IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, 2ND DECEMBER, 2022
BEFORE THEIR LORDSHIPS

MUSA DATTIJO MUHAMMAD	**JUSTICE, SUPREME COURT**
CHIMA CENTUS NWEZE	**JUSTICE, SUPREME COURT**
UWANI MUSA ABBA AJI	**JUSTICE, SUPREME COURT**
MOHAMMED LAWAL GARBA	**JUSTICE, SUPREME COURT**
HELEN MORONKEJI OGUNWUMIJU	**JUSTICE, SUPREME COURT**

SC/CV/677/2021

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL COMMISSION ..... APPELLANT

AND

YOUTH PARTY ..... RESPONDENT

JUDGMENT
(Delivered by MOHAMMED LAWAL GARBA, JSC)

By way of originating summons filed on the 8th January, 2020, before the Federal High Court, Abuja (trial court here after), the Respondent sued the Appellant and sought for the determination of the following questions:-

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Supreme Court of Nigeria

"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 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, amounts 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 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 election; 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 required registration period including the 2019 general elections, the Defendant can deregister the Plaintiff for failure to win any seat in the 2019 general election; pursuant to Section 225A (b & c) of the Constitution of the Federal Republic of Nigeria, 1999 as amended).*

Premised on these questions, the Respondent sought for declarations and injunction against the Appellant in the following terms:-

"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 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.*

4. *A DECLARATION that the provision of Section 255A (b & 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 255A (b & c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 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 until the Plaintiff*

is given equal opportunity to freely participate in the 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 the circumstances of this Suit."*

Briefly, the facts giving rise the Respondent's suit are that in January, 2017, it applied to the Appellant; as a political association, for registration as a political party with name "Youth Party", which application was acknowledged by the letter dated 17th February, 2017 from the Appellant.

When the Appellant failed or neglected to register the association, suit No. FHC/ABJ/CS/221/2017 was initiated by Chukwudi Adiukwu, Sope Doradola and Zahradeen Garba Ammani (for themselves and on behalf of the members of the Youth Party), at the trial court against the Appellant and at the end of trial in a judgment delivered on 16th October, 2017, the Appellant's letter of 17th February, 2017 was declared "invalid as same having been issued in contravention of the Constitution" thereby granting reliefs or prayers 1, 2, 3 and 4 sought in the suit by the Plaintiffs. The prayers sought and granted by the trial court were as follows:-

"1. *A DECLARATION that the Plaintiffs have validly applied to the Defendant for registration of their political organization as a political party in the name of "Youth Party".*

2. *A DECLARATION that the word "Youth" in the "Youth Party" sought to be registered by the Plaintiffs is not contrary to, or in breach of the provisions of Section 222(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*

3. *A DECLARATION that the Defendant's letter dated 10th February, 2017 refusing to register the Plaintiff's political association under the name of "youth Alliance for Good Governance" is inconsistent with the Plaintiff's valid application, and therefore unconstitutional, null and void.*

4. *A DECLARATION that the Plaintiffs' application letter dated 18th January. 2017 to register as a political party under the name of "Youth Party" has been accepted pursuant to Section 78(4) of the Electoral Act, 2010."*

Prayer 5 sought for in the suit by the Plaintiffs for:-

"5. *AN ORDER directing the Defendant to register the Plaintiff's political association as a political party under the name of "Youth Party" was not granted by the trial court."*

After the abovenamed judgment, the Respondent once again, as a political association, submitted another application for registration as a political party to the Appellant on the 12th January, 2018 and it was eventually registered as a political party and issued with a certificate or registration on the 16th August, 2018.

Subsequently, the Appellant in August and September, published news of its intention to de-register political parties in line with the provisions of Section 225(A) of the 1999 Constitution (as amended). It was on the basis of the declared intention by the Appellant to de-register political parties that Respondent instituted the action leading to this appeal, on the 8th January, 2020 along with a separate motion on notice for an order restraining the Appellant from de-registering the Respondent pending the determination of the suit.

On the 27th of February, 2020, the Appellant through Counsel, stated, when the motion on notice was mentioned before the trial court, that the Respondent was de-registered on the 6th February, 2020 after the processes of the suit and the motion were served on the Appellant (at page 215 of the Record of Appeal).

The motion on notice for an order to restrain the Appellant from de-registering the Respondent was eventually withdrawn by the Respondent's Counsel and struck out on the 30th June, 2020, but another one, filed on the 19th February, 2020, sought for mandatory injunction

compelling the Appellant to restore the Respondent's registration as a political party on the ground that the de-registration was done during the pendency of the motion for injunction and the suit.

The suit, a preliminary objection and the motion for mandatory injunction were taken together by the trial court, which, in a judgment delivered on the 12th October, 2020, set aside the de-registration of the Respondent on the ground that it was done by the Appellant during the pendency of the suit and the motion for injunction.

The Appellant was also restrained from de-registering the Respondent before the 2023 elections.

The Appellant's appeal to the Court of Appeal, Abuja Division (court below) was allowed in respect of the order restraining the Appellant from de-registering the Respondent before the 2023 elections, but the order by the trial court setting aside the de-registration of the Respondent during the pendency of the suit and the motion for injunction, was affirmed.

Being aggrieved with the decision by the court below to affirm the order setting aside the de-registration of the Respondent during the pendency of the suit and the motion for injunction, the Appellant brought this appeal vide the Notice and Grounds of Appeal dated the 21st and filed on the 22nd June, 2021, which was later amended by the Amended Notice of Appeal filed on 8th October, 2021, but dated the 7th September, 2021, containing four (4) grounds.

