

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY, THE 12TH DAY OF OCTOBER, 2020
BEFORE HIS LORDSHIP, THE HON. JUSTICE I. E. EKWO
JUDGE
SUIT NO: FHC/ABJ/CS/10/2020

BETWEEN:

YOUTH PARTY PLAINTIFF

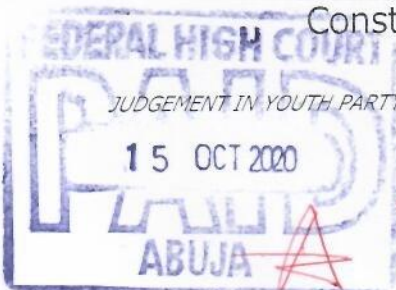
AND

**INDEPENDENT NATIONAL }
ELECTORAL COMMISSION } DEFENDANT**

JUDGEMENT

This judgement is upon the Originating Summons issued upon the application of the Plaintiff on 8th January, 2020 who seeks the determination of the following questions:

- 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 judgement 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)



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and Section 78 (4) of the Electoral Act 2010 (as amended), which requires it to register a political party within 30 days of fulfilment 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 judgement 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 Plaintiffs 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 fulfilment of the constitutional conditions, and in disobedience to the Judgement of this Honourable Court in Suit No: FHC/ABJ/CS/221/2017, delivered on 18th October, 2017, until

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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 de-register 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 de-register the Plaintiff on the basis on the Plaintiffs 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 Plaintiff claims against the Defendant as follows:

1. A DECLARATION that the Defendant breached the

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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 fulfilment 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 Judgement 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 Plaintiffs 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 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 255A (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 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 de-registering 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.

The case of the Plaintiff is that it is a political party registered in accordance with the laws of the Federal Republic of Nigeria and the Defendant is the Federal Government Agency saddled with the responsibility of registration and regulation of political parties and conduct of elections in Nigeria. The Plaintiff by their letter of 24th

November, 2016 served on 5th December, 2016, applied to the Defendant for the Defendant's Guidelines for the registration of political parties and by a letter dated 21st December, 2016, the Defendant availed them. The Plaintiff by another letter dated 18th January, 2017, served on the Defendant on 23rd January, 2017, applied to the Defendant to register their political association. In the application, the Plaintiff presented the name, logo as well as meaning of logo, party acronym and the address of the head office of the Plaintiff, Youth Party to the Defendant and the Defendant acknowledged the application by its letter dated 10th February, 2017, and served on the Plaintiff on 20th February, 2017. In the Defendant's letter dated 10th February, 2017 the Defendant erroneously stated that the Plaintiff applied to register a political party in the name of Youth Alliance for Good Governance instead of Youth Party and refused to proceed with the application on the ground that the Defendant considered the application and found that the "proposed name does not comply with the requirements for registration as a Political Party under Section 222 (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)" and further stated that "the word Youth depicts its membership as being restrictive to a peculiar group of people in the country - i.e. "Youth". Being dissatisfied with the Defendant's response, the Plaintiff responded by their letter dated 13th March, 2017 to highlight their positions. Despite the letter dated 13th March, 2017, the Defendant failed, refused and neglected to register the Plaintiff as a political

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party notwithstanding the fact that the Plaintiff has met the legal requirement for registration as a political party. The Plaintiff then instituted an action at the Federal High Court Abuja with Suit No: FHC/ABJ/CS/221/2017, seeking an order to compel the Defendant to issue certificate of registration to the Plaintiff and the Plaintiff's prayers were granted in the Judgement of the Court delivered on 18th October, 2017 (Exh. 1). Consequent upon the Judgement, the Plaintiff submitted another application on 12th January, 2018, accompanied by completed Defendant's Registration Forms (Exh. 2) and the Defendant was required by law to register the Plaintiff within 30 days from the submission of their application for registration. Subsequently, the Defendant conducted a verification exercise with respect to the Plaintiff's application on 1st March, 2018, at the Plaintiff's office at 6B, Bamako Crescent, Zone 1, Wuse, Abuja, F.C.T, and thereafter, failed, refused and neglected to register the Plaintiff as a political party in Nigeria. The Plaintiff wrote letters to the Defendant dated 8th April, 2018 and 30th May, 2018, requesting the issuance of certificate of registration to the Plaintiff (Exhs. 3 and 4). The Defendant's delay in registering the Plaintiff caused a good number of party members that were interested in vying for elective positions to move to other registered political parties such as Action Alliance (AA). The Defendant's delay also caused a lot of party members that were willing to provide financial support to candidates to move to other registered political parties such as Action Alliance (AA). The Defendant eventually issued the Plaintiff with a certificate

