

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
SUIT NO.....

714/ABJ/CS/610/2022

BETWEEN

MR GODWIN EMEFIELEPLAINTIFF

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. ATTORNEY GENERAL OF THE FEDERATION



NOTICE OF MOTION
BROUGHT PURSUANT TO

128653142434

1. ORDER 26 RULES 2(1), ORDER 51, ORDER 7 RULE 1(1), ORDER 13 RULE 49, 13 RULE 50 AND ORDER 56 RULES 1 AND 6 OF THE COURT FEDERAL HIGH CIVIL PROCEDURE RULES, 2019,
2. THE INHERENT JURISDICTION OF THIS HONOURABLE COURT AS PRESERVED BY SECTION 6 (6) (A) AND (B) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999, AS ALTERED.

TAKE NOTICE that this honourable court shall be moved on theday of, 2022, at 9 O'clock in the forenoon or so soon thereafter as counsel on behalf of the Plaintiff/Applicant shall be heard praying this honourable court for the following:

1. AN ORDER directing a departure from the rules of this honourable court, in the interest of justice, by allowing the following:
 - (a) A departure from the provisions of order 7 rule 1(1) and order 13 rule 49 of the rules of this honourable court by abridging the time within which the Defendants shall enter appearance and file their counter affidavits.

- (b) A departure from the provisions of order 13 rule 50 of the rules of this honourable court by abridging the time within which the Plaintiff shall file his reply to the Defendants' counter affidavits.
- (c) Accelerated hearing and determination of this suit, in the interest of justice and on the ground of the imminent presidential primaries towards the 2023 presidential election as scheduled by INEC.

AND FOR SUCH FURTHER OR OTHER ORDERS as this honourable court may deem fit to make in the circumstances.

GROUND FOR THIS APPLICATION

AND TAKE NOTICE that the grounds upon which the application is brought are:

1. That the Plaintiff is a Nigerian economist, Banker and financial expert who has been serving as the Governor of the Central Bank of Nigeria since **4th June, 2014**.
2. That the Plaintiff has aspiration to seek election to the office of the President of the Federal Republic of Nigeria and participate as a candidate in the upcoming **2023** presidential elections.
3. That section **84(12)** of the Electoral Act, **2022** provides that: **"No political appointee at any level shall be a voting delegate or be voted for at the Convention or Congress of any political party for the purpose of the nomination of candidates for any election"**.
4. That the Plaintiff verily believes that he is not affected by these provisions, as he is not a political appointee as envisaged by the above provisions of section **84(12)** of the Electoral Act, **2022**.
5. That the Central Bank of Nigeria is entirely **(100%)** owned by the Nigerian Federal Government, and therefore constitutes a government agency with the meaning and intendment of section 318 of 1999 Constitution.
6. That public service in Nigeria encompasses service in governmental departments and agencies, including the Central Bank of Nigeria, wherein the plaintiff is the Governor.

7. That the Plaintiff, as the Governor of the Central Bank of Nigeria, is a person employed in the "public service of the Federation".
8. That consequently, the relevant section of the Constitution applicable to the Plaintiff is section 137(1) (g) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, which provides thus: "A person shall not be qualified for election to the office of President if being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election".
9. That the said section 137(1) (g) of the 1999 Constitution provides that the Plaintiff shall resign, withdraw or retire from the office of Governor of the Central Bank of Nigeria at least 30 days before the date of the 2023 presidential elections; and not 30 days before a Political Party's primaries at a convention or congress as envisaged by section 84(12) of the Electoral Act, 2022.
10. That section 84(12) of the Electoral Act, 2022 is inconsistent with the provisions of section 137(1) (g) of the 1999 Constitution; and even if not inconsistent, same does not apply to the Plaintiff who is governed by the provision of section 318 of the Constitution, the Plaintiff being a public officer and a political appointee.
11. That the Constitution of the Federal Republic of Nigeria is the highest law of the land, the grundnorm and fons et origo, and therefore, any provision or law that is inconsistent with it shall be null and void to the extent of its inconsistency. Similarly, where an Act makes provisions on a matter already covered by Constitution, such provisions are null and void by the doctrine of covering the field. See the case of **SARAKI v. FRN (2016) LPELR-40013(SC)**, where it was held:

"Where the doctrine of covering the field is in vogue in the Constitution any other legislation on the same field whether by the Federal/State government must bow to the dictate of the Constitution. That other law/legislation, if not repugnant must be supplemental or subsidiary to the constitutional provision see **INEC v. Musa (2003) 3 NWLR (Pt.806) 72 at pp 158; 203 - 205; AG Ogun State v. AG Federation (1982) 3 NCLR 166 at p.176; AG Abia State v. AG Federation**".