An issue was formulated from each of the grounds and submitted to the court for determination in the Appellant's brief filed on the same date with the Amended Notice of Appeal; i.e. 8th October, 2021, as follows:-

> *"a. Whether the Court below can refer to a non-existing "grounds of appeal" in upholding the issues for determination as framed by the trial Court (Distilled from Ground 1 of the Notice of Appeal).*
>
> *b. Whether the Court below upheld the principles of fair hearing as enshrined in the Constitution when they held that the failure to invite parties to address the court on an issue raised suo motu goes to naught. (Distilled from Ground 2 of the Notice of appeal).*
>
> *c. Whether the doctrine of lis pendens is applicable in Constitutional matters. (Distilled from Ground 3 of the Notice of Appeal).*
>
> *d. Whether the lower court was right in upholding the reliefs granted by the trial court in the face of conflicting*

conclusions reached in the judgment of the trial court and the clear provisions of S. 225A of the Constitution which was also upheld by the lower court. (Distilled from Ground 4 of the Notice of Appeal).

The Respondent's brief was filed on the 10th May, 2022, deemed on 30th May, 2022 along with a Notice of Preliminary Objection, and three (3) issues are set out for decision by the court, after arguments at paragraphs 2.1 to 2.11 (hand written pages 103 – 107). The issues are:-

"1. *Whether their Lordships of the lower court were right when they held that the sole issue formulated by the trial court was the central issue for determination having regard to the Originating Summons, the affidavit in support and the entirely of the proceedings before the court. (Distilled from Ground 1 of the Notice of Appeal).*

2. *Whether their Lordships of the court below were right when they held that the issue before the trial court is not above the power of the Appellant to deregister the Respondent but the exercise of such powers during the pendency of the suit and that the trial court acted correctly by setting aside the deregistration of the Respondent which happened while the case was pending in court. (Distilled from Grounds 2 and 3 of the Notice of Appeal).*

3. *Whether the Learned Justices of the court below were right when they held that relief 6 is a substantive relief that is predicated on questions V and VI of the Originating Summons and not a consequential relief that is hinged on the grant of prayers 1-5 of the Originating Summons (Distilled from Ground 4 of the Notice of Appeal".*

An Appellant's Reply Brief was filed on the 25th May, 202 in reaction and answer to the objection and the issues argued in the Respondent Brief.

I would deal with the objection to the appeal first.

As set out on the face of the Notice of Preliminary Objection, the grounds upon which it is premised are thus:-

> *"i. The Appellant/Respondent being dissatisfied with the judgment of the lower Court delivered on the 11th May, 2021 with Appeal No. CA/ABJ/CV/980/2020 lodged an Appeal via a Notice of Appeal filed on the 8th October, 2021 and subsequently filed a brief of argument in support thereof.*
>
> *ii. Further to paragraph 1 (supra), Notice of appeal filed on 15th July, 2021 by the Appellant/Respondent contains 4 (Four) grounds and accompanying particulars which are of mixed law and facts.*
>
> *iii. The Appellant did not seek the leave of this Honourable Court before filing the above stated Notice of Appeal.*
>
> *iv. Failure to seek the leave of court before filing a Notice of Appeal containing grounds of mixed law and facts makes such Notice of Appeal incompetent and robs this Honourable Court of the jurisdiction to entertain same.*
>
> *v. This Honourable Court does not have the jurisdiction to entertain this appeal and thus, ought to be dismissed."*

As can easily be observed, the pith of the objection is that all the four (4) grounds contained on the Notice of Appeal filed on the 15th July, 2022

are of mixed law and facts and require prior leave of court to be competent. That the requisite leave was not sought for and obtained before the Notice of Appeal was filed and so it is incompetent, thereby depriving the court of the jurisdiction to entertain same. Section 233(2) (a) and (3) of the Constitution as well as the cases of Olowokere v. African Newspapers Ltd (1993) 5 NWLR (pt. 295) 583, West Africa Ltd. v. Migliore (1990) 2 SC, 33, (1990) 1 NWLR (pt. 126) 299 and Nalsa & Team Associate v. NNPC (1991) 8 NWLR (pt. 212) 652 at 666 are cited in support of the objection. Among others, the case of B.A.S.F. Nig. Ltd. v. Faith Ent. Ltd (2010) All FWLR (pt. 518) 840 was referred to on what constitutes a ground of mixed law and facts as distinct from one of pure law alone and how to identify each. Modukolu v. Nkemdilim (1962) 2 SCNLR, 341 on the consequence of lack of jurisdiction on judicial proceedings conducted by a court is also cited and the court is urged to strike out the grounds on the Notice of Appeal for being incompetent.

In the Appellant's Reply Brief, it is submitted that the Appellant had applied by the motion on Notice filed on the 8th October, 21 for leave to amend the Notice of Appeal filed on the 15th July, 2021 being challenged by the Respondent which motion was not opposed by the Respondent and so the Appellant's Amended Notice of Appeal filed on the 8th October, 2021 super-ceded the earlier Notice of Appeal and is the extent Notice of Appeal, if the amendment was granted by the court. The cases of Oboh v. Nig. Football League Ltd. (2022) LPELR – 56867 (SC) and Afribank Nig. Plc. v. Akwara (2006) 5 NWLR (pt. 974) 619 at 640 are relied on for the submission and Anukam v. Anukam (2008) 5 NWLR (pt. 1081) 455 and Obayuwana v. Adum (2000) LPELR – 49377 (SC) are cited on the guidelines to distinguish a ground of mixed law and facts from one of pure law alone and it is argued that the Notice of Appeal filed by the Appellant contains grounds of law alone. The court is urged to disregard and discountenance the objection for lacking in merit.

I should start a determination of the objection by noting that the Appellant has conceded that the objection relates to the Notice of Appeal filed on the 15th July, 2021; filed within the time prescribed by the provisions of Section 27 (1) of the Supreme Court Act, 2004. The Learned counsel for the Appellant has also stated on pages 2 – 3 at paragraphs 2.3, 2.4, 2.5 and 2.10 of the Appellant's Reply Brief that the extant Notice of Appeal for the purpose of hearing and determination of the appeal is the Amended Notice of Appeal filed on 8th October, 2021 filed along with a motion on notice for amendment of the Notice of Appeal filed on the 15th July, 2021, which was not opposed by the Respondent. He predicted the statement on "*if this Honourable Court graciously grants the amendment sought by the Appellant, which is unchallenged*", at paragraph 2.10 of the Reply Brief.