of registration on 16th August, 2018 but dated 14th August, 2018 (Exh. 5) which came just about 2 (Two) days before the commencement of primary elections preparatory to the general elections in 2019 according to the Defendant's timetable and schedule of activities for the 2019 general election dated 9th January, 2018 (Exh. 6). The Defendant's delay on the issuance of a certificate of registration to the Plaintiff was done in bad faith as the Plaintiff was systematically excluded from the 2019 general election. The Plaintiff did not get the opportunity of participating in the 2019 general elections at all levels of government in Nigeria. The Defendant had indicated its intention to de-register political parties in line with S. 225A of the 1999 Constitution (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 (Exhs. 7 and 8). It is in the interest of justice that this Honourable Court grants this application and the Defendant will not be prejudiced if the Plaintiff's prayers are granted.

The case of the Defendant is that contrary to paragraph 20 of affidavit in support of Originating Summons, the Defendant never at any time failed, refused and neglected to register the Plaintiff, rather, the delay was occasioned by the failure of the Plaintiff to secure a befitting office accommodation. Contrary to paragraph 21 of the affidavit in support of Originating Summons, Certificate of Registration is not issued as a matter of urgency or unnecessary desperation but upon verifiable claims in any event the Plaintiff was eventually issued the said certificate subject to

minor lapses in the documents submitted. Contrary to paragraphs 22 and 23 of affidavit in support of Originating Summons, there was no delay in registration of the Plaintiff, and there are no facts available that party members moved to other registered political parties, there are also no facts to substantiate the claim that those willing to provide financial support declined such support. Contrary to paragraphs 25 and 26 of affidavit in support of Originating Summons, it was not only the Plaintiff that was registered few days preceding commencement of primary elections for 2019 General Elections, other political associations were also registered much later and they participated at the elections. Contrary to Paragraphs 27 and 28 of affidavit in support of Originating Summons, the Plaintiff as well as all duly registered political parties who conducted primaries within the time allowed by law were not excluded from participating in the 2019 General Elections. The claim that the Plaintiff was systematically excluded is a systematic admission of being in default by the Plaintiff. In any event this Court lacks the jurisdiction to entertain issues bordering on exclusion. Contrary to paragraph 29 of affidavit in support of Originating Summons, it is not true that there was delay in the registration and issuance of Certificate of Registration to the Plaintiff, and, there are no facts to support the claim that the party lost potential members to the likes of Action Alliance. Contrary to paragraph 30 of affidavit in support of Originating Summons, there are no facts to support the allegation that the Defendant has indicated intention to de-register political parties. Contrary to paragraph 31 of affidavit in support of Originating Summons, there was no delay in registering the Plaintiff and in

any event, it is Constitutional to deregister any political party that contravenes the Constitution. Contrary to paragraph 33 of affidavit in support of Originating Summons, it will not serve the interest of justice to grant the prayers contained in this Originating Summons as this Court lacks the jurisdiction to entertain non-existing cause of action and issues bordering on exclusion and the Defendant will be greatly prejudiced if the prayers contained in the Originating Summons are granted.

Upon joining issues with the Plaintiff, the Defendant has entered a notice of preliminary objection to the competence of the suit and on the jurisdiction of the Court to hear and determine same and the grounds are that:

- (a) The time frame for instituting action against any alleged omission by the Defendant/Applicant had elapsed and or statute barred under the Statutes of Limitation as provided under Section 2 (a) of the Public Officers Protection Act, Cap P4, LFN, 2004.
- (b) The questions sought to be determined are predicated on the Order of Court made on the 18th October, 2017 in suit No. FHC/ABJ/CS/221/2017 between *Chukwudi Adiukwu & Ors vs INEC* which Order has long been carried out by the Defendant/Applicant.
- (c) The subject matter of the application constitutes an abuse of court process.
- (d) The Defendant/Applicant shall rely on all the processes filed in the instant suit.

It is averred in the supporting affidavit that the Plaintiff/Respondent submitted initial application for registration as a political party which was refused on the ground that its proposed name was restrictive. The Plaintiff/Respondent instituted action against the refusal by the Defendant/Applicant to register it as a political party and the Court in its wisdom decided in their favour. At the time the Defendant/Applicant was notified of the judgement, the preparations for the upcoming 2019 General Elections was underway but despite the busy schedule of the Defendant/Applicant preparing for the 2019 General election, the Plaintiff/Respondent was issued a Certificate of Registration on 16th August, 2018 and the Plaintiff/Respondent received the said Certificate without any objection, it conducted primary elections and fielded candidates for the 2019 General Elections and fully participated in the 2019 General Elections. The issue of refusal to register the Plaintiff/Applicant has been decided by this Court in a previous action in Suit No. FHC/ ABJ/CS/221/2017 between *Chukwudi Adiukwu & Ors v. INEC*, judgement delivered on 18th October, 2017. The Defendant/Applicant registered the Plaintiff/ Respondent as a political party and issued it with a certificate of registration on 16th August, 2018 but the Plaintiff/Respondent filed this suit on 8th January, 2020 which is 17 months after the cause of action arose. Pursuant to the said certificate of registration, the Plaintiff/Respondent submitted names of its candidates in Form CF 002 accompanied by their sworn affidavit in Form CF 001 to the Legal Department to contest for 2019 general election and in fact contested the said election. This action is not initiated by due process of law in that this Court does not interpret its own judgement. The