12. That the section **84(12)** of the Electoral Act , **2022**, is null and void was the decision of Hon. Justice Evelyn Anyadike of the Federal High Court, Umuahia Judicial Division, who struck down section 84(12) of the Electoral Act, **2022**, in Suit No. FHC/UM/CS/26/2022 – Between **CHIEF NDUKA EDEDE V. ATTORNEY GENERAL OF THE FEDERATION**. A certified true copy of the judgment of Hon. Justice Evelyn Anyadike of the Federal High Court, Umuahia Judicial Division is hereby attached and marked **Exhibit A**.
13. That the learned Justice rightfully held that section **84(12)** was in clear violation of the provisions of the Constitution and therefore, is unconstitutional, null, void and of no effect whatsoever and howsoever.
14. That the effect of this judgment is that section 84(12) of the 1999 Constitution is no longer in existence; nor form part of laws of Nigeria, and therefore cannot have any effect on the Plaintiff whatsoever and howsoever.
15. That in any event the Plaintiff being a Public officer is governed by section **318** of the Constitution and not the said section **84(12)** of the Electoral Act, **2022**.
16. That the Plaintiff is within his rights to contest any party's primaries while still serving as the Governor of the Central Bank of Nigeria in **2023**.
17. That this suit seeks a determination of the status of the plaintiff who as Governor of Central Bank of Nigeria, desires to contest elections as president of the Federal Republic of Nigeria.
18. That the Plaintiff is legally competent to contest the primaries of any political parties while still serving as the Governor of the Central Bank of Nigeria, in so far he gives at least 30 days' notice of his resignation, withdrawal of from the services of the Central Bank of Nigeria as its Governor in accordance with the provisions of section **167(1) (g)** and **318** of the **1999** Constitution.
19. That the Plaintiff fears that Defendants are making frantic efforts to disqualify the Plaintiff from participating in the presidential primaries

scheduled for **30th and 1st June, 2022**, for not resigning from his office before the parties primaries.

20. That there is the urgent need for this honourable court to hear this suit and determine the rights of parties before the presidential Primaries.
21. That except this suit is heard timeously and urgently, the Plaintiff shall be wrongfully disqualified from participating in any of the parties Primaries.
22. That the Defendants will not be prejudiced by a grant of this application.
23. That is necessary in the circumstances that this suit is set down for hearing of the substantive Originating Summons by this honourable court with extreme urgency.
24. This honourable court is vested with the jurisdiction and powers to grant the reliefs sought herein, in the interest of justice.
25. That parties will not be prejudiced by a grant of this application as it will serve the overriding interest of justice and expeditious determination of this suit and ultimately, the rights of the parties to this suit.
26. That this honourable court has the inherent powers to order a departure from the rules in order to eliminate unnecessary delay in the hearing of this suit which shall meet the justice of this suit.
27. That it is a public policy that the business of this honourable court be conducted with utmost dispatch in a manner to avoid delays.
28. That the Plaintiff/Applicant is prepared to do all things legally and humanly possible towards expeditiously prosecuting this suit, if this honourable court allows this present application inclusive of prayers sought to depart from the Rules of this honourable court as well as filing of the counter affidavits and reply in the substantive suit.
29. That no party will be prejudiced if this application is granted, as it will serve the overriding interest of justice and expeditious hearing and

determination of the entire suit, while allowing the Plaintiff/Applicant exercise his constitutional right before this honourable court.

30. That this application is to enhance the expeditious hearing of this suit as well as to further the ends of fair hearing and administration of justice on the Plaintiff who has stands the risk of been denied his right.

AND TAKE FURTHER NOTICE that the Plaintiff shall rely on the processes filed at the hearing of this application.

DATED THIS 4TH DAY OF MAY 2022.



