powers of the court donated by section 6(6) (a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The section 6(6)(a) provides thus;

> *"The judicial powers vested in accordance with the foregoing provisions of this section- (a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law."*

This power as the name suggests is essential to the very existence of the court as an institution and to its ability to function as such in the dispensation of justice. This power which is general in nature has to be inherent in the sense that it forms an integral, essential and intrinsic element of the whole adjudicatory process such that same cannot be abridged or taken away by any

legislation. To abridge or take away the power is to cripple the court from performing its constitutional duty. In the case of **ERISH & 2 ORS vs. IDIKA & 2 ORS (1987) ALL NLR 529 @ 546-547 SC,** the Supreme Court explained the purport of inherent powers of the court, thus:

> *"(i) The powers or inherent powers of the Court of law are powers which enable it to effectively exercise the jurisdiction conferred on it.*
>
> *(ii) It is clear from the wording in Section 6(6)(a) of the Constitution of 1979 (now 1999) that the exercise of judicial powers is intended to include all the powers and sanctions which a Court of law ought to exercise in order to do justice, and uphold its dignity.*
>
> *The inherent power of a Court is the power which is itself essential to the very existence of the Court as an institution charged with the dispensation of justice...*
>
> *Inherent powers of the Court are therefore those powers that are reasonably necessary for the administration of justice.*

(d) It is doubtful if justice can be effectively administered in our Courts, if the Courts do not possess inherent powers to make consequential orders, directly or indirectly ... promote the process of litigation and ensure proper administration of justice."
(Italics mine for emphasis)

Undoubtedly, the court has the inherent power and the discretion to formulate or reformulate issue or issues for determination so long as the issue formulated or reformulated is derived from the ground of appeal. This could be for the purpose of brevity, clarity, accuracy or precision **UNITY BANK PLC vs. EDWARD BOUARI (2008) 8 NWLR (PT. 670) 685; AWOJUGBAGBE LIGHT IND. LTD. VS. CHINUNKE & ANOR (1995) 4 NWLR (PT. 390) 379;** or to accentuate the real question or issue in controversy between the parties calling for resolution which will lead to a more judicious determination of the matter or appeal. See **OLOWOSAGO V. ADEBANJO (*SUPRA*); ABDULLAHI vs. ADETUTU (*SUPRA*).**

This power being discretionary, there is no hard and fast rule as to how it should be exercised. The court (judge) is in charge of its proceedings and being the ***dominus litis,*** exercises the power in accordance with his personal judgment and conscience for the

452

smooth flow of the proceedings before him. Where the court deems it expedient to modify or reformulate issues for determination, except the judge goes outside the principles and the limits of the law, his discretion cannot be questioned and if questioned cannot be sustained. Deliberating on the exercise of discretion, **ADEKEYE JSC** in the case of **UNION BANK PLC vs. ASTRA BUILDERS (WA) LTD (2010) LPELR-3383 (SC)** stated the nature of judicial discretion thus;

> *"An exercise of discretion is an act or deed based on one's personal judgment in accordance with one's conscience, free and unfettered by any external influence or suggestions. A judicial discretion means the power exercised in an official capacity in a manner which appeals to be just and proper under a given situation. It must not flow from or be bound by a previous decision of another Court in which a discretion was exercised. It is in short, an antithesis to the doctrine of stare decisis. There is no hard and fast rule as to the exercise of a judicial discretion by a Court for if that happens, a discretion becomes fettered. ODUSOTE VS. ODUSOTE (1971) 1 NLR 219 @ PAGE 222; ANYAH VS.*

AFRICAN NEWSPAPERS OF NIGERIA LTD.
(1992) 6 NWLR (PT. 247) PAGE 317."

It should be borne in mind that the cardinal goal of the court is always to do justice within its power between the disputant parties in adjudication. In doing this, it must be given a free hand and the liberty to adopt, reject, modify, frame or reframe any issue formulated by the parties either for the purpose of clarity and precision or to accentuate the real issue in controversy and to narrow the issues that in the opinion of the court, will determine the dispute, where the doing of such will not be prejudicial to any of the parties. See **IKUFORIJI vs. FRN (2018) LPELR-4388 (SC).**

Thus, where the issues submitted by the parties are inappropriate, inelegant, imprecise, meaningless or inadequate having regards to the grounds of appeal filed, it is only logical that the Court should, without any inhabitation or hesitation, invoke its power to identify the appropriate issues in controversy that meet the fact and the circumstances of the case. The court cannot and should not be restricted to the issues formulated by the parties or be hamstrung from reformulating the proper issues succinctly and clearly that bring out the issues in contention in so far as the Court does not introduce new issues outside the grounds of appeal or the issues canvassed by parties except the issue on jurisdiction.

See; **FABIYI VS. ADENIYI & ORS. (2000) LPELR - 1220 (SC) OLORIODE VS. OYEBI (1984) 1 SCNLR 390; (1984) 5 SC 1; OLOBA VS. AKEREJA (1988) 3 NWLR (PT. 84) 508. DUWIN PHARMACEUTICAL & CHEMICAL CO. LTD. VS. BENEKS PHARMACEUTICAL & COSMETICS LTD. & ORS. (2008) 4 NWLR (PT. 1077) 376.**

Thus, except where the reformulated issues are shown to be prejudicial to one of the parties, the Appellate Court will not interfere. See **FRN Vs. BORISADE (2015) LPELR-24301(SC).** In **NWANA V FCDA (2004) LPELR-21029 (SC)**, the Supreme Court, per Tobi, JSC stated:

> *"A party who complains about the formulation of issues or issues by the Court must say what injustice has been done to him by such formulation. In the absence of such evidence, an appellate Court cannot reverse the decision of the lower Court. The formulation of the issue must result in miscarriage of justice for this Court to intervene in favour of the appellant."*

The potent question is whether the sole issue reformulated by the lower court is outside the live issue in controversy between the

parties the resolution of which occasioned a miscarriage of justice which would warrant interference of this court.

It is apt to reproduce the issue formulated by both counsel at the lower court from which the learned trial judge purportedly culled out or reframed the sole issue for determination.

The issues formulated for determination by the Plaintiff (Respondent in this appeal) before the lower court are;

"i. *Whether the Defendant breached the provisions of the Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended), and the Judgment of this Honourable Court in Suit No: FHC/ABJ/CS/221/2017, delivered on the 18th day of October, 2017, when it failed to register the Plaintiff within the 30 (Thirty) days upon the receipt of the application for the registration of the Plaintiff.*

ii. *Whether the failure of the Defendant to register the plaintiff in line with the Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of*

Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended), which requires it to register a political party within 30 days of fulfillment of the constitutional conditions, amounts to a constructive exclusion of the Plaintiff from all elections after the required registration period including the 2019 general election.

iii. *Whether in the light if the Defendant's failure to comply with the provisions of the Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended), which requires it to register a political party within 30 days of fulfillment of the constitutional conditions, the Defendant can deregister the Plaintiff for failure to win any seat in the 2019 general elections; pursuant to section 225A (b & c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

iv. *Whether having excluded the Plaintiff from participating in the 2019 general elections the Defendant can deregister the Plaintiff on*

the basis of the Plaintiff's failure to win any seat in any election; pursuant to Section 225A (b & c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)."

The Defendant's (Appellant in this appeal) formulated the following issues before the lower court to wit;

i. *Whether the Plaintiff has a cause of action against the Defendant.*
ii. *Whether this Honourable Court can stop the Defendant from performing its constitutional duties.*
iii. *Whether this Honourable Court has the power to decide on issue bordering on exclusion (sic) see page of the transmitted records.*

A perspicuous examination of the issues shows that while the Respondent's issues I & II, complain of the failure of the Appellant to register it (the Respondent) within the time prescribed by Paragraph 15 (b) of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended) which failure the Respondent alleges amounts to its exclusion from the 2019 General Elections, issues III & IV complain of deregistration and question

the propriety of deregistering the Respondent on the basis of failure to win any seat in the election, the Appellant having excluded it (the Respondent) from participation by reason of the Appellant's failure to register it on time.