Originating Summons Procedure is not used to seek for interpretation of judgement. This case by the Plaintiff/Respondent constitutes an abuse of the process of this Court.

The Defendant's averments in their counter-affidavit are that contrary to paragraph 3 (c) of the Affidavit in Support of the Preliminary Objection, the Defendant/Applicant was aware of the judgement of this Court since October, 2017, as the Defendant was duly served with all the processes in the Suit and was promptly notified of the judgement of this Court by a letter dated 3rd November, 2017 (Exh. PR1). Though the Plaintiff/Respondent met the requirements for registration as a political party, the Applicant failed/refused to register the Respondent within the Thirty (30) days period stipulated by law. Contrary to paragraph 3 (d) of the Affidavit in Support of the Preliminary Objection, the Plaintiff/Respondent was prevented from preparing for and effectively competing in the 2019 General Elections as the Certificate of Registration was only issued to the Plaintiff Two (2) days to the commencement of party primaries for the 2019 Elections, and, contrary to paragraph 4 (a) and (b) of the Affidavit in Support of the Preliminary Objection, the Plaintiff/Respondent's cause of action is the threat of and the eventual de-registration of the Plaintiff by the Defendant/Applicant while the matter was already pending before this Court. The fact of the Defendant's failure to register the Plaintiff in line with the time frame stipulated by law is an incidental fact to the Plaintiff's poor performance at the 2019, General Election. Another plank of the Plaintiffs case is that it has not participated in some Governorship/State Houses of Assembly Elections in Nigeria and

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cannot be said to have failed to meet the requirements of the 1999 Constitution. Since its registration, the Plaintiff/Respondent has not had the opportunity to participate in the Governorship/State Houses of Assembly Elections in Osun, Ekiti, Ondo, and Edo which are yet to be conducted by the Defendant/Applicant. Since its registration, the Plaintiff/Respondent has not had the opportunity to participate in most Local Government Elections in Nigeria as some have not been conducted. The crux of the Plaintiffs case is the Defendant's threat, and continued threat to de-register political parties, including the Plaintiff, in several 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. PR2 and PR3). The Defendant subsequently continued to threaten to de-register political parties including the Plaintiff, for failure to win seats at various elections. Based on the threat to de-register the Plaintiff, the Plaintiff filed this present action before this Court with an application for injunction which was duly served on the Defendant but the Defendant carried out its threat and purportedly de-registered the Plaintiff while this Suit is pending before this Court. The Defendant acted in bad faith and abused its office when it purported to de-register the Plaintiff while this matter was pending in this Court. Contrary to paragraph 4 (e) of the Affidavit in Support of the Preliminary Objection, the instant Suit was commenced by due process of law and this suit does not in any way seek the interpretation of the judgement of this Court or any other Court. The Defendant is deliberately attempting to set up a case different from the one the Plaintiff has

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submitted to this Court which is based on threat of de-registration. This suit is not an abuse of the process of this Court and that this Court has jurisdiction to entertain this Suit. It is in the interest of justice that this Honourable Court dismisses the Defendant's Objection as same lacks merit.

There are three issues upon which arguments on the preliminary objection are predicated to wit:

- (i) *Whether in view of Section 2 (a) of the Public Protection Act Cap P4 LFN, 2004, the action of the Plaintiff/Respondents is not statute barred having waited more than three months of the accrual of cause of action before instituting same.*
- (ii) *Whether Originating Summons procedure can be used to seek for interpretation of judgements of Court.*
- (iii) *Whether the case of the Plaintiff does not constitute an abuse of Court process as to warrant its dismissal by this Honourable Court.*

The argument on issue one is that by virtue of S. 2 (a) of the Public Officers Protection Act (hereinafter POPA 2010 LFN) this action ought to have been commenced 3 months after the cause of action accrued. The Defendant/Applicant is a public officer and protected by the above provision; reliance is placed on *Hassan v. Aliyu* (2010) 17 NWLR (Pt. 1223) 547. The Plaintiff is seeking for the determination of an issue that occurred since 16th August, 2018 over which it slept until in 2020 when the issue has become statute barred; reliance is placed on *Messrs Maduka Ent. (Nig.) Ltd v. BPE* (2019) 12 NWLR (Pt. 1687) 429 at 447, *Maigari v. Malle* (2019) 16 NWLR (Pt. 1169) 69 at 89, *Sylva v INEC* (2015) 16 NWLR