Since the motion for the amendment of the Notice of Appeal filed on the 15th July, 2021 was granted by the court on the 30th May, 2022 and the Amended Notice of Appeal deemed, the Learned Counsel for the Appellant is right on the recent authority of this Court in Oboh v. Nig.

Football League Ltd. (supra) that the extant Notice of Appeal to be used and relied on for the purpose of hearing and determination of the appeal is the Amended Notice of Appeal filed on the 8th October, 2021 and not the Notice of Appeal filed on the 15th July, 2021 which was amended. See also Afribank Nig. Plc v. Akwara (supra). With this position of the law, the objection which goes to challenge the grounds contained on the Notice of Appeal filed on the 15th July, 2021 which was amended and so superseded by the Amended Notice of Appeal filed on the 5th October, 2021 and no longer present the grounds of complaints or attack against the decision/judgment of the court below in this appeal, "the wind" has been effectively taken out of the sail of the objection.

There is no specific challenge or objection to the competence of any of the grounds contained on the Amended Notice of Appeal, which the Appellant's Counsel submits, at paragraph 2.14 of the Amended Respondent Brief, all raise or involve questions of law alone. However, it needs to be pointed out that the law is that the absence of such objection from the Respondent and/or description of the grounds as

being grounds of law by the Appellant do/does not make the grounds on the Amended Notice of Appeal to automatically involve/s questions of law alone as prescribed under Section 233 (2) (a) of the Constitution, to make them and the appeal as of right so as not to require prior leave of court to be valid and competent. See Olojoun v. Ozima (1986) 2 NWLR (pt. 6) 167, Ejuwunmi v. Lostair (West Africa) plc (1988) 12 NWLR (pt. 576) 146, Ogbechie v. Onochie (1986) 2 NWLR (pt. 23) 484, NNPC v. Fanfa Oil Ltd. (2012) LPELR – 7812 (SC), Opuiyo v. Omoniwari (2007) 6 SC (pt. 1) 35, Ajuwa v. SPDCN (2011) 11 – 12 SC (pt. iv) 118. Where the issue was properly raised by way of an objection, or raised suo motu by it, the court has the duty, to look closely at and consider the grounds along with the particulars provided in support thereof, in order to properly determine the nature of grounds; i.e. whether of law alone or of mixed law and facts. Decisions of this Court on the position are legion and include NNPC v. Famfa Oil Ltd. (supra), Anoghalu v. Oranlosi (1999) 13 NWLR (pt. 634) 297, (1999) 10 – 12 SC, 1, Calabar Co-op. Ltd v. Ekpo (2008) 1 – 2 SC, 229 FBN v. T.S.A. Ind. Ltd. (2010)

15 NWLR (pt. 1216) 247, Ajuwa v. SPDCN (supra), Okorocha v. PDP (2014) LPELR – 22058 (SC), B.A.S.F. Nig. Ltd. v. Faith Ent. Ltd. (2007) 30 NSCQR, 1123. In this appeal, I have in line with the recognized guidelines and principle stated and restated in these decisions, considered the four (4) grounds contained on the Appellant's Amended Notice of Appeal filed on the 8th October, 2021 and am of the view that they all question and challenge the understanding and application of principles of law on facts which were/are not disputed by the parties, in the decision appealed against. Not long ago, this Court, per Nweze, JSC, in Reg. Trustees, Mission House Int. v. All Trust Bank, Plc (2021) 17 NWLR (pt. 1805) 275 at 299, restated the law on the classification of a ground of appeal that:

> *"In determining the classification or characterization of a ground of appeal, a court has a duty to do a thorough examination of the ground in order to find out whether, from the said ground, it is evident that the lower court misunderstood the law or whether it misapplied the law to the facts which are already proved or admitted. In any of those two instances, the ground would qualify as a ground of law. Thus, it is neither its cognomen nor its designation as "error of law" that determines the character of a ground of appeal."*

In this premise, the grounds are of law alone, on which, as prescribed by the provision of Section 233 (1) (a) of the Constitution, an appeal is as of right from the decision of the court below to this Court. See Ogbechi v. Onochie (1986) 2 NWLR (pt. 23) 484, Nwadike v. Ibekwe (1987) 4 NWLR (pt. 67) 718, Orakosim v. Menkiti (2001) 5 SC (pt. 1) 72, Osasona v. Ajayi (2004) 5 SC (pt. 1) 88.

For that reason, no leave of the court is required and needed for the appeal to be valid and competent, as demonstrated in the decisions of this Court in the cases cited above. But, that is not the end of the matter, because the Appellant has relied on an Amended Notice of Appeal in the prosecution of the appeal.

The law is now firmly settled that it is only a valid and competent Notice of Appeal, as an originating process in the appellate courts, filed by an Appellant before or in an appellate court against the decision of a lower court, that can properly be amended. Also, that an invalid and incompetent Notice of Appeal is dead on arrival and so cannot, in law be revived or life be infused into it by way of a subsequent amendment.

The absence of a valid and competent Notice of Appeal means that there is no appeal in existence, in law, notice of which can be amended. Once an appeal does not exist in law, the jurisdiction of an appellate court would be absent and lacking for the purpose of an amendment of the notice of the non-existent appeal. See Omigbedin v. Balogun (1975) 1 ALL NLR (pt. 1) 233, Lamai v. Orbi (1980) 5 – 7 SC, 24, Oluwole v. L.S.D. & P. C (1983) 5 SC, 1 Aja v. Okoro (1991) 7 NWLR (pt. 203) 260, Global Transp. Oleanieo S. A. v. Free Ent. Nig. Ltd Erisi v. Idika (No. 1) (1987) 4 NWLR (pt. 66) 50, (2001) 2 SC, 154, Tiza v. Begha (2005) 5 SC (pt. II) 1, Okoro v. Okoro (2009) LPELR – 8413, Shelim v. Gobang (2009) 12 NWLR (pt. 1156) 435, NBN v. NET (1986) 3 NWLR (pt. 31) 667, Atuyeye v. Ashamu (1987) 1 NWLR (pt. 49) 267, Odofin v. Agu (1992) 3 NWLR (pt. 229) 350, Nwaeze v. Eze (1999) 3 NWLR (pt. 595) 410.