Conversely, issues II & III formulated by the Appellant's (the Defendant at the lower court) in response to the Respondent's issues III & IV question the right of the Respondent to stop the Appellant from performing its constitutional duties which includes deregistration of political parties and the power of the court to decide on the complaint of exclusion from participation in the 2019 general elections. The learned trial judge declined to delve into the Respondent's (the Plaintiff's) issues I & II being issues already adjudged in suit No: **FHC/ABJ/CS/221/2017**, and accordingly struck them out.

Let me state straight away , contrary to the view of the Appellant's counsel , that the sole issue reformulated by the learned trial judge was not only a live issue but also in view of the clear wordings of issues III & IV, the central issue before the lower court for determination having regards to questions (i), (ii), & (iii) which relate to enforcement of the judgment of the court in Suit No: FHC/ABJ/CV/221/2017 and Relief 6 of the Originating Summons as well as the affidavit in support of the Originating

Summons and the entirety of the proceedings before the court. What else would have been the driving force for the Respondent to institute the action? Was it to seek an order for registration which it had already obtained and the Appellant had complied with? Or could it be merely to seek a declaration that the Appellant did not timeously comply with the order to register it? Or could it be to seek enforcement of the said judgment by instituting this action by an Originating Summons? I think the reason is much more than these. Obviously, the *raison d' etre* of instituting the action is to forestall or prevent the consequence of not meeting up with the provisions of section 225A (b & c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) befalling on the Respondent for a fault it alleges is not its and prematurely.

As stated in the introduction, this suit was instituted in apprehension of the threat by the Appellant to deregister some political parties that did not perform well in the 2019 general elections. With all honesty, in view of issues III & IV formulated by the Plaintiff at the lower court (Respondent herein) and the issue II by the Appellant (as Defendant) therein and the totality of the Originating Summons and affidavit in support as well as the argument canvassed before the court, I fail to see any grain of substance in the Appellant's argument that the sole issue reformulated by the learned trial judge is outside the controversy

between the parties. Nothing can be further from the truth than that submission.

It is obvious that the issue formulated by the lower court derivable from the grounds of appeal was culled from the Respondent's issues III & IV and Appellant's issue II before the court and is without doubt, after the striking out of Respondent`s issues I & II, the central issue accentuating the real issue in dispute or contention between the parties. Indeed, as rightly submitted by the Respondent's counsel, the learned counsel for the Appellant was frank enough to approbate at paragraph 4.15 of his brief that the sole issue reformulated by the lower court was an apt issue which if restrictively resolved, would have decided the case differently, only for him to reprobate by contending that the issue was outside the purview of the controversy between the parties.

That attitude is not acceptable. A party must take a consistent position in litigation. He cannot be permitted to take one position at one time or breath and take another, entirely different at another breath or time on the same matter or issue. He cannot be slippery in his case or act like a chameleon changing the nature of his case at will from time to time or court to court and expect to benefit from his attitude. In other words, a party cannot be allowed to approbate and reprobate at the same time. **F.R.N VS. IWEKA**

(2013) 3 NWLR (PT. 1341) 285; P.D.P & ORS vs. EZEONWUKA & ANOR (2018) 3 NWLR (PT. 1606) 187; EMENIKE vs. P.D.P (2012) 12 NWLR (PT. 1315) 556, 592 C-D.

Having said this, in sum, I find that the sole issue formulated by the lower court arose from the grounds of appeal and encapsulates with precision and clarity, the issues raised by the parties from where it was culled and reframed.

The lower court was thus right in distilling and isolating that issue as the sole issue capable of determining the matter before it. We see no injustice or any miscarriage of justice that was thereby occasioned.

This issue No I is therefore resolved against the Appellant and in favour of the Respondent.

ISSUES NO 2 & 3:

2. ***Whether the trial court can grant relief 6 as contained in the Originating Summons after the same court declined the basis for the reliefs as contained in reliefs 1-5 of the Originating Summons. (Distilled from Ground 2 of the Notice of Appeal)?***

462

3. ***Whether the trial court can raise the issue of lis pendens without inviting Parties to address the court on it and proceed to pronounce on same without first considering and pronouncing on the merit of the case. (Distilled from Ground 3 and 4 of the Notice of Appeal).***

A read through the Appellant's issues 2 & 3 and arguments canvassed in support of same shows that the two are interwoven raising the complaints whether relief 6 which is an injunctive order for restraining the Appellant from deregistering the Respondent could be granted questions 1 -3 of the Originating Summons having been struck out and whether the lower court rightly declared the deregistration of the Respondent by the Appellant during the pendency of the suit as illegal, null and void. The two issues (issues 2 & 3) respectively question the propriety of the lower court granting relief 6 (the restraining order) and declaring the deregistration of the Respondent by the Appellant as illegal, null and void. The Respondent's sole issue captures the Appellant's issue 3. I shall therefore for succinctness and to avoid proliferation of issues, reformulate a sole issue from these issues formulated by the Counsel as the 2nd issue in this appeal as follows: -

463

WHETHER QUESTIONS 1-3 OF THE ORIGINATING SUMMONS HAVING BEEN STRUCK OUT BY THE LOWER COURT, RELIEF 6 WAS GRANTABLE AND THE COURT RIGHT IN DECLARING THE DEREGISTRATION OF THE RESPONDENT BY THE APPELLANT AS ILLEGAL, NULL AND VOID?

APPELLANT'S SUBMISSION:

Arguing this issue, the Appellant's counsel again reproduced the reliefs sought by the Originating Summons and the issues formulated by both Counsel at the lower court to submit that questions 1-3 for determination which are premised on reliefs 1-5 of the Originating Summons haven been struck out, relief 6 which is a consequential relief predicated on the struck-out reliefs 1-5, cannot be granted. He argued that the Respondent's main claim is within reliefs 1-5, the main claim being the Appellant's failure to register it as a political party in contravention of Third Schedule Paragraph 15(B) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 78 (4) of the Electoral Act 2010 as amended and the judgment of the Federal High Court in suit No: FHC/ABJ/CS/221/2017 delivered on 18/10/2017, thus relief 6 according to him, is only incidental or a consequential relief grantable only upon a positive finding of reliefs 1-5, insisting that the court is only empowered to grant a consequential relief flowing naturally from the main relief. On the meaning of consequential

order and when it can be made, the cases of **A.G. LAGOS STATE v. A.G FEDERATION (2004) 18 NWLR (PT. 904) 1; INAKOJU v. ADELEKE (2007) 4 NWLR (PT. 1025) 427; WEST AFRICAN UTILITIES METERING & SERVICES LTD v. AKWA IBOM PROPERTY & INVESTMENT CO. LTD (2019) CA.** were called in aid.

It was contended that the lower court having struck out questions I, II & III, thereby declining the declarations sought in reliefs 1-5 of the Originating Summons and the Respondent having been given equal opportunity to participate in the General Elections by submitting the names of its candidates in form (F) 002, as averred at Paragraph 4(d) of the affidavit in support of Appellant's preliminary objection before the lower court, the Respondent cannot complain of denial of equal opportunity of participation and it is thus strange for the same court to restrain the Appellant from deregistering the Respondent, a power which he argued, the Appellant can exercise by virtue of section 225A (b) &(c) of the Constitution as given effect to by this court in **APPEAL NO: CA/A/CV/426/2020** ***BETWEEN: NATIONAL UNITY PARTY (NUP) AND INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)*** which was delivered on 18th day of March, 2020, as well as **APPEAL NO: CA/A/ABJ/CV/507/2020 BETWEEN: ADVANCED**

CONGRESS OF DEMOCRATS & 22 ORS AND INDEPENDENCT NATIONAL ELECTORAL COMMISSION judgment delivered on the 10th day of August, 2020.

The Constitutional provision being clear and unambiguous, he further argued, same cannot be varied or qualified by the court but must, by the canon of interpretation, be given its plain meaning without any embellishment as decided in the cases of **AGWUNA VS. A.G. FEDERATION (1995) LPELR-258 SC; OGUNMADE V. FADAYIRO (1972) 8-9 SC 1,** but which admonition the lower court refused to adopt.

We were urged to hold that relief 6 is a consequential relief which cannot be granted, the main reliefs upon which it is premised having been struck out and to accordingly resolve the issue in favour of the Appellant against the Respondent.