(Pt. 1486) 576 at 620, and, *N.R.M.A. & FC v. Johnson* (2019) 2 NWLR (Pt. 1656) 247 at 270. Therefore, the cause of action having been hinged on the alleged refusal by the Defendant/Applicant to register them within 30 days occurred in 2018, more than three months thereby making their case statute barred. This Court is urged to resolve this issue against the Plaintiff/Respondent.

The argument on the second issue is that by paragraphs 15, 16, 17 and 20 of affidavit in support of Originating Summons the Plaintiff/Respondent made heavy weather on the Defendant/Applicant's failure, refusal and neglect in complying with the judgement of Court in Suit No. FHC/ABJ/CS/221/2017 - Between *Chukwudi Adiukwu & Ors v. INEC* delivered on 18th October, 2017 and this caused it to lose members to other political parties. It is trite law that a party interested in enforcing a judgement, ruling or order cannot commence such action by way of Originating Summons. The purpose of Originating Summons is stated in Order 3 Rules 6 and 7 of the Federal High Court (Civil Procedure Rules) 2009 (hereinafter referred to as FHCCPR 2009). This Court is urged to resolve this issue against the Plaintiff/Respondent as Originating Summons procedure is not the appropriate method to be used to pray for interpretation of judgement of Court in FHC/ABJ/CS/221/2017-Between *Chukwudi Adiukwu & Ors v. INEC* delivered on 18th October, 2017.

The argument on issue three is that this suit is an abuse of Court process as it constitutes multiplicity of actions with the aim of achieving the same aim; reliance is placed on *Lokpobiri v. Ogola* (2016) 3 NWLR (Pt. 1499) 328 at 367, and, *PDP v. Sheriff* (2017) 15 NWLR (Pt. 1588) 219 at

265. By Exh. 1 attached to affidavit in support of Originating Summons, the failure to register the Plaintiff/Respondent as a political party was determined by this Court and in spite of this the Plaintiff/Respondent is now before this Court a second time complaining that the delay by the Defendant/Applicant in registering it as a political party contrary to S. 78 (4) of the Electoral Act was the cause of their failure to meet up with the requirements of S. 225A of the 1999 Constitution (as amended) as if the provision of the said S. 78 (4) of the Electoral Act was made subject to the provision of 225A of the 1999 Constitution (as amended). The consequences of filing multiplicity of actions over same subject matter is clear; It ought to be struck out; reliance is placed on *NWOSU vs PDP* (2018) 14 NWLR (Pt. 1640) 532 at 546. This Court is urged to so hold. And on the whole, this Court is urged to decline jurisdiction on this suit and to dismiss this Originating Summons.

The reply of the Plaintiff on the issue of application of the S. 2 (a) of the POPA 2010 LFN is that this action is hinged on the threat of de-registration of Political Parties by the Defendant for failing to win any seat in the 2019 General Election pursuant to S. 225A of the 1999 Constitution (as amended). This Suit was therefore filed pre-emptively to stop the Defendant from de-registering the Plaintiff. It is the pleadings of the Plaintiff that the Court will look at in order to determine whether the Court has jurisdiction or not, and, in this case it is the Affidavit filed in support of the Summons that the Court will look at; reliance is placed *P.D.P. v. Sylva* (2012) 13 NWLR (Pt. 1316) 85 at 127. It is their argument that the Plaintiff's cause of action is captured at paragraphs 30 and 31 of the

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Affidavit in support of the Summons. The cause of action in this Suit commenced with the threats of de-registration on the 9th August, 2019 and continued throughout the year 2019 as published in different online print media until the Defendant eventually de-registered the Plaintiff on the 6th February, 2020. The Plaintiff filed this present action on the 8th January, 2020 and the Defendant was served with the Summons and the Motion for Injunction on the 15th January, 2020. On the 27th February, 2020 when this matter came up for hearing, this Court expressed its disappointment with the action of the Defendant in de-registering the Plaintiff while this Suit is pending in Court. Rather than restore the Plaintiff to its original status before the Defendant purportedly registered it, the Defendant filed this objection to distract the Court from the ignoble actions of the Defendant. Where a cause of action is continuous such as continuous trespass, a Defendant will not be availed of the defence of limitation of action; *Elukpo v. Kaduna State Development & Property Co. Ltd & Ors* (2017) LPELR-43185 (CA). This suit is founded on the threat of de-registration which was a continuous threat until it materialized on the 6th February, 2020. It is also contended that there is abuse of office and bad faith displayed by the Defendant. These factors deprive the Defendant of the protection of the Public Officers Protection Act; reliance is placed on *Offoboche v. Ogoja L.G.* (2001) 16 NWLR (Pt. 739) 458 at 485, and, *Odeyemi v. Nigeria Telecommunications Plc* (2009) LPELR-4982 (CA).