I have seen the Notice of Appeal filed on the 15th July, 2021 which also contains four (4) grounds that are materially the same with the grounds contained on the Amended Notice of Appeal filed on the 8th October,

2021. I have earlier stated that the grounds contained on the Amended Notice of Appeal are, in line with the established guidelines for the identification thereof, grounds of law alone, which do not require the prior leave of the court to be validly filed and competent. For that reason, the Notice of Appeal filed on 15th July, 2021 was a valid and competent Notice of Appeal which this Court has the jurisdiction to order an amendment of, thereby rendering the Amended Notice of Appeal competent.

The summary of all I have said above is that the objection to the competence of the grounds contained on the Appellant's Notice of Appeal filed on 15th July, 2021 as well as the Amended Notice of Appeal filed on the 8th October, 2021 lacks merit and it is dismissed.

I now go to the issues in the appeal.

I have read the sixty-five (65) pages Lead Judgment of the court below appealed against, which appears at page 435 to 499 of the Record of Appeal, calmly and more than once, as well as the real grievance of the Appellant as embedded in the grounds contained on the Amended

Notice of Appeal and I am of firm view that the crucial question that calls for decision in the appeal is thus:-

> *"Whether the court below is right to have affirmed the order by the trial court setting aside the re-registration of the Respondent by the Appellant during the pendency of the case and the motion for injunction."*

This issue is discernable and derivable from all the four (4) grounds contained on the Amended Notice of Appeal and in exercise of the court's indisputable discretion to either reframe or frame issues in order to determine the germane and real dispute in an appeal, in precise terms, see Chabasaya v. Anwasi (2010) 10 NWLR (pt. 1201) 163 at 181, NDP v. INEC (2012) 12 MJSC (pt. II) 67, Yisi Nig. Ltd. v. Trade Bank, Plc (2013) LPELR – 20087 (SC), Tazoor v. Loraer (2016) 3 NWLR (pt. 1500), 463 at 506, Okafor v. Abumofuani (2016) 12 NWLR (pt. 1525) 117, I intend to use it to determine the appeal.

Before that however, perharps, I should say that the issues "a" and "b" formulated in the Appellant's brief on non-existence of grounds of appeal in the trial court and alleged failure to invite parties to address on the issue raised suo motu by the trial court are introduced only for the

purpose of obfuscating the crucial issues decided by both the trial court and the court below. It may be recalled that in the introductory part of this judgment on the facts that gave rise to the appeal, I have stated that a motion for an order interlocutory injunction to restrain the Appellant from de-registering the Respondent during the pendency of the suit before the trial court, was filed by the Respondent and duly served on the Appellant. The said motion was withdrawn by the Respondent's counsel, but another motion on notice was filed on the 19th February, 2020 for mandatory restorative injunction by the Respondent because the Appellant had, during the pendency of the suit, de-registered the Respondent.

The motion and the suit were heard together by the trail court and the parties addressed that court on all the issues raised in both. In particular, on the 27th February, 202, when the motion for mandatory restorative injunction came up for hearing before the trial court, the proceedings at page 214 – 216 of the Record of Appeal were as follows:-

"Appearances:

Respectfully, John Ochogwu, Esq., (with Messrs Francis Akinlotan and John Ugbeikwu) for the Appellant.

Respectfully, Abdulazeez Sani, Esq., for the Defendant.

Ochogwu: My learned friend Francis Akinlotan, Esq., is to conduct the proceedings for today.

Akinlotan: We have a special and urgent application before the Court.

Court: What is urgency in the application?

Akinlotan: We have an urgent situation that the Defendant has put us and the activities and the issues that will be affected. They have been 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 affidavit in support of motion dated the 19th day of February, 202.

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

Sani: Their de-registration 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 3rd 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 record 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, 202 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?

Mr. Ochogwu, on your part an event took place that took something out of your action what have done?

Even if I were to allow you to move this process the way it is, it does not cure it.

I am going to give a date for hearing.

Agree on a date to come back to Court.

Akinlotan: Subject to the convenience of the Court, we have agreed to come back on the 20th day of April, 2020.

Court: Mr. Sani, I am giving you from now to 20th April, to go and give your client a proper legal advice.

I am against anybody or organization taking the laws into their hands as the best use of power is restraint."

These proceedings are also set out at pages 16 – 17 of the Appellant's Brief and Pages 478 – 480 of the Record of Appeal by the court below.

As can easily be observed, the issue of the de-registration of the Respondent by the Appellant during the pendency of the suit and the application for interlocutory injunction was raised by the Respondent's Counsel at the hearing of the motion for mandatory restorative

injunction filed on the 19th February, 2020. The Learned Counsel for the Appellant was confronted by the trial court on the issue of the Appellant's action of de-registration of the Respondent during the pendency of the suit and the motion for interlocutory injunction to restrain the Appellant from de-registering the Respondent pending the determination of the suit. Appellant's Counsel was apparently afforded the opportunity to be and was in fact, heard on the issue of Lis pendens in respect of the action taken by the Appellant to de-register the Respondent during the pendency of the suit before the trial court as well as the motion for interlocutory injunction, service of which was acknowledged by the Learned Counsel for the Appellant and to which he had reacted by filing a Counter Affidavit to oppose same on the 3rd February, 2020. In the judgment of the trial court, the motion for mandatory restorative injunction along with the suit, were determined and orders made accordingly. On the face of the above unchallenged record of proceedings before the trial court and relied on by the Appellant's Counsel, it is clearly spurious for counsel to raise and claim

that the issue of "Lis pendens" was raised suo motu by the trial court and the Appellant was not afforded the opportunity to address on it before it was used and relied on by the trial court as the basis of its decision to set aside the de-registration of the Respondent by the Appellant during the pendency of the suit. It is elementary that the trial court, as the name implies, is a court of first instance before which matters or causes are initiated, commenced or filed by parties for the initial determination of disputes and their respective legal rights and obligations arising from alleged breach or violating of same.