Furthermore, learned counsel reproduced the provisions of section 225A of the Constitution and submitted that, it is strange that merely because a political party is in court with the Appellant (INEC) on a ground other than that of deregistration, the political party cannot be deregistered in accordance with the said section 225A of the Constitution. He contended that the lower court exceeded its' judicial power when it proceeded to amend, add to

or vary the said clear provisions of the Constitution by holding that the Appellant did not comply with the said provisions by reason of its failure to wait for the judgment of the court a condition he insisted is extraneous to and is at variance with the provisions and is inconsistent with the duty of the court, thus is null and void. He pointed out that it is not the duty of the court to make, amend or vary laws but to interpret the law. He accused the court of putting itself in a situation where his personal opinion was substituted for the law rather than interpreting the law. He cited the cases of **OGUNDELE & ANOR vs. AGIRI & ANOR (2009) 18 NWLR (PT. 1173) 251 @ 384 F-G; EJUETAMI vs. OLAIYA & ANOR (2001) LPELR-1072 (SC); GLOBAL EXCELLENCE COMMUNICATION LTD & ORS vs. MR. DONALD DUKE (2007) LPELR-1323 (SC), (2007) 16 NWLR (PT. 1059) 22.**

Learned counsel drew our attention to the order made by the lower court declaring the Respondent's deregistration by the Appellant during the pendency of the action as being illegal, null and void and the order setting aside the deregistration and again accused the learned trial judge of *suo motu* raising the issue of *lis pendens* without inviting the parties to address on it as required by law. He referred to the proceedings of the 27/2/2020 at pages 250-251 of the record to submit that the Appellant was denied right to

fair hearing in contravention of section 36 of the Constitution, citing in support the cases of **ANGADI v. PDP (2018) 15 NWLR (PT. 1641) 23, PARAS. B-E.; AKEREDOLU v. ABRAHAM (2019) 10 NWLR (1628) 532 PARAS. A-G SC; S.A.P LTD v. MIN. PETROLEUM RESOURCES (2018) 6 NWLR (PT. 1616); OTEMOLU v. MAKARFI (2018) 5 NWLR (1611) 157-158, PARAS. H-B.**

That is not all, he also accused the lower court by its own showing at pages 261-262 of the record, of first delving into the issue of *lis pendens* before deciding the merit of the case rather than deciding the case on its merits before considering the issue of *lis pendens* which if done, would have produced a different result in favour of the Appellant which will be consistent with the case of **NATIONAL UNITY PARTY (NUP) AND INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)** ***(SUPRA).*** Moreover, he continued on the issue of *lis pendens* that the doctrine of *lis pendens* does not apply to every suit and does not apply to a suit for Constitutional interpretation, but applies solely to suits in respect of ownership of real properties. On the meaning of *lis pendens*, the case of **OBIOHA v. KALU (2019) LPELR-48825 CA;** was called in aid.

In urging us to resolve the issue in favour of the Appellant, we were also urged to hold that section 225A of the Constitution

does not contain the meaning read into it by the lower court and that the court cannot properly raise an issue *suo motu* and resolve same without inviting parties to address it on it.

RESPONDENT'S SUBMISSION

It was submitted in response that the Appellant's argument that questions 1-3 of the Originating Summons are premised on reliefs 1-5 is not only misconceived but misleading as each of the Six (6) questions gave rise to a distinct relief, thus the striking out of questions 1-3 only means the striking out of reliefs 1-3 leaving questions IV, V and VI and question IV being supported by reliefs 4, 5 & 6 of the Originating Summons. He referred to the ratio of the lower court striking out questions 1-3, and as well as granting an order of injunction restraining the Appellant from deregistering the Respondent which relief the Appellant has erroneously understood to be consequential order.

While relief 6 granted by the lower court is a substantive relief claimed by the Respondent, a consequential order he argued, is not claimed by any party but made by the court to appease a successful party in litigation. **AKINBOBOLA v. PLISSON FISKO (1991) 1 NWLR (PT. 167) 270 @ 288 SC.** On when to grant a consequential relief the case of **AMAECHI v. INEC (2008) 5 NWLR (PT. 1080) 227 @ 334 SC** was called in aid.

469

On the Appellant's argument and reference to paragraph 4(d) of the affidavit in support of the Preliminary Objection to contend that the Respondent was afforded equal opportunity to participate in the 2019 General Election, it was submitted that since it was an issue raised and determined at the Preliminary Objection which does not form part of the complaint in this appeal or has not been appealed against, same should be discountenanced.

He submitted that while the Respondent is not challenging the powers of the Appellant vide section 225A of the Constitution to deregister political parties, the case of the Respondent is that no power is absolute and that the Appellant did not comply with the said provision before deregistering the Respondent while the matter was still pending in court. That the Appellant's submission that it is strange that a court of law will prevent it (Appellant) from deregistering a political party merely because the party is in court on a matter other than deregistration, is not only misconceived but is a slap on the Rule of Law. **ANAMBRA STATE VS. OKAFOR (1992) 2 NWLR (PT. 224) 396, 419.**

He contended that the proper interpretation of the section (225A of the Constitution) which is the intention of the Legislature, as it would not have intended otherwise, is that the section must not be read and interpreted disjunctively but conjunctively to the effect as

contemplated by the section that a political party must be given an opportunity to participate in the full cycle of all the elections from the Presidential to the Chairmanship election before invoking the provision to deregister the party for failure to win the minimum 25% or seat in the election. In his view, the section does not state that a political party which has not fully participated in all the elections should be deregistered merely because it fails to win 25% of the Presidential votes cast in at least one State of the Federation, drawing our attention to the fact that the Respondent had not had opportunity to participate in the Governorship election in Osun, Ekiti, Ondo and Edo or any Chairmanship or Counsellorship election before it was deregistered. He cited the case of **A.G. BENDEL STATE VS. A.G. FEDERATION (1981) 10 SC 1, PER OBASEKI JSC** on the twelve (12) rules of interpretation.

He stated that the only reason the Appellant deregistered the Respondent was due to the Respondent's failure to win at least 25% of the votes cast in one state of the Federation in the 2019 General Elections as stated by the Respondent's letter of 6/2/2020. He wandered why the Appellant was in a hurry to deregister the Respondent even when the Respondent had not participated in all the elections and the matter was pending in court, insisting that as the section 225A of the Constitution contemplates, the Respondent must be given full opportunity to participate in all cycle of elections

and denied the argument that the lower court added or varied the meaning of section 225A of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

On the Appellant's submission that the issue of deregistration and self-help was raised *suo motu* by the lower court and that the Appellant was denied right of fair hearing, our attention was drawn to the proceedings of the court on the 27/2/2020 and that it was the Respondent that drew attention to the issue and its motion, after which parties were given opportunity to address the court on the matter.

On the attitude of the lower court to a party like the Appellant resorting to self-help by deregistering the Respondent during the pendency of the suit, the cases of **REGISTERED TRUSTEES, APOSTOLIC CHURCH v. OLOWOLENI (1990) 4 NWLR (PT. 158) 514 @ 537 PARAS D-H SC, C.D.C (NIG) LTD v. SCOA (NIG) LTD (2007) 6 NWLR (PT. 1030) 300 @ 363 PARAS E-G,** and **EGWU OYIBO OKOYE v. INEC & ORS (2010) LPELR-4726(CA)**. were relied upon

On the reliance placed on the case of **NATIONAL UNITY PARTY (NUP) vs. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)** ***(SUPRA)*** to argue that this court had pronounced therein that the Appellant can exercise

discretion to deregister any political party after the conclusion of 2019 General Election, learned counsel submitted that the facts and circumstances of this case where; (i) The Appellant failed, even after the court's order to register it two days to the commencement of the primary elections; and (ii) When the matter was pending in court, distinguish it from the case of **NATIONAL UNITY PARTY (NUP) VS. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) (SUPRA)** case and all other cases in that line.

The conduct of the Appellant herein, he further submitted was under pinned by bad faith towards the Respondent and that the Appellant who has no respect to the Rule of Law should not receive any favour from the court. We were urged to resolve the issue in favour of the Respondent and dismiss the appeal.

RESOLUTION OF ISSUES NO 2 AND 3.

The contention of the learned Counsel to the Appellant is that questions (i) (ii) & (iii) of the Originating Summons struck out by the lower Court are predicted on reliefs 1 – 5 wherein resides the Respondent's main claim and same having been struck out, relief 6 cannot be granted.