The reply to issue two is that Originating Summons is used for the construction of laws and documents where there is no serious dispute as to the surrounding facts; reliance is placed on *ASOR v. INEC & Ors* (2013)

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LPELR-20695 (CA). This suit is hinged on the interpretation of S. 225A of the 1999 Constitution (as amended) and is therefore properly commenced by Originating Summons. There is no prayer that invites this Court to interpret any judgement.

The reply on issue three is that this suit does not constitute an abuse of Court process. There is an abuse of Court process where there is multiplicity of suits in respect of the same matter, on the same issues and against the same person; reliance is placed on *Obu v. J. O. Olumbamise Printers Ltd.* (2013) LPELR- 20415 (CA). What was determined in Suit No: FHC/ABJ/CS/221/2017 was failure to register the Plaintiff and not de-registration of the Plaintiff. This Court is urged to so hold.

On the whole, this Court is urged to resolve all the issues in favour of the Plaintiff/Respondent and dismiss the Defendant's/Applicants Preliminary Objection.

The first ground of the Defendant's objection is that this action is by virtue of S. 2 (a) of the POPA 2010 LFN, statute barred as it was commenced in 2020 while the cause of action arose on 16th August, 2018 and S. 2 (a) of the POPA 2010 LFN states that:

- (a) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuant or execution or intended execution of any act or law or any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty or authority, the following provisions shall have effect:

The action, prosecution or proceeding shall not lie or be

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instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury within three months next after ceasing thereof.

There is no argument whether or not the Defendant is a public officer by virtue of S. 2 (a) of the POPA 2010 LFN. However, to determine whether an action is statute barred, the Court has repeatedly and unwaveringly stated the perimeters for the computation of time; see *Ajayi v. Adebisi* (2012) 11 NWLR (Pt. 1310) 137 at 169 -170, per Adekeye (JSC) (as he then was) that:

"The yardsticks to determine whether an action is statute-barred are:

- (a) The date when the cause of action accrued.
- (b) The date of commencement of the suit as indicated in the writ of summons.
- (c) Period of time prescribed to bringing an action to be ascertained from the statute in question.

Time begins to run for the purpose of the limitation law from the date the cause of action accrues. *British Airways Plc v. Akinyosoye* (1995) 1 NWLR (Pt. 374) pg.722. *Shell Petroleum Development Co. (Nig.) Ltd. v. Farah* (1995) 4 NWLR (Pt.382) pg.148. *Jallco Ltd. v. Owoniboys Tech. Serv. Ltd.* (1995) 4 NWLR (Pt. 391) pg.534. *Asaboro v. Pan Ocean Oil Corp. (Nig.) Ltd.* (2006) 4 NWLR (Pt. 971) pg. 595. *Ogunko v. Shelle* (2004) 6 NWLR (Pt. 868) pg.17. *Osun State Government v. Dalami*

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Nigeria Ltd. (2007) All FWLR (Pt. 365) 438, (2007) 9 NWLR (Pt. 1038) 66. *Akinkunmi v. Sadiq* (2001) 2 NWLR (Pt. 696) pg. 101. *F.B.N. v. Associated Motors Co. (Nig.) Ltd.* (1998) 10 NWLR (Pt. 570) pg. 441. *Obiefuna v. Okoye* (1964) 1 All NLR 96."

It is the case of the Plaintiff per paragraph 30 of their Affidavit in support of the Originating Summons that the Plaintiff 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 on 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

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subject matter of the notification crystallizes by actual de-registration another cause of action has arisen that can give rise to fresh litigation. In this case the cause of action retained pendency at the time the Plaintiff commenced this action, therefore, the Provision of S. 2 (a) of the POPA does not apply. 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 over-rule the Defendant on this leg of objection.