The suit of the Respondent initiated before the trial court was one of such cases and was heard or tried and decided on that basis. The law recognises that a superior court of record such as the trial court in this appeal, (and indeed all courts established by or under the constitution or statute/law) are inherently imbued with the requisite power and authority to, in the course or proceedings in cases, identify and isolate, what, from the cases presented by the parties in both pleadings and evidences, in its trained and experienced judicial view, is or are the real questions or

issue/s that arise/s and which require determination by it for the purpose of complete effectual and final resolution of the dispute in the case. In this regard, a trial court is entitled and has the discretionary power and jurisdiction to, depending on the peculiar facts and circumstances in a case, either abridge, reframe or even reject or ignore issues submitted by counsel to the parties in their addresses at the close of evidence and to frame issue/s which it considers as real, germane and crucial for the resolution of the dispute arising for determination in the case before it. See Neke v. ACB Ltd. (2004) 1 SC (pt. 1) 32, (2004) 7 SCNJ, 193, Agbareh v. Munira (2008) 2 NWLR (pt. 1071) 378, Machika v. Imam (2010) LPELR – 4448, Ogboro v. Reg. Trustees, Lagos Polo Club (2016) LPELR – 40016. In these premises, a court is not bound to consider the issue as formulated and presented by the parties in their addresses or in the order such issues are presented, but possesses the judicial discretion to re-formulate or formulate the real issues that require resolution in the determination of the case presented by the parties for the purpose of attaining substantial justice between them.

However, I should caution that it is not a free for all or a licence for the court to frame or raise issues which are completely outside the facts and evidence presented by the parties before it, in the name of exercising a judicial discretion over the issues in a case. The law is known and so trite, that judicial discretion should and must always be exercised judicially and judiciously by a court of law, and not arbitrarily, whimsically or capriciously. See Univ. of Lagos v. Aigoro (1985) 1 NWLR (pt. 1) 143, Olamiyan v. Univ. of Lagos (1985) 2 NWLR (pt. 9) 599, Williams v. Williams (1987) 4 SC, 42, (1987) 1 NWLR (pt. 54) 66, Oduba v. C.V.S.A.H. (1997) 6 NWLR (pt. 508) 185, Olumegbon v. Kareem (2002) 5 SC, (pt. 1) 101, (2002) 34 WRN, 1 at 8, the Owners of the "Mr LUPEX" V. Nigeria Overseas Chartering & Shipping Ltd. (2003) 9 MJSC, 156 at 168. Being a court of first instance, the trial court was not an appellate court before which appeals against or from decisions of lower courts are initiated or brought for review on grounds of appeal and so the issues submitted in cases before it are not formulated from ground of appeal, but rather from the facts and

evidence representing the cases of the presented by the parties. Both the trial and appellate courts have the judicial discretion over issues raised or formulated by the parties in their Addresses or Briefs of Argument and are not bound to use the formulation by the parties in the determination of the cases or appeals, as the case may be. In the above proceedings of the trial court, the learned counsel for the Appellant had unequivocally, freely and expressly stated and admitted that the Appellant de-registered the Respondent while both the suit and the motion for interlocutory injunction to restrain the Appellant from the de-registering the Respondent during pendency of the suit, were pending and to which the Appellant had filed processes to oppose. There was no longer the need for the trial court to call on the parties, particularly the Appellant, for any further address on the issue of Lis pendens in the suit, in respect of the action taken by the Appellant on the de-registration of the Respondent before the determination of the valid and competent motion for interlocutory injunction submitted to the trial court for decision. The issue of denial or breach of the Appellant's right to fair

hearing in the suit on the said issue did not arise or borne out by the record of proceedings of the trial court. Once more, it was an issue that was raised by the Respondent's counsel in the course of the proceedings before the trial court and the learned counsel for the parties had addressed on it. In the circumstances, it is not correct to say that it was an issue raised and decided suo motu by the trial court in its judgment without affording the parties a hearing thereon, before then.

In the case of Enekwe v. I.M.B.N. Ltd. (2006) LPELR – 1140 (SC), Hon. Justice Niki Tobi, JSC stated the law that:-

> *"A Judge has the right in our adjectival law to use particular words and phrases, which in his opinion, are germane to his evaluation of the facts of the case. In so far as he does that in line with the evidence before him, it will be unfair for counsel to castigate him or accuse him of raising issue suo motu. A Judge can only be accused of raising issue suo motu if the issue was never raised by any of the parties in the Litigation.*
>
> *A Judge cannot be accused of raising issue suo motu if the issue was raised by both parties or by any of the parties in the proceedings."*

The court below, is accordingly on the firm terrain of the law in the finding that the alleged failure by the trial court to invite the parties to address it on the issue identified by it as the material question to be

decided in the case before it on the admitted action taken by the Appellant to de-register the Respondent during the pendency of the suit and the motion for interlocutory injunction, was of no moment. Again, again, the issues a. and b. in the Appellant brief are simply meant to flummox and beguile the court away from the relevant, fundamental and crucial issue which calls for determination in this appeal, as demonstrated above.

I now go back to the submissions of the parties on the identified material issue for determination in this appeal.