It is settled law that the Court not being a charitable institution, cannot grant relief(s) not claimed by parties. The court

only grants to a party the reliefs he has specifically claimed except such a relief is a consequential relief giving effect to the judgment or order prayed for to which it is consequential. **BOLA IGE VS. O. OLUNLOYO & ORS (1984) 1 SC 258, REGISTERED TRUSTEES OF APOSTOLIC CHURCH VS. OLOWOLENI (1990) 6 NELR (PT. 158) 514 AT 530, DANTSOHO VS. MOHAMMED (2003) LPELR – 926 (SC).**

A substantive relief is an essential redress, benefit, remedy or assistance sought by a party from the court which is essential or forms part of the essential part of his case.

The phrase "substantive relief" come from two distinct words "substantive" and "relief".

The black's law dictionary 6th edition at page. 1429 defines "Substantive" as:

> ***"An essential part or constituent or relating to what is essential."***

The word "relief" is defined at page 1292 of the same edition to mean:

> ***"A redress or benefit which a complainant seeks at the hands of the court such as a***

redress for specific performance, injunctions etc."

Thus, a substantive relief connotes an essential and distinct redress or remedy sought or prayed for by an aggrieved party against the other, from the court, which is of substance and important or paramount to this claim before the court.

While, a substantive relief is one that is specifically claimed and is supported by pleadings in a case sought on pleadings – see ***ISHOLA VS. UBA LTD (2005) ALL FWLR (PT. 258) 202, 213,*** a consequential relief is one that is not claimed by the parties but flows naturally and consequentially from the substantive relief. A consequential relief gives effect to the judgment or order of Court. It is consequential because it follows as a result of the judgment.

In **INAKOJU & ORS VS. ADELEKUE & ORS (2007) 4 NWLR (PT. 1025) 427,** a consequential order was defined by the apex court as follows:

> ***"A consequential order is one giving effect to a judgment or one directly traceable to or flowing from the judgment or order duly prayed for. It is essentially one which would make the principal order effectual and effective or which necessarily follows as***

being incidental to the principal order. In other words, it is one which has a bearing with the main relief or reliefs claimed by a party. It is thus granted or made to give meaning and effect to the main relief or reliefs sought by a party. A consequential order can only relate to matters adjudicated upon."

To determine whether relief 6 is a substantive, principal or main claim or a consequential relief, it is necessary to refer to the questions posed for determination by the Originating Summons, the affidavit in support, and the reliefs sought.

The questions posed for determination of the lower Court by the Originating Summons as well as the reliefs sought thereat in the event of positive answers to the questions have already been reproduced in this judgment. It suffices to say that the substance of questions 1 – 3 struck out by the lower Court is whether the Appellant breached the provisions of 3rd schedule paragraph 15 (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Section 78 (4) of the Electoral Act, 2010 (as amended) and acted in bad faith when it (Appellant) failed to register the Respondent within 30 days of the judgment of the Federal High

Court in Suit No. **FHC/ABJ/CS/221/2017** delivered on 18/10/2017.

These questions (1-3) contrary to the contention of the Appellant's Counsel, relate only to reliefs 1 and 3.

Relief (v) which seeks a declaration that the same Constitutional provision cannot be invoked against the Respondent in the light of the fact that the Respondent had not had the opportunity of participating in elections at all levels obviously, is outside the purview of the struck-out questions 1 – 3 and is not predicated on the said questions. The struck -out questions (1-3) have nothing to do with reliefs (v), (vi) nor with question (vi) from where relief 6 flows.

Furthermore, the injunctive relief 6 as well as the declaratory reliefs (iv) and (v) from where it flows, are all substantive or principal reliefs claimed by the Respondent.

In disagreeing with the learned Counsel for the Appellant that relief 6 is a consequential relief predicted on the struck out questions 1-3, I hold that relief 6 is a substantive relief predicated on questions V and VI of the Originating Summons.

The necessary question that flows from this is whether the lower court rightly granted the relief 6, an order of injunction

restraining the Appellant from deregistering the Respondent until it is given opportunity to freely participate in the 2023 general elections to be organised by the Appellant.

Principally, the Appellant is complaining against two orders made by the lower Court and the circumstances of making the orders. The orders are (1) the order setting aside the deregistration of the Respondent by the Appellant during the pendency of the suit and declaring same as illegal, null and void; and (2) the order of injunction restraining the Appellant from deregistering the Respondent until it is given equal opportunity to freely participate in the 2023 general elections.

I will start with the first order.

The grouse of the Appellant is that the issue of *"lis pendens"* was not raised by the Respondent but by the lower Court *suo motu* and without inviting parties to address it on it thereby infringing on the Appellant's fundamental right to fair hearing. This argument is however not supported by the record particularly what transpired in the court on the 27/2/2020 reproduced at pages 250 – 251 of the record.

This is what transpired in Court on that day:

"Akinlotan: We have an urgent situation that the Defendant has put us and the activities and the issue that will be affected. They have served with the processes in this case and they proceeded to deregister us while the matter was pending before the Court. There is an application for interlocutory injunction which was served on them. This application was foisted on us by the Defendant. We are into a very urgent position that requires the intervention of the Court. It is paragraph 14 to 23 of the affidavit in support of motion dated the 19th day of February, 2020.

Court: Sani, Esq, did you deregister them while this action was pending?

Sani: Their deregistration was done on February, 6th, 2020. At the time the matter was filed the supposed cause of action has not happened.

Court: When did you file your counter affidavit?

Sani: ***We filed our counter affidavit on the 3th day of February, 2020.***

Court: ***When did you take the action to deregister them?***

Sani: ***It was taken on the 6th day of February, 2020. The subject matter of this action was not deregistration. The records of the Court will bear me witness.***

Court: ***You were served a process by a political party and you filed a counter affidavit on 3rd February, 2020 and on 6th February, 2020, you took steps to deregister a party that you are in court with?***

Sani: ***I want to state the position of the law.***

Court: ***Which law is greater than the Rule of law?"***

The court then held inter alia:

"It must be stated that the Defendant is not above the law. No person or parties to an action is allowed to resort to self-help when an action is pending in Court. The Court cannot fold its hand and watch or

applaud the action of a party in a pending case that amounts to self-help."

It is clear from the proceedings of the Court above reproduced that it was Counsel for the Respondent who raised the issue of its deregistration by the appellant while the action was pending. He also drew the attention of the court to the Respondent's pending motion on notice served on the Appellant for interlocutory injunction (to restrain appellant from deregistering it) and prayed for the urgent intervention of the court. The Appellant has not challenged the record. It cannot therefore be correct to argue that the court raised the issue of "*Lis pendens*" *suo motu.* All the authorities cited on the impropriety of the court raising an issue *suo motu* and resolving same *suo motu* without input from the parties, go to naught as they are inapplicable to the facts of this case.

Furthermore, the question and answer dialogue between the court and the Appellant's Counsel belies the submission that the parties were not called upon to address the court on the issue or that the Appellant was denied fair hearing merely because the Appellant who had admitted been served with the processes and filing a counter affidavit on 3/2/2020 and then proceeded to deregister the Respondent on the 6/2/2020, was told when he said he wanted

to state the position of the law, that there is no law greater that the Rule of law. That does not amount to a denial of fair hearing.

The following facts stand out clear from the record to wit:

1. That the Respondent instituted the action before the lower Court on 8/1/2020 seeking among other reliefs, an order of injunction restraining the Appellant from deregistering the Respondent.
2. Respondent also filed a motion on Notice on the same 8/1/2020 seeking an order restraining the Respondent (Appellant herein) by its itself, its servants, agents, heirs, representatives and privies from deregistering the plaintiff (Respondent herein) as a duly registered political party in Nigeria pending the determination of the suit. (See page 46 of the Record).
3. Appellant filed a counter affidavit on 3/2/2020 and on 6/2/2020, 3 days after, it deregistered the Respondent.
4. On the 18/2/2020, Respondent filed another Motion, for an order of mandatory injunction compelling the Appellant to restore the Respondent to its status as a registered

political party, the position occupied prior to the deregistration of 6/2/2020.

5. The matter continued and the court gave its judgment on 12/10/2020 setting aside the deregistration of the Appellant by the Respondent during the pendency of the suit. These are uncontested facts.