The second issue of the Defendant's objection is that a party interested in enforcing a judgement, ruling or order cannot commence such action by way of Originating Summons and reference is made to Order 3 Rules 6 and 7 of the FHCCPR 2019. This Court is urged to resolve this issue against the Plaintiff/Respondent as Originating Summons procedure is not the appropriate method to be used to pray for interpretation of judgement of Court in FHC/ABJ/CS/221/2017 - Between *Chukwudi Adiukwu & Ors v. INEC* delivered on 18th October, 2017. I have studied the claims of the Plaintiff and the questions sought to be determined in this case. I do not see where the Plaintiff is asking this Court to interpret any judgement. Where Originating Summons is used by a litigant, it is for the Court to decide which questions on the process that is within the procedural framework for the act and answer them accordingly. The same thing goes with the reliefs sought. The Court determines the reliefs to be granted depending on the case before the Court. This leg of

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...action has no merit and is hereby resolved against the Defendant.

The third issue is that of abuse of process. It is the position of the defendant that the subject matter of this suit has already been determined in FHC/ABJ/CS/221/2017-Between *Chukwudi Adiukwu & Ors v. INEC* delivered on 18th October, 2017. This is wrong. I agree with the Plaintiff that this suit is about de-registration of the Plaintiff by the Defendant. It was stated per Ogbuagu, JSC (as he then was) in *Abubakar v. B.O. & A.P. Ltd.* (2007) 18 NWLR (Pt. 1066) 319 at 377-378 that:

"There is abuse of process of court where the process of the Court has not been used *bonafide* and properly. The circumstances in which abuse of Court process can arise has been said to include the following:

- (a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue or multiplicity of actions on the same matter between the same parties even where there exists a right to begin that action.
- (b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right; for example a cross-appeal and a Respondent's notice.

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- (d) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.
- (e) Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the inconvenience and inequities involved in the aims and purposes of the action. See *Jimoh v. Starco (Nig.) Ltd.* (1998) 7 NWLR (Pt. 558) 523 at 535; *Jadesimi v. Okotie-Eboh* (1986) 1 NWLR (Pt. 16)264."

As much as the concept of abuse of Court process is nebulous, it is a very practical issue in its application. Where the complain of abuse is founded on multiplicity of case as posited by the Defendant, the abuse of process is determined by comparing the process of each suit. I have read the judgement of my learned Brother, Abdu-Kafarati, CJ (as he then was) in FHC/ABJ/CS/221/2017-Between *Chukwudi Adiukwu & Ors v. INEC* delivered on 18th October, 2017 (herein Exh. 1). I find that that suit was about the registration of the Plaintiff and not on de-registration as stated in this case. Simply put, the issue of abuse of Court process has not been established by the Defendant. I overrule this leg of objection.

Now, having determined the issues in the preliminary objection of the Defendant against it, I find that the preliminary objection lacks merit. I make an order dismissing it.

The Plaintiff predicates the substantive matter on the four issues formulated in the originating process.

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However, before delving into the issues, I have to sort out the issue on the action of the Defendant during the pendency of this suit. During the proceedings of 27th February, 2020 the following took place to wit:

"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 de-register 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 require the intervention of the Court. It is paragraphs 14 to 23 of affidavit in support of motion dated the 19th day of February, 2020.

Court: Sani, Esq., did you de-register 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 de-register them?

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

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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 de-register 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 above proceedings show that the Defendant in defiance of the rule against self-help *pendente lite* de-registered the Plaintiff. This is aberrant. See *Egwu Oyibo Okoye v. INEC & Ors* (2010) LPELR - 4726 CA where it was stated that:

"No matter the possible delay that may be encountered during the pendency of a suit/matter in court parties should not jump the gun and do anything in their own way which may destroy or tamper with the *res* which could ultimately render the outcome of the appeal nugatory. To put it in another way self-help act should not be applied by any of the parties to the suit or matter as to do so will render a successful decision of the Court meaningless and ridiculous too. See *Governor of Lagos State v. Chief Ojukwu* (1986) 1 NWLR (Pt. 68) 621. *Chief Okoya & Ors v. Santilli & Ors* (1991) 7 NWLR (Pt. 206) 753".

See also *Ojukwu v. Military Governor Lagos State* (1985) 2 NWLR (Pt. 10) 806, *UBN Nig. Plc v. Alhaji Adams Ajabule & Anor.* (2011) LPELR-8239 (SC), *Abiodun v. C.J. Kwara State* (2007) 18 NWLR (Pt. 1065) 109, and, *Registered Trustees Apostolic Church v. Olowoleni* (1990) 6 NWLR (Pt. 158) 514 at 537-538.

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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. 225A (b) & (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 might. 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.

On the issues formulated by the Plaintiff for determination on the merit, I find that questions i, ii, and iii relate in my view to enforcement of the judgement of this Court in FHC/ABJ/CS/221/2017-Between *Chukwudi Adiukwu & Ors v. INEC* delivered on 18th October, 2017 and cannot be properly litigated in this action. This Court will not delve into them. I make an order striking out the questions.