APPELLANT'S SUBMISSIONS:

The substance of the submissions is that the principle of Lis Pendens does not apply to and in the construction of a constitutional provision involved in litigation and reliance was placed on the statements by this Court in the case of Enekwe v. JMB Nig. Ltd. (2007) FWLR (pt. 349) 1053. (2006) LPELR – 1140 (SC), Dan-Jumbo v. Dan-Jumbo (1999) 11 NWLR (pt. 627) 445, Osidele v. Sokunbi (2012) LPELR – 9378 (SC), Olori Motors Co. Ltd. v. U.B.N. Plc (2006) LPELR – 2589 (SC) and

Backlays Bank of Nig. Ltd. v. Ach. Ashiru (1978) 6 – 7 SC, 128, for the argument. It is also submitted that the court below was wrong to uphold the decision of the trial court setting aside the de-registration of the Respondent by Appellant after upholding the finding that the Appellant has the constitutional power under Section 225(A) of the 1999 Constitution to de-register political parties, which provisions are to be assigned their ordinary grammatical and plain meanings since the words therein are clear and unambiguous. Orubu v. NEC (1988) 5 NWLR (pt. 94) 323, Agwuna v. A. G. Federation (1995) LPELR – 258 (SC), INEC v. Asuquo (2018) 9 NWLR (pt. 1624) 326 and Ogunmade v.Fadayiro (1972) 8 – 9 SC, 1 are referred on the duty of a court in the interpretation of clear and unambiguous provisions of a statute.

The judgment of the court in Appeal No. SC/CV/458/2020 delivered on 7th May, 2021, upholding the constitutional powers of the Appellant to de-register political parties, is cited and the court is urged to uphold same.

In conclusion, the court is urged to allow the appeal and set aside the decision by the court below affirming the order by the trial court setting aside the de-registration of the Respondent by the Appellant.

RESPONDENT'S SUBMISSION:

The fulcrum of the submissions, relying on, inter alia, the cases of Reg. Trustees, Apostolic Church v. Ulowoleni (1990) 4 NWLR (pt. 158) 514 at 537, F.A.T. B. v. B.V. Ezegbu (1992) LPELR – 1278 (SC) and C.D.C. Nig. Ltd. v. SCOA Nig. Ltd. (2007) 6 NWLR (pt. 1030) 300 at 363, is that the issue is not about whether the Appellant has the power to de-register political parties alleged to have breached the Constitution, but the exercise of the power when the parties have submitted their dispute on the exercise to the court for decision, before the decision by the court as rightly stated by the court below in its judgment, at page 482 of the Record of Appeal.

It is submitted that all the cases cited on the application of the principle of Lis pendens are misplaced and inapplicable to the facts of this appeal which are different. Also, the Respondent did not challenge the power

of the Appellant to de-register political parties in accordance with the provisions of the Constitution in the suit before the trial court or even the court below, but how the said power was exercised during the pendency of the suit, on the authority of A. G. Anambra State v. Okafor (1992) 2 NWLR (pt. 224) 396 at 419.

We are urged to hold that the facts in the cases cited on the power of the Appellant to de-register political parties are different from those in present appeal and to dismiss the appeal and uphold the decision by the court below setting aside the de-registration of the Respondent during the pendency of the suit and the motion for interlocutory injunction before the trial court, in conclusion.

In the Appellant's Reply Brief, the court is urged to, once more, affirm its decisions in NUP v. INEC (supra) and Appeal No. SC/CV/485/2020 on the powers of the Appellant to de-register political parties, as binding in this appeal.

RESOLUTION:

As a foundation, it may be recalled that, I have at the beginning of this judgment, set out the case presented by the Respondent before the trial court against the Appellant as represented in the questions submitted to that court for answers and the reliefs sought on the originating summons. The grievances of the Respondent against the Appellant are contained in the questions IV, V, and VI of the originating summons, which for appropriate appreciation, I set out again thus:-

> "*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 18th October, 2017, until 16th August, 2018, bneing 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 election; 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 required registration period including the 2019 general elections, the Defendant can deregister the Plaintiff for failure to win any seat in the 2019 general election; pursuant to Section 225A (b & c) of the Constitution of the Federal Republic of Nigeria, 1999 as amended).*

All the reliefs sought by the Respondent are entirely predicated on the grievances of alleged exclusion of Respondent from the elections of 2019 that the power of the Appellant to de-register the Respondent as a political party under the provisions of Section 225(A) of the Constitution was challenged by the Respondent. The genuine and real purport of the Respondent's suit was to question and challenge, directly and frontally, the constitutional powers of the Appellant to de-register it as a political party on ground of allegation of exclusion from the 2019 elections due to, yet, another allegation, of late issuance of certificate of registration to the Respondent before the said elections.

In the above circumstances, it is not correct for the Learned Counsel for the Respondent to say that the suit before the trial court did not challenge the constitutional power of the Appellant to de-register political parties pursuant to the provisions of Section 225(A). It was because the suit challenged the power of the Appellant to de-register political parties under or as prescribed in Section 225(A) that the Respondent in relief 6 of the originating summons, sought and prayed the trial court for an order of injunction restraining the Appellant from de-registering it until it was given equal opportunity to freely participate in the 2023 elections. In addition, the Respondent later filed the motion of 8th January, 2020 for an order interlocutory injunction to restrain the Appellant from exercising the power provided for under the provisions of Section 225(A) of the Constitution to de-register the Respondent as a political party pending the determination of the suit challenging the power of the Appellant. It is therefore, beyond reasonable argument that the primary sincere and real object and purpose of the Respondent's suit was to and, in fact and law directly challenge and frontally challenged

the power of the Appellant to de-register the Respondent pursuant to the provisions of Section 225(A) after the 2019 elections.

The parties are one in this appeal that the Appellant has and possesses the constitutional power vested in it by the express provisions of Section 225(A) of the 1999 Constitution (as altered/amended) to de-register political parties. The provisions are simple, plain and clear to be devoid any ambiguity in the following terms:-

> *"225(A) The Independent National Electoral Commission shall have power to de-register a political party for –*
> *(a) breach of any of the requirements for 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 word in the Chairmanship election;*
> *(ii) one seat in the National or State House of Assembly election; or*
> (iii) *one seat in the Councillorship election."*

By the natural, ordinary and grammatical meanings of the words in these straight forward provisions, the "fons ego" "supreme law of the land" and "grund norm", has explicitly, conferred on, vested in, donated or

given the legal and lawful authority and power to the Appellant to de-register a political party for two (2) broad reasons or on two (2) grounds thus:-

(a) Breach of any of the requirements for registration as a political party or/and

(b) Failure to win election as set out therein.