Appellant has not denied deregistering the Respondent during the pendency of the suit. Its only reason is that it is so empowered by the said Section 225 A (b & c) of the Constitution to do so. This is where the Appellant got it all wrong. The issue is not whether the Appellant has the power to deregister the Respondent but whether that power can be exercised during the pendency of the suit before the court.

The Courts have spoken unequivocally in unison and in very clear and simple language for every person or authority to understand and obey that once parties have submitted or turned in their disputes to the Court for determination, the right to self-help ends and they are bound to await the outcome of the case. None of the parties is permitted to do or take any action or omission that would overreach the interest of the other party or foist a situation of complete helplessness or "fait accompli" on the Court. Both parties are expected to await the result of the litigation

and the appropriate order of court. See **REGISTERED TRUSTEE APOSTOLIC CHURCH VS. OLOWOLENI (1990) 4 NWLR (PT. 158) 514, 532, NIG NAVY VS. GARRIU (2006) 4 NWLR (PT. 969) 163, AGBAI & ORS VS. OKOGBUE (1991) LPELR 225 (SC).**

The courts frown upon any act of self-help and are always swift in repelling such conduct by sending strong signal that they are not being used as mere subterfuge to tie the hands of one party while the other helps himself extra-judicially. This is necessary in order to prevent any likely breach of peace, anarchy and chaos, and also not to make a non-sense of the court. The Court would therefore invoke its disciplinary power to restore the status quo in order not only to preserve and protect its powers and dignity but also the Rule of law.

As **AKPATA JSC** succinctly stated in the case of **AGBAI VS. OKOGBUO (SUPRA):**

> ***"It is the function of the courts in any orderly society to settle dispute between persons, between government or authority and any person in that society. The law is being accorded general acceptance, in varying degrees in most countries of the world. For anyone to resort to self-help that is taking the law into his hands, in a situation such as in***

this case, is the very antithesis of orderliness. It is retrogressive step which if encouraged, will lead to chaos, anarchy and the law of the fittest."

Thus, where a party is aware of a pending court process irrespective of whether an injunctive order has been given by the Court or not, the parties are bound to maintain the status quo.

In **F.A.T.B. & ANOR VS. EZEGBU & ANOR 91992) LPELR – 1278 (SC)** the plaintiffs after obtaining leave of the Federal High Court, Lagos filed an action by Originating Summons.

The Court granted the order sought in the defendants' Originating Summons that an extra-ordinary general meeting of the members of the 1st plaintiff be called at which only members mentioned in claim 3 of the plaintiffs' amended Statement of Claim were to attend including the five defendants adjudged to be members of the 1st plaintiff by the Court and the meeting should be convened by the Company Secretary Miss Nkemena. That the notices thereof must be served on all the 20 shareholders whose names appeared in Exhibit B. That the meeting should be held within 14 days with 3 days notices issued to all the 20 members including the five defendants.

Immediately thereafter, learned Senior Counsel for the Defendants filed a Notice of Appeal against the Federal High Court decision..., the Court of Appeal (Lagos Division) set aside the proceedings and decision of the General Meeting of the 1st plaintiff held on Saturday the 9th of November, 1991; it made an order nullifying all decisions taken or the implementation thereof and in particular reinstating all employees of the Bank whose appointments were terminated; An order generally restoring the status quo ante before the date of the delivery of the judgment on 1st November, 1991 pending the appeal.

The plaintiffs were aggrieved and they appealed to the Supreme Court. The Apex Court held thus:

> *"None of the parties in litigation before a court of law is allowed to take the law into his own hands and foist upon the court of 'fait accompli' thereby rendering it impossible for the court to arrive at a decision one way or the other on the merits of the issue before it or render any decision it may take nugatory or futile. In the instant case, by holding the meeting, they had pre-empted any decision which could be made by the trial court thereby frustrating or stultifying the exercise*

by the court of its jurisdiction to determine the application one way or the other. Therefore, the Court of Appeal can properly set aside the whole proceedings of the meeting of 9th November."

In the case of **ABIODUN VS. CHIEF JUDGE OF KWARA &2 ORS (2007) LPRLR -8308 (CA)** where in spite of the two processes served on the HON CHIEF JUDGE (1st Respondent) to suspend the 5-man panel to investigate the Appellant on the allegation levelled against him by the 3rd – 4th Respondents from investigating the Appellant, the 1st respondent proceeded to inaugurate the panel. The court made it clear that the 1st respondent ought to have postponed the inauguration. It did not hesitate to pull down every edifice built on the panel.

Similarly, in the case at hand, this Court will not hesitate to sustain the decision of the lower Court which pulled down and dismantled the edifice the Appellant built on self-help when it deregistered the Respondent not only during the pendency of the suit but when it had been served with and had reacted to the motion for interlocutory injunction seeking to restrain the Appellant from the very act it helped itself to actualise extra judicially.

To say the least, we find the Appellant's action very reprehensible. The lower Court, as any Court of law would have done, acted correctly by setting aside the deregistration of the Respondent done while the case was still pending in court.

We have no reason to interfere with the order made by the lower Court and same is sustained.

The Appellant's argument, unsupported by any authority, statutory or judicial, that the court ought to have considered the merit of the case before delving into the issue of *Lis pendens*, is obviously not the position of the law. It is of no moment and is discountenanced.

I now proceed to consider the 2nd order made by the lower Court, as prayed for in relief 6 of the Originating Summons.

The Respondent contends that it's deregistration was done in violation of Section 225 A (b & c) of the Constitution. On the other hand, the Appellant also putting his eggs in the same basket of Section 225 A, contends that it rightly deregistered the Respondent and that the court cannot restrain it from carrying out its Constitutional power of deregistering the Respondent or any political party that falls short of the requirements of the section.

There is no disputing the fact that the Appellant as the body constitutionally saddled with the responsibility of conducting the elections in the country is vested not only with the power to register political parties but also with the power to deregister any political party that fails to meet the requirements of sustaining its registration status. The power to deregister a political party and the conditions for deregistration is what Section 225 A (b) & (c) of the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration No.9) Act of 2017 provides.

What are the requirements of the provision? There can hardly be a better way of knowing its requirements than by considering the provisions, which for ease of reference and appreciation is reproduced below:

> **"The Independent National Electoral Commission shall have power to de-register a political part for -**
>
> **(a) Breach of any of the requirements for the registration;**
>
> **(b) failure to win at least twenty-five percent of votes cast in:**
>
> **(i) One state of the Federation in a Presidential election; or**
>
> **(ii) One Local Government of the State in a Governorship election,**

(c) Failure to win at least:

(i) One ward in the chairmanship election;

(ii) One seat in the National or State House of Assembly election; or

(iii) One seat in the councillorship election"

The real issue turns on the proper interpretation of the Section, whether it bears the meaning ascribed to it by the Respondent or that apportioned to it by the Appellant.

In construing the provision, it is important to note that as with every constitutional provision or statute, the cardinal rules of interpretation must be implored and the duty of the judge is to give the meaning to the words of the constitution that best reflects the purpose and intention of the constitution. **PDP v SAROR & ORS (2012) LPELR-14287 (CA).**

One of the vital canons of interpretation and the general guidelines to the interpretation of constitutional provisions and statutes including those propounded and set out by **OBASEKI JSC** in the case of A.G **BENEL STATE VS. A.G.F. (1981) 10 SC 1** commonly referred to as the twelve point Rules of Constitutional interpretation is that the language of the Constitution where clear should be given its plain and evident meaning as the primary duty of the court is only to give effect to

the words used. **ROSSEK VS. A.C.B LTD (1993) 8 NWLR (PT. 312) 382, 498.**

Thus, the Court should approach the interpretation of clear words of the Constitution by giving to the words their simple, grammatical and ordinary meaning. **OGBONNA VS. A.G IMO STATE (1992) 1 NWLR (PT. 220) 647, AFRICAN NEWSPAPER VS. FRN (1985) 2 NWLR (PT. 6) 137.** Where the words are clear and unambiguous, the terms of the constitution cannot be rewritten or construed beyond what they mean in the guise of liberal interpretation, for to do so will be ultra-vires the power of the court.

If there is nothing to modify alter or qualify the language of a statute, it must be construed in the ordinary and natural meaning of the words and sentences used since the object of all interpretation is to discover the intention of the law makers which is deducible from the language used. Once the meaning is clear the Courts are to give effect to it. The Courts are not to defeat the plain meaning of an enactment by an introduction of their own words into the enactment.