The sole issue to be determined now is issue iv, which is:

- i. Whether having excluded the Plaintiff from participating in the 2019 general elections, the Defendant can de-register the Plaintiff on the basis on the Plaintiffs 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 argument on this issue can be found between paragraphs 7.6 and 7.13 of the written address. It is the position of the Plaintiff that the failure of the Plaintiff to attain the requirements of S. 225A (b) & (c) of the 1999 Constitution (as amended) was a proximate consequence of the Defendant's act of non-compliance with the Electoral Act. This is because having excluded the Plaintiff from participating in all elections conducted after the required registration period including the 2019 general elections, the Defendant cannot de-register the Plaintiff on the basis of the Plaintiffs failure to win any seat in any election; pursuant to S. 225A (b & c) of the 1999 Constitution (as amended). The Plaintiff's participation in the 2019 general elections was greatly hampered as the Plaintiffs certificate of registration was issued few days to the commencement of primaries election for the 2019 general election. The Defendant having tacitly occasioned the inability of the Plaintiff to scale the provisions of S. 225A (b & c) of the 1999 Constitution (as amended), cannot turn around to rely on that same provision to de-register the Plaintiff. A party cannot be allowed to benefit from its own act of illegality or its own breach of statutory provisions; reliance is placed on *Saleh v. Monguno & Ors.* (2006) LPELR-2992 (SC), *Nwakhoba v. Dumez Nig. Ltd., Ajaokuta* (2003) All FWLR (Pt. 179) 1188 at 1203, and, *Sodipo v. Lemninkainen & Anor* (1986) LPELR-3087 (SC). The Court is urged to uphold the Plaintiff's arguments and grant the reliefs sought by the Plaintiffs in this Suit.

The Defendant hereby submits three issues for determination thus:

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

The argument on issue one is that it is the Defendant that is saddled with the responsibility to register and de-register political parties. S. 225A of the 1999 Constitution (as amended) gives the Defendant the power to de-register political parties that fail to comply with mandatory Constitutional requirements for continuous existence in that capacity; reliance is placed on *SDP v. Gana* (2019) 11 NWLR (Pt. 1684) 510 at 532. The facts deposed to in the affidavit in support of Originating Summons discloses no cause of action against the Defendant as the case of the Plaintiff against the Defendant is founded on the apprehension that it is going to be de-registered. The case of the Plaintiff can best be described as a gagging suit designed to frustrate and discourage the Defendant from performing its statutory duties. This Court is urged to resolve this issue against the Plaintiff.

It is argued on issue two that S. 225A of the 1999 Constitution (as amended) empowers the Defendant to de-register any political party found in breach of the stated conditions therein. Therefore, the registration and de-registration of political parties are constitutional duties placed on the Defendant and the Courts do not restrain persons carrying out

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constitutional duties; reliance is placed on *Igbo Peter v. Okoye* (2003) 3 NWLR (Pt. 755) 529. This Court is by virtue of the above authority estopped from restraining the Defendant. The only time this Court will interfere is to review whatever decision is reached in the aftermath of the exercise of the duty; reliance is placed on *Anambra State v. Okafor* (1992) 2 NWLR (Pt. 224) 396 at 419. This Court lacks the jurisdiction to restrain the Defendant from exercising the statutory duty of de-registration and this Court is urged to resolve this issue against the Plaintiff.

The third issue is whether this Honourable Court has the power to decide on issues bordering on exclusion. If this issue is taken as a pre-election matter, the action must be instituted before election and an action is taken out on it before the election. Where such issue is raised in litigation after election, it is post-election matter irrespective of when it occurred. Therefore, issue three of the Defendant is immaterial, irrelevant and extraneous to this case.

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 provision of S. 225A of the 1999 Constitution (as amended). It is provided therein that:

The Independent National Electoral Commission shall have power to de-register a political for-

- (a) Breach of any 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

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- 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 issue with political association is that it is part of the fundamental rights provided for in Chapter IV of the 1999 Constitution (as amended) particularly, S.40 thereof. Therefore, political association is *prima facie* a being that exist upon exercise of the fundamental right to form or belong to association of the citizens' choice. S. 46 (1) of the 1999 Constitution (as amended) provides the respective periods where an action on the rights provided for in the Constitution can be enforced, that is, where such right has been, is being or is likely to be contravened. This means that the person affected does not have to lie down and wait until the actual infringement. This means the pre-emptive action is allowed on issues on fundamental right. Now where a political party has been registered by the Independent National Electoral Commission (the Defendant in this suit) such association by virtue of S. 80 of the Electoral Act, then acquires statutory corporate status, that is, perpetual succession, power to sue and be sued in its corporate name, common seal and the power to acquire, own and dispose of its

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movable and immovable property. Such party so registered can take action in Court where its right, especially its right of existence has been, is being or is likely to be contravened.