Recently, a full panel of this Court unanimously affirmed the legal authority and power of the Appellant to de-register a political party under and pursuant to the above provisions of Section 225(A) in National Unity Party (NUP) v. I.N.E.C. (2021) 17 NWLR (pt. 1805) 305. In the Lead Judgment read by Hon. Justice Adamu Jauro, JSC, at page 341, the court stated that:-

> *"It is not in dispute that the powers of the respondent to deregister political parties in Nigeria is statutory. Its powers is rooted in section 225A (a) (b) and (c) of the Constitution of the Federal Republic of Nigeria (1999) (Fourth Alteration No. 9) Act, 2017 which provides that:*
>
> *"225A The Independent National Electoral Commission shall have power to de-register a political party for –*
>
> *(a) Breach of any of the requirements for 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."*

However, in the above case, the Appellant had already de-registered the political parties in question before they commenced legal actions to challenge the power of the Appellant to de-register them unlike in the Respondent's case. As a reminder, the Respondent initiated the action before the trial court when the Appellant threatened to de-register political parties pursuant to the provisions of Section 225(A) of the Constitution after the 2019 Elections and before the actual de-registration of the Respondent. The Respondent also, sought for an order of the trial court to restrain the Appellant from going ahead to carry out the threatened de-registration of the Respondent before the case was finally determined by that court, unlike in the other cases where the de-registration had been completed, done and happened

before the resort to the legal actions before the court and so there was no application from the parties for order to restrain the completed act of de-registration. To that extent, although the power of the Appellant to de-register political parties was affirmed in the aforenamed case, the issue of whether the Appellant can validly exercise the power during the pendency of a case before a court of competent jurisdiction challenging the exercise of the power as well as an application for an interlocutory order to restrain the Appellant from de-registering the Respondent pending the determination of the action by the court did not arise and was not considered and pronounced upon by the court.

Now, in addition to the challenge by the Respondent to the Appellant's power to de-register it as a political party in the suit and the motion to restrain the Appellant from the exercise of the power provided for in Section 225(A), the Respondent as a result of the exercise of the power by the Appellant despite and in spite of, and during the pendency of the suit and the motion for interlocutory injunction, filed the motion 19th February, 2020 for mandatory restorative order of injunction to compel

the Appellant to reverse the de-registration of the Respondent until the suit was finally determined by the trial court. It is therefore clear that the motion for the mandatory order to restore the registration of the Respondent in order for the "status quo ante" to be maintained during the pendency of the suit, and in respect of which the trial court made the order setting aside the de-registration of the Respondent by the Appellant, was merely incidental to the primary challenge to the power of the Appellant to de-register the Respondent pursuant to the provisions of Section 225(A). The motion for mandatory order to restore the registration of the Respondent was essentially directed at the stage and manner the power of the Appellant to de-register a political party was exercised by it in the circumstances of the suit before the trial court. Although it is settled that the Appellant has the constitutional authority and power to de-register a political party under the provisions of Section 225(A), the power is not absolute, unqualified or unquestionable since it was made subject to certain conditions and requirements set out and prescribed therein.

In addition, the exercise of the power is also made subject to the supervisory judicial control by virtue of the provisions of Section 6(6) (a) and (b) of the same Constitution which imbues the Appellant; a public authority or institution, with the power. The provisions of Section 6(6) (a) and (b) are as follows:-

> *"(6) The judicial powers vested in accordance with the foregoing provisions of this section –*
>
> *(a) shall extend, notwithstanding anything to the country in the Constitution, to all inherent powers and sanctions of a court of law;*
>
> *(b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all action and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."*

Under these provisions, the Respondent was vested with the right to approach the court for the determination of its rights and the obligations of the Appellant in relation to its status as a duly registered political party in line with the provisions of Section 221 and 222 of the Constitution and Section 78 of the Electoral Act 2010 (as amended). In all democratic environments; constitutional or otherwise, the rule of law is the fundamental basis of all actions

by the government and all its agencies, institutions, establishments or departments, however, known. In Mil. Gov., Lagos State v. Ojukwu (1986) All NLR, 233, (1986) 1 NWLR (pt. 18) 621, Obaseki, JSC, dealing with the doctrine of the rule of law had said:-

> *"The Nigerian Constitution is founded on the rule of law the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the frame-work of recognised rules and principles which restrict discretionary power which Coke colourfully spoke of as golden and straight met-wind of law as opposed to the uncertain and crooked cord of discretion. ... the rule of law means that disputes as to the legality of act of government are to be decided by judges who are wholly independent of the executive."*

In this appeal, the Respondent initiated the suit before the trial court to challenge the power of the Appellant to de-register it as a political party and sought for order of the court to restrain, prevent and stop the Appellant from the exercise of that power during the pendency of the suit so as to enable the court to hear, consider and determine the suit on the merits of the facts and evidence to be presented by the parties before it. The Appellant was admittedly, duly and properly served with all the relevant processes of the suit and the application for an order of

injunction to which it had formally reacted, responded to and answered by way of filing Counter Affidavits in the trial court.

Evidently therefore, the parties had submitted their dispute to the trial court, a court with the requisite constitutional jurisdiction to entertain it, for resolution in accordance with the dictates of the rule of law.