What was intended as the aim of liberal interpretation by UDO UDOMA JSC in the case of **NAFIU RABIU VS. THE STATE (1981) 2 NCLR 293;** is no more than that in construing the

constitution, mere technical rules of interpretation more suitable to ordinary statutes should not be applied in a way as to defeat the principles of government enshrined in the constitution; and that where the question is whether the constitution has used an expression in the wider or in the narrower sense, this court should wherever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.

The words used are to be given their ordinary and natural meaning. The intention of the law maker is always to be sought from or through the words used in the enactment. Dwelling on the object of statutory interpretation, the Supreme Court in the case of **SARAKI VS. FRN (2016) LPELR-40013 (SC)** stated thus:

> *"The main object or statutory interpretation is to discover the intention of the law maker which is deduced from language used."*

Now, looking at the constitutional provision in focus, it does appear to me that the words used are clear and unambiguous, and should be given their ordinary grammatical and plain meaning.

The other cannon of interpretation is that effect should be given to every word used in the constitution or statute. Thus, bearing this in mind effect must be given to each word and punctuation used in the section. See section 301 of the Interpretation Act, as punctuation forms part of an enactment and regard shall be had to it accordingly in construing the enactment. This is necessary for a proper interpretation of the section to determine whether the sub paragraphs i.e. (a), (b) & (c) are intended to be construed conjunctively or disjunctively.

With respect to paragraph (a), parties are at idem that it is intended to be interpreted disjunctively, creating a distinct scenario from paragraphs (b) & (c). By his argument, Counsel for the Respondent concedes that a political party can be deregistered if it breaches any of the requirements for registration.

The only bone of contention is whether paragraph (b) is also distinct from paragraph (c) that is to say, whether paragraphs (b) and (c) are disjunctive or conjunctive. Put differently, whether the breach of paragraph (b) alone entitles the Appellant (INEC) to deregister the defaulting political party or conversely whether INEC has to wait for both paragraphs (b) and (c) to be violated, as is position of the Respondent, before it can swing into action to enforce its power of deregistration.

It is necessary to consider the use of the punctuations, semi colon (;), the word "or" and full stop (.) used in paragraph (b) proceeded by a colon (:) in paragraph (a).

Paragraph (b) is in two parts; (i) and (ii). Paragraph (b) (i) is separated or paused from (b) (ii) by a semi colon and the word "or". This paragraph (b) is then terminated by a full stop (.) before paragraph (c).

The courts have interpreted the meaning of and have given effect to the punctuation marks, semi colon (;) and the phrase "or" when used together in a statute as in paragraph b (i) of the Section 225 A of the Constitution.

In the case of **ABUBAKAR & ORS VS. YAR'ADUA & ORS (2008) LPELR – 51 (SC) TOBI JSC** stated thus:

My immediate observation of the provisions is that (a), (b) and (c) are lumped together, in the sense that they are punctuated by semi colons. What does that mean? To be able to answer this question, I will look at the definition of semi-colon as is in Shorter Oxford English Dictionary. It states:

> *"In its present use it is the chief stop intermediate in value between the comma and the full stop."*

He went further to say

I would add that it is a very short pause between two clauses. So in essence these paragraphs (a), (b) and (c) are like continuation of one to the other, but with pauses. In other words, they belong to the same class. After stating ground (c), together with the semi-colon, the draftsman, then went on to add the word 'or', a word which I think distinguished the grounds in (a), (b) and (c) from the provision in paragraph (d) that immediately comes thereafter. My answer to the question I earlier asked is that paragraphs (a), (b) and (c) belong to the same family and category. If all the paragraphs (a), (b), (c) and (d) were meant to fall within the same category, then the word 'or' wouldn't have been used. Now, what does the word 'or' stand for? According to Section 18(3) of the Interpretation Act:

> "The word 'or' and the word 'other' shall, in any enactment be construed disjunctively and not as implying similarity."

In the same Oxford Dictionary, the word disjunctive is defined as:

> "Having the property of disjoining; characterized by separation. Involving a choice between two or more things or statements; alternative."

Thus, in interpreting the section, though paragraph (b) (i) is like a continuation of the paragraph (b) (ii) in the same category of requirements but with a pause, the phrase or word "or" which is a disjunctive participle used to express an alternative or to give a choice of one thing among two or more things, separates or disjoins (b) (i) from (b) (ii) in the sense that (b) (i) is an alternative to B (ii) in that category. Paragraph (b) (i) is disjunctive of but not conjoined to paragraph (b) (ii). It separates paragraph (b) (i) preceding paragraph (b) (ii) coming after it by the word "or" therein.

The simple meaning of this paragraph (b) (ii) of section 225A A of the 1999 Constitution of the Federal republic of Nigeria is that it is intended to be construed as a continuation of paragraph (b) (i) of the same section but disjunctive of the other. Paragraph 2 (b) (i) is disjunctive of paragraph 2 (b) (ii).

It means that paragraph (b) (i) is disjoined from paragraph (b) (ii).

Similarly, in the case of **NATIONAL UNITY PARTY VS. INEC (SUPRA)** when this court had opportunity to interpret the same provision, it took time to define the punctuation marks colon (:), semi colon (;), dash (-) and a full stop (.). From the definitions and explanations, the court came to the conclusion that:

"..... it is clear that the colon, semi colon and dash used in the provision signifies a continuation of a sentence to be connoted as a whole but the use of the word "or" signifies the point where the sentence becomes disjunctive."

As stated earlier, there is a full stop (.) after paragraph (b) (ii) and before paragraph (c).

Full stop is a punctuation mark used to end a sentence before the commencement of another. It is used to bring a sentence, passage, or text to a complete stop. It is also used in abbreviation to make the word shorter by using the first letters of each word such as e.g., from the latin idest (for example), i.e., (that is), I.N.E.C (Independent electoral Commission) or N.U.P. (National Unity Party) etc.

The use of full stop at the end of section 225 A (b) terminating the paragraph (b) and before the commencement of paragraph C, is meant to separate Section 225 A (b) from 225 A (c).

Similarly, as with section 225 A (b), the use of semi colon and "or" between paragraph C (i) and C (ii) renders the provision of Section 225 A C (i), C (ii) and C (iii) disjunctive and in the alternative.

Except words have lost their meanings, and I believe they have not, paragraph (b) & (c) of Section 225A cannot be construed conjunctively. The literal and grammatical meaning of the section as is the intention of the law maker is to construe the separate paragraphs disjunctively.

In sum, I am of the humble but firm considerate view that the proper interpretation of Section 225 A (b) and (c) of the Constitution (4th Alteration, No. 9) is that the provisions of paragraph (A), (B), and (C) are disjunctive. The effect is that a breach of any of the requirements in either of the sub-paragraphs entitles the Appellant (INEC) to deregister the political party.

I find the vehement but strenuous argument of the Respondent's Counsel that the intention of the law maker is that the paragraphs be read conjunctively such that the political party has to be given an opportunity to participate in the full cycle of elections to be conducted in 2023 as a fallacy. That in my view cannot be the intention of the legislature, and a court is enjoined not to construe a statute in a manner that would defeat the very intention and purpose of the law maker. This point was made by the Supreme Court per **TOBI JSC** in **MOHAMMED BUHARI & ANOR VS. ALH M. DIKKO & ANOR 14 NSCCQRC (PT. 11) 1114 AT 1161** when the great jurist stated:

"It is settled principle of interpretation of statutes that the Court would ascertain the intention and purpose of the law makers and give effect to same. The Court should not give a statute a construction that would defeat the very purpose of the law maker."

Without any circumlocution, I would simply say that the lower court was wrong in its interpretation of Section 225 A (B & C) of the Constitution of the Federal Republic of Nigeria (4th Alternation No. 9) (as amended). Consequently, the order of the injunction restraining the Appellant from deregistering the Respondent until Respondent is given equal opportunity to freely participate in the 2023 general election to be organised by the Appellant is not well founded on law. It was wrongly granted and is accordingly set aside.

The net result is that this appeal succeeds in part. For avoidance of doubt;

(i) The order of the lower court declaring the deregistration of the respondent by the Appellant during the pendency of the case before it as null and void and setting same aside is hereby sustained. To that extent the appeal fails.