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 issue 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. The meaning of cause of action was stated recently by the Court in *Iyeke v. P.T.I.* (2019) 2 NWLR (Pt. 1656) 217 at 238-239 thus:

"Now, from the authorities on the subject, "cause of action" means -

- i. A cause of complaint;
- ii. A civil right or obligation for determination by a court of law;
- iii. A dispute in respect of which a Court of law is entitled to invoke its Judicial powers to determine;
- iv. Consequent damage;
- v. Every fact which would be necessary for the Plaintiff to prove, if traversed in order to support his right to the

judgement of the court. it does not comprise every piece of evidence that is necessary to be proved;

- vi. All those things necessary to give a right of action whether they are to be done by the Plaintiff or a third person; and
- vii. It is a factual situation, which enables one person to obtain a remedy from another in court in respect of injury.

See A.-G., Fed. v. A.N.P.P. (2003) 12 SCNJ 67, (2003) 18 NWLR (Pt. 851) 182, and, *Cookey v. Fombo* (2005) 15 NWLR (Pt. 947) 182 at 202."

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 issue whether or not the Defendant can de-register the Plaintiff pursuant to the provision of S. 225A of the 1999 Constitution (as amended) ought not to be controversial. However, the exercise of such constitutional power and duty by the Defendant is not absolute to the extent that the Defendant would posit that the Court cannot restrain them from performing the constitutional function. The Defendant even relied on the case of *Anambra State v. Okafor* (Supra) where it was stated at p. 419 thus:

"In matters involving the exercise of statutory power, the functions of the Courts begin only when it is alleged that the power has not been exercised in accordance with the law. Once the person or authority or body on whom the

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statutory power is conferred has exercised its power under the statute, any citizen of Nigeria who feels his rights are infringed thereby can by virtue of Section (6) (6) (b) of the Constitution of the Federal Republic of Nigeria, 1979, challenge the exercise of the power."

I am not sure that the learned Counsel read the reasoning of their Lordships in the above case well. Where the exercise of any power given to any person by the Constitution or statute is being, has been or is likely to be done in a manner that would infringe on the right of any person whether artificial or natural, such exercise can be challenged in Court and the Court will have the power to examine the validity of such exercise. It is stated in paragraph 30 of the affidavit in support of the Originating Summons that:

30. That the Defendant had indicated its intention to de-register political parties in line with Section 225A 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 Pressreader platform dated 25th September, 2019. Attached and marked as Exhibits 7 and 8 are the news publications.

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

I have perused the case of *Hope Democratic Party v. INEC & Ors* (unreported) Court of Appeal decision made on 1st September, 2020 in Appeal No: CA/A/506/2020 sent to Chambers by learned Silk of Counsel for the Defendant. I must note that the facts and circumstances in this case is not the same as the one in *Hope Democratic Party v. INEC & Ors (supra)*. Cases are decided on their peculiar facts and circumstances; see *Dick v. Our and Oil Co. Ltd.* (2018) 14 NWLR (Pt. 1638) 1 at 28 where it was stated thus:

"What has come to the fore is that the Appellant has cited some earlier judicial authorities out of context or not in tune with the facts on ground and re-engineered along the way some of those facts to get them as much as appellant could attempt to fall in line with earlier decisions of this court so as to get an advantage over the respondent and thereby persuade that Court below to tow his line of thinking which attempt remained so as it failed. A similar situation had confronted this court in *Adegoke Motors Ltd v. Adesanya* (1989) 3 NWLR (Pt. 109) 250 at 265 - 266 paras. H-8 and Oputa JSC stated the position of things thus:

" there is now a tendency among our lawyers and sometimes some of our Judges, to consider pronouncements made by Justices of the Supreme Court

in unnecessary isolation from the facts and surrounding circumstances of those particular cases in which those Pronouncements were made. I think it ought to be obvious by now, that it is the facts and circumstances of any given case that frame the issues for decision 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, (2003) 2 NWLR (Pt. 805) 589."

I had already set aside the decision of the Defendant against the Plaintiff on the grounds that the de-registration was carried out during the pendency of this action in Court. Now, on the merit of this case, the

Plaintiff's case has succeeded in part and I make an order granting only relief no. 6 as follows:

An Order of Injunction is hereby made restraining the Defendant from de-registering the Plaintiff until the Plaintiff is given equal opportunity to freely participate in the 2023 general election to be organized by the Defendant.

This is the judgement of this Court.



I. E. Ekwo
Judge
12/10/2020

O. Osoka, Esq., (with John Ochogwu, Esq.) for the Plaintiff.

Abdulaziz Sani, Esq., for the Defendant.

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