Now, it is a basic principle of the rule of law which has been settled, stated and re-stated by the courts in battalions of decisions that once parties have submitted their dispute as to the existence and entitlement to legal civil rights and obligations for determination to a court of competent jurisdiction, they have the unqualified statutory obligation and duty to submit totally to the judicial powers and authority of the court in the determination and resolution of the dispute. None of the parties has the valid power to, either by deliberate omission or actions, interfere with or in the court's jurisdiction to conclusively, effectively and finally determine and resolve the dispute between them in accordance with the relevant law/statutes. In specific terms, none of the parties to a suit before a court of law is permitted or allowed by the

principle or doctrine of the rule of law, to, while the case is pending before the court, take the law in to his hands and do anything or take any deliberate action which directly touches on the subject of the dispute submitted to the court for resolution in order to render the final resolution by the court of no practical legal value or effect or completely useless with no derivable utilitarian value, worth or benefits.

Actions or omissions which are intended or meant by parties to make a mockery of the judicial processes of a court of law during the pendency of cases before the court by foisting a fait accompli upon it in the case, are a frontal and direct assault and attack on the principle and doctrine of the rule of law, especially in constitutional democracy such as we operate and practice in Nigeria. The situation is more serious when such deliberate action or omission was by or from a public body, institution, department, establishment or agency of government created or established by the constitution itself for the purpose of enthroning democracy – where the rule of law should be the basic foundation or premise of and for all governmental actions, as stated earlier. If parties

in a case before a superior court of law and record established by the Constitution to exercise the judicial powers of the Federation vested in it under Section 6 of the Constitution were to be free and at liberty to, with impunity, disrespect, dishonour and disparage the judicial processes of the court, then the rule of anarchy and lawlessness, rather than the rule of law, would result. A situation where parties to a case before a court of competent jurisdiction would resort to self-help over the subject matter of a dispute which they have submitted to it for adjudication and resolution would not only result in to chaos, but also destroy the foundation upon which the constitution of a Nation is premised. It is a basic principle of the rule of law that no matter or however clear, well founded or justifiable a party to a case before court of competent jurisdiction may consider his legal right, obligation, power or authority to be or might be, it will be disrespectful and contemptuous of the judicial processes of the court for him to take the law in to his hands by resorting to self-help over the subject matter of a dispute between the parties which the court has legally taken cognizance and commenced

trial of. Resort to self-help by parties during the pendency of an action before a competent court of law constitutes not only a subversion against the constitutional judicial powers of the court but also a direct affront to the Constitution which the court has the inherent power and authority to stop and penalize.

Again, ESo, JSC in Mil. Gov., Lagos State v. Ojukwu (supra), also reported in (1986) 17 NSCC (pt. 1) 304, stated that:-

> *"....in the area where the rule of law operates, the rule of self-help by force is abandoned. Nigeria being one of the countries in the world, even in the third world which processes loudly to follow the rule of law, gives no room for the rule of self-help by force to operate. Once a dispute has arisen between a person and the government or authority and the dispute has been brought before the court, thereby involving the judicial powers of the state, it is the duty of the government to allow the law to take its course or allow the legal and judicial process to run its full course."*

Similarly, in the case of Reg. Trustees, Apostolic Church v. Oluwoleni (supra), Nnameka-Agu, JSC, speaking for this Court, had restated that:-

> *".....once parties have turned their dispute over to the Courts for determination, the right to resort to self-help ends. So, it is not permissible for one of the parties to take any step during the pendency of the suit which may have the effect of foisting upon the Court a situation of complete helplessness or which may give the impression that the Court is being used as a mere subterfuge, to tie the hands of one party while the party helps himself extra-judicially. Both parties are expected to*

> *await the result of the litigation and the appropriate order of Court before acting further."*

See also A. G., Abia State (2006) 7 SC (pt. 1) 51, (2006) 16 NWLR (pt. 1005) 265, Shining Star Nig. Ltd. v. AKS Steel Nig. Ltd. (2011) 4 NWLR (pt.) 596, F.P.A.T.B. v. Ezegbu (supra), Agbai v. Okogbuo (1991) LPELR – 225 (SC).

In the above premises of the law, I totally agree with the court below when it held, in its judgment at pages 486 – 487 of the Record of Appeal, that:-

> *"..... 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 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."*

I must say that any deliberate action or omission by any of the parties to a case pending before a superior court of competent jurisdiction by way of self-help and in complete disregard to valid judicial processes of that

court, is not only reprehensible, but should be penalized with the severest of penalties provided for or allowed by the law if the authority, dignity and integrity of the courts as well as the rule of law are to be protected, upheld and maintained.

I have not been able to find a decision by this Court which upheld the action of any party in a case which was deliberately taken by way of self-help to render, not only the proceedings, but the eventual outcome or final decision of a court of competent jurisdiction, nugatory or practically of no legal value. However, decisions of this Court deprecating, severely, and penalizing resort to self-help by parties to an action before a court of law, during the pendency of the action, some of which are cited above, abound in our jurisprudence. I have the duty and obligation to follow those decisions in order to maintain the certainty and orderly development of the law. Resort to self-help by parties to an action before a court of competent jurisdiction in complete disregard of the judicial processes of the court cannot and should not, or better still, must not be condoned in all cases.

For the above reasons, I answer the issue for determination in the affirmative and endorse the decision by the court below setting aside the de-registration of the Respondent during the pendency of the action before the trial court.

The above position as it is, it is worthy of note that the order setting aside the de-registration of the Respondent was to pend the final determination of the action before the trial court in which, the Respondent, inter alia, sought for an order to restrain the Appellant from de-registering the Respondent before the 2023 Elections. Since the Respondent's action was eventually determined finally by the trial court and court below had, in the judgment appealed against, set aside the order to restrain the Appellant from de-registering the Respondent before the 2023 Elections and there is no appeal against that decision by the court below on the issue, the order, setting aside the de-registration during the pendency of the action before the trial court, has abated while the decision by the court below on the power of the Appellant to de-register the Respondent remains extant and effective.

On the whole, the appeal is dismissed for being devoid of merit.

Parties to bear their respective costs of prosecuting the appeal.

MOHAMMED LAWAL GARBA
JUSTICE, SUPREME COURT

CERTIFIED TRUE COPY
REGISTRAR
Supreme Court of Nigeria
O. O. OWODOLU ESQ
Official 27/1/2023

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