(ii) The injunctive order made restraining the Appellant from deregistering the Respondent until the Respondent is given equal opportunity to freely participate in the 2023 General Elections to be organised by the Appellant, is set aside. To this extent, the appeal succeeds.

(iii) Parties shall bear their costs.

These shall be the orders of this court.

AMINA AUDI WAMBAI
JUSTICE, COURT OF APPEAL

APPEARANCES:

EMEKA OBEGOLU ESQ., **FOR THE APPELLANT**

JOHN OCHOGWU ESQ.,
AKINWALE IROKOSU ESQ. } **FOR THE RESPONDENT.**

13/8/24

CERTIFIED TRUE COPY
DATE 13/8/2024
UMAR ABUBAKAR ESQ.
P.E.O 1 LITIGATION
COURT OF APPEAL, ABUJA

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CA/ABJ/CV/980/2020

CONTRIBUTION

THERESA NGOLIKA ORJI-ABADUA, PJCA.

I had the privilege of reading in advance the leading judgment in this appeal just delivered by my learned brother, Wambai, J.C.A., and I concur with the reasoning and conclusions therein and I abide by the consequentiai orders made in the leading judgment.

Theresa Ngolika Orji-Abadua,
Presiding Justice, Court of Appeal.

13/8/21

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13/05/2021
UMAR ABUBAKAR ESQ
PETITIONER
COURT OF APPEAL ABUJA

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CONTRIBUTION

APPEAL NO: CA/ABJ/CV/980/2020

HON. JUSTICE I. A. ANDENYANGTSO, JCA

I have been privileged to read in draft the judgment just delivered by my learned brother, Wambai JCA. I am in total agreement with the conclusion and reasons therein contained. I can only add a few words of mine by way of emphasis. The facts of the case, the grounds of appeal, the issues and submissions of counsel therein have adequately been treated so much so that I need not waste further time and energy thereon.

ISSUE 1

> **"Whether the trial Court can pronounce on an issue not submitted for determination by any of the parties and substantially different from the issues formulated and adopted by the Court as sole issue for determination by the same Court. (Distilled from Ground 1 of the Notice of Appeal)"**

The grouse of the Appellant under this issue is that the Lower Court did not determine the case before it based on any of the issues formulated by both parties. Now, the issues formulated at the court below need be reproduced here for proper appreciation of the complaint of the Appellant. For the Plaintiff at the court below (now the Respondent herein) the issues are:-

> *"i. Whether the Defendant breached the provision of the Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended) and the Judgment of this Honourable court in Suit No:*

FHC/ABJ/CS/221/2017, delivered on the 18th day of October, 2017 when it failed to register the Plaintiff within 30 (Thirty) (sic) the receipt of the application for the registration of the Plaintiff.

ii. Whether the failure of the Defendant to register the Plaintiff in line with the Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended), which requires it to register a political party within 30 days of the fulfillment of the constitutional conditions, amounts to exclusion of the Plaintiff from all elections conducted after the required registration period including the 2019 general elections.

iii. Whether in the light of the Defendant's failure to comply with the provisions of the Third Schedule, Paragraph 15 (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 78 (4) of the Electoral Act, 2010 (as amended), which requires it to register a political party within 30 days of fulfillment of the constitutional conditions, the Defendant can deregister the Plaintiff for failure to win any seat in the 2019 general elections; pursuant to Section 225 A (b & c) of the Constitution of the Federal Republic of Nigeria, 1999 as amended)."

iv. "Whether having excluded the Plaintiff from participating in the 2019 general elections, the Defendant can deregister the Plaintiff on the basis on the Plaintiff's failure to win any seat in any election; pursuant to Section 225 A (b & c) of the Constitution of the Federal Republic of

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Nigeria, 1999 as amended)" (sic). See pages 32-33 of the transmitted Records.

503

The Appellant's issues (as Defendant) contained at page 86 of the Record are:-

> ***(i) Whether the Plaintiff has a cause of action against the Defendant.***
>
> ***(ii) Whether this Honourable Court can stop the Defendant from performing its Constitutional duties***
>
> **(iii) *Whether this Honourable Court has the power to decide on issues bordering on exclusion"***

The Appellant has complained that the trial Judge abandoned all the issues above captured and formulated or adopted an issue entirely different from those formulated by both parties. Learned Counsel for the Appellant cited and relied on a number of cases to argue that the trial Judge was wrong in his decision. The Respondent on its own part argued that the trial Judge was right in doing so. Now, the point in contention is captured at page 225 of the Record thus:-

> **"Upon studying the issues in this case, I am of the opinion that the only relevant issue to be determined is whether the Defendant rightly deregistered the Plaintiff going by the provisions of S. 225 A of the 1999 Constitution (as amended)."**

Learned trial Judge then proceeded to set out the provisions of the said Section 225 A of the Constitution.

I have carefully perused the cases cited and relied upon by the Appellant, and I agree that as far as they relate to the formulation of issues, they are incontestable. For instance, in **OLOWOSAGO & ORS. VS. ADEBANJO & ORS. (1998) 4 NWLR (PT. 88) 275, also reported in (1988) LPELR-2661 (SC) page 12 paras A-C** the Apex Court, per Karibi Whyte, JSC held as follows:-

> **"Like pleadings to a litigation between the parties, the issues formulated are intended to accentuate the real issue for determination before the Court. The grounds of appeal allege** the complaints of errors of law, fact or mixed

in that particular case. Pronouncements of our Justices whether they are ratio decidendi or obiter dicta must therefore be inextricably and intimately related to the facts of the given case. Citing those pronouncements without relating them to the facts that induced them will be citing them out of their proper context, for without known facts, it is impossible to know the law on those facts." Following on the trait of the guides laid out already by this Court, one has no difficulty in positing humbly that a case is decided on the facts presented to the Court and a decision is never made in vacuo or in a vacuum. Therefore the ratio in one case may not be applicable in another case in instances where the facts present differently. The principle in a given case can only apply to another where the cases are similar. See Idoniboye - Obu v NNPC (2003) 1 SC (pt. 40) 40 at 70."

In the instant case the issues formulated, which I have reproduced above encompass the complaint on the de-registration of the Respondent as a political party by the Appellant. The cases cited and relied upon by the Appellant, were cited out of context and therefore inapplicable to this case. I so hold.

The learned trial Judge, in my view, rightly identified the main issue that could determine this case before him at pages 246-247 of the Record thus:-

> "it is the case of the Plaintiff per paragraph 30 of their Affidavit in support of the Originating Summons that the Plaintiff (sic) threatened to de-register them as a political party by several news publications including the following: article on TVC News online platform dated 9th August, 2019 and THISDAY online publication on the Press reader platform dated 25th September, 2019 Exhs. (7) and (8). This threat continued until the time of filing this action. In actual fact, the cause of action arose in this case as the date of first publication which was 9th August, 2019. The Defendant has not disputed issuing the notification for de-registration as stated in Exh, 7. For the purpose of statute bar as provided for in S.2 (a) of the POPA 2010 LFN

where a notification of an impending action is given as in Exh. 7, the cause of action accrues on that day. A person aggrieved by the notification of impending action can be said to take recourse in the Court on the date the cause of action accrued, or can sue during the pendency of the notification, or, can sue when the impending act which notice was given is consummated. In this case, for as long as the notification of de-registration lingered, the cause of action continues. I therefore, agree with the Plaintiff that the cause of action in this case is a continuous one. The said cause of action began when the notification in Exh.7 was made and continued, until the notice is withdrawn. Where the subject matter of the notification crystalizes by actual de-registration another cause of action has arisen that can give rise to fresh litigation--- It is my finding therefore that the cause of action in this case, has a degree of perpetuity and no time bar would apply to any cause of action founded on the express intention of the Defendant to de-register the Plaintiff can be sustained during the pendency of such intention. I overrule the Defendant on this leg of objection."

Now, the averment in paragraphs 30 and 31 of the Respondent's affidavit in support of Originating Summons on page 52 of the Record are as follows:-

"30. That the Respondent had indicated its intention to de-register political parties in line with Section 225 A of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in several news publications including the following: article on TVC News online platform dated 9th August, 2019 and THISDAY online publication on the Press reader platform dated 25th September, 2019. Attached and marked as Exhibits 7 and 8 are the news publications.

507

31. That I believe it is unfair to de-register the Plaintiff after denying it the opportunity to fairly participate in the 2019 General Election."

It has been adequately demonstrated above that the issue summed up by the Learned Trial Judge upon which he determined this matter before him, was not raised *suo motu* by him. I hold that the issue was an apt capture of the issues formulated by the parties emanating from the facts and circumstances of this case.

It is trite that the Court is at liberty to either adopt the issues formulated by learned counsel, or formulate or reformulate or rephrase issues for determination in appropriate circumstance. In the case of **UNITY BANK PLC. VS. MR. EDWARD BOURI (2008) 7 NWLR (PT.1086) 372,** the Supreme Court, per Ogbuagu JSC held as follows:

> **"It is now firmly settled that a Court can and is entitled to reformulate issue or issues formulated by a party or parties or counsel in order to give it precision and clarity."**

See **ALSO AWOJUGBAGBE LIGHT INDUSTRIES LTD. VS. P.N. CHINUKWE & ANR. (1995) 4 NWLR (PT. 390) 379; OGUNBIYI VS. ISHOLA (1996) 6 NWLR (PT. 452) 12 at 24; MPAMA VS. FBN PLC (2013) LPELR-19896 (SC) p.13 paras D-E.** In the **MPAMA's** case above, the Appellant formulated 3 issues for determination while the Respondent formulated 2issues. The Apex Court, after considering all the issues of the parties, the record of appeal, the facts and circumstances of the case, reduced the issues to one by reformulation and decided the appeal thereupon, holding that a Court can and is entitled to reformulate an issue or issues formulated by a party or parties or counsel in order to give it precision and clarity. This point was conceded to by the Appellant in paragraph 4.8 of its Brief of Argument where it was stated thus:-

> **"4.8. My lords, while we concede that courts are allowed to reformulate issues for determination, we most humbly submit that the power to reformulate issues is only exercisable in order to enable the Court deal with the real issues between the litigating parties."**

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508

Citing **ABDULLAHI VS. ADETUTU (2020) 3 NWLR (PT.1711) 338** Learned Counsel in paragraph 4.9 quoted the decision of the Supreme Court to the effect that "... Court can reformulate the issues for determination formulated by parties to accentuate the real questions in controversy."

In paragraph 4.10 of the Appellant's Brief, Learned Counsel submitted or rather contended thus:-

> **"4.10. My lords, the above holding** (referring to the ABDULLAHI VS. ADETUTU's case) **by the apex court goes to show that of great importance is for the court to deal with what the court finds to be the real issues in controversy between the parties. It is therefore taken for granted that by formulating a sole issue for determination, the Learned Trial Judge has made a finding on what is the real issue in controversy between the parties and therefore ought to situate the merits of the judgment within the confines of the sole issue for determination."**

I dare say, the above submission or contention was exactly what the Learned Trial Judge did in this case. The contentions of the Appellant in paragraphs 4.11-4.22 are most surprising as the Learned Trial Judge considered all the issues raised by both parties and identified the central issue as garnered from the affidavit evidence and all the submissions in respect of the issues formulated and then stated or held at page 255 of the Record, even at the risk of repetition, thus:-

> **"Upon studying the issues in this case, I am of the opinion that the only relevant issue to be determined is whether the Defendant rightly de-registered the Plaintiff going by the provisions of S. 255 A of the 1999 Constitution (as amended)."**

I have referred to paragraphs 30 and 31 of the Affidavit in support of the Originating Summons of the Respondent wherein the core complaints of the Respondent (as Plaintiff) were stated. From the totality of the facts and circumstances of this case and the issues formulated for determination I find, in agreement with the Learned Trial Judge, that the sole issue identified by the lower court adequately encapsulates the main issue or question in controversy between the litigating parties in this case. I resolve this issue against the Appellant and in favour of the Respondent.

509

ISSUE 2

"Whether the trial Court can grant relief 6 as contained in the Originating Summons after the same Court declined the basis for the relief as contained in reliefs 1-5 of the Originating Summons. (Distilled from Ground 2 of the Notice of Appeal)"

Under this issue the Learned Trial Judge considered the reliefs sought by the Respondent (as Plaintiff at the Court below) as captured at pages 224-226 of the Record and the questions raised for the determination by the Court, and found at page 257 of the Record as follows:-

> **"in this case, the Plaintiff instituted this action because the Defendant had threatened to de-register them. This threat was actually carried out on 6th February, 2020 while this case was pending. It is to be noted that at the time of the threat the Plaintiff had a right of action. In other words cause of action inured the Plaintiff upon the threat of de-registration. The issues of lack of cause of action raised by the Defendant as a defense does not arise in view of the threat by the Defendant to de-register the Plaintiff. Again, the cause of action of the Plaintiff was further fortified when the Defendant de-registered the Plaintiff."**

Learned Trial Judge then relied on the cases of **IYKE VS. P.T.I. (2019) 2 NWLR (PT. 1656) 217 at 238-239** dealing with cause of action, and **A-G. FED. VS A.N.P.P (2003) 12 SCNJ 67, (2003) 18 NWLR (PT. 851) 182** and **COOKEY VS. FONBO (2005) 15 NWLR (PT. 947) 182 at 202**and thereafter found thus:-

> **"I therefore find that the threat of de-registration and de-registration of the Plaintiff by the Defendant founded a cause of action for them and I so hold."**

The argument of the Appellant under issue 2 clearly holds no water in view of the numerous findings of the trial Court as to cause of action being centered on the threat of de-registration and the actual de-registration of the Respondent by the Appellant. See pages 247 and 255 of the Record.

I am satisfied that the Learned Trial Judge did not commit any error that deserves or warrants tampering with his judgment. Issue 2 is resolved against Appellant,

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before de-registering the Respondent or, put in another way, what did it gain by hastily de-registering the Respondent?

When Government Agencies, saddled with enormous responsibility decide to ride rough shot over and above the rule of law, that will be nothing but an invitation to anarchy.

The lower Court in respect of this wrong exercise of a statutory power by the Appellant, correctly stated at page 252 of the Record thus:-

> **"It must be stated that the Defendant is not above the law. No person or parties to an action is allowed to resort to self-help when an action is pending in court. The Court cannot fold its hand and watch or applaud the action of a party in a pending case that amounts to self-help. The claim that the Defendant has power pursuant to S. 225 A (b) and (c) of the 1999 Constitution (as amended) to de-register a political party does not justify the action of the Defendant while this action was pending. The Defendant must understand that the Constitution is not an author of confusion. I condemn the action of the Defendant as wrong exercise of right. Therefore, the de-registration of the Plaintiff during the pendency of this action by the Defendant is illegal, null and void and liable to be set aside. Consequently, I hereby make an order setting aside the de-registration of the Plaintiff."**

The above is apt and commendable. It has to be so if our society will be allowed to progress and fit into the comity of civilized Nations. It is trite that where the Rule of law operates, self-help must take flight. **See THE MILITARY GOVERNOR OF LAGOS STATE VS. OJUKWU (1986) 1 NWLR (PT. 68) 621.**

As to the merit of the case, the Learned Trial Judge rightly refused prayers/reliefs i, ii and iii and properly struck out same.

The remaining issue was properly treated and decided as indicated above, as the Learned Trial Judge at page 259 of the Record inter alia held thus:-

> **"Going by the averment above which has neither been controverted nor denied by the Defendant, it is my opinion that the manner by which the Defendant threatened to de-register the Plaintiff was arbitrary and so was the manner by which the Defendant de-registered the Plaintiff. Both actions were taken**

S92

without giving the Plaintiff any opportunity to make a case to the Defendant. The actions of the Defendant do not reflect any dent of fairness and such cannot be allowed to stand."

To this extent I agreed with the Learned Trial Judge on the wrong exercise of constitutional power by the Appellant. However, the injunctive relief granted against the Appellant cannot stand in view of the provisions of Section 225A of the 4th Alteration of the Constitution which has adequately been treated in the lead judgment delivered by my Noble **Lord Wambai, JCA**. I abide by the orders therein made.

I. A. ANDENYANGTSO,

JUSTICE, COURT OF APPEAL

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DATE .....
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COURT OF APPEAL, ABUJA

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