- ✓ Chief Mike A. A. Ozekhome, SAN, OFR,
FCI Arb, LL.M, Ph.D, LL.D
Benson Igbanoi, Esq.
Lady Josephine Mike Ozekhome, LL.M.
Amauche O. Onyedum (Mrs)
Godwin Iyinbor, Esq.
Richard Ebie, Esq.
Onuoha Ejieke, Esq.
S. E. O. Maliki, Esq.
Justin Omogbemeh, Esq.
Queen-Ubokutom I. Umana, (Miss)
Wilson A. Ibhazobe, Esq.
Jeffrey Iluobe Itua, Esq.
Oluchi Vivian Uche (Miss)
Azubuike Solomon, Esq.
Osilama Mike Ozekhome, Esq., LL.M, MBA
Ngozi T. Onyechi (Miss), LL.M, MSC
Adadu Obande, Esq.
Destiny E. Odianoson, Esq.
Dixon C. Odili, Esq.
Aisosa Iriangbonse Ogboro (Miss).
Oshomha Mike Ozekhome, Esq., MBA
Oghenetajiri Ruth Djegbada, (Miss)

Mike Ozekhome's Chambers,
Counsel to the Plaintiff
Ukwe Court,
Plot 2215, Nile Street,
Opposite Maitama Police Station,
Maitama, Abuja,
08035550444, 08022266688
Email: ozekmike@yahoo.com
ozekmike@nigerianbar.ng

FOR SERVICE ON:

**1. THE 1ST DEFENDANT:
INDEPENDENT NATIONAL ELECTORAL COMMISSION,
(INEC),
PLOT 436,
ZAMBEZI CRESCENT,
MAITAMA,
FEDERAL CAPITAL TERRITORY,
ABUJA.**

**2. THE 2ND DEFENDANT:
ATTORNEY GENERAL OF THE FEDERATION,
OFFICE OF THE HONOURABLE ATTORNEY GENERAL,
FEDERAL MINISTRY OF JUSTICE,
CENTRAL BUSINESS DISTRICT,
FEDERAL CAPITAL TERRITORY,
ABUJA.**

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO.....

BETWEEN

MR GODWIN EMEFIELEPLAINTIFF

AND

**1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)**
2. ATTORNEY GENERAL OF THE FEDERATION } **DEFENDANTS**

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, Maliki Sylvanus, adult, male, Christian, Nigerian citizen of Mike Ozekhome's Chambers, Ukwe Court, Plot 2215 Cadastral Zone, Opposite Maitama Divisional Police Station, Nile Street, Maitama, Abuja, do hereby make Oath and state as follows:

1. That I am a Senior Counsel in the law firm of Mike Ozekhome's Chambers, Counsel to the Plaintiff/Applicant in this matter, and by virtue of which position I am conversant with the facts and circumstances of this case.
2. That I have the consent and authority of the Plaintiff/Applicant and that of the lead Counsel in this case, Chief Mike Ozekhome, SAN, OFR, FCI Arb, LL.M, Ph.D, LL.D, to depose to this affidavit.
3. That at a conference meeting held on this case at our office, **Ukwe Court, Plot 2215 Cadastral Zone, Opposite Maitama Divisional Police Station, Nile Street, Maitama, Abuja, on Tuesday, the 3rd day of May, 2022, at about 1:00 pm, I was informed by the Plaintiff/Applicant, Mr. Godwin Emefiele, of the following facts and I verily believe him to be true as follows:**

- a. That he has read through the several court processes and is thus fully seized of the facts stated below, which are facts as contained in the several court processes filed by the various parties in the process leading to this suit.
- b. That the Plaintiff/Applicant is a Nigerian citizen; economist, Banker and financial expert who has been serving as the Governor of the Central Bank of Nigeria since 4th June, 2014.
- c. That the Plaintiff/Applicant has aspiration to seek election to the office of the President of the Federal Republic of Nigeria and participate as a candidate in the upcoming 2023 presidential elections.
- d. That section 84(12) of the Electoral Act, 2022, provides mutatis that: **"No political appointee at any level shall be a voting delegate or be voted for at the Convention or Congress of any political party for the purpose of the nomination of candidates for any election"**.
- e. That the Plaintiff verily believes that he is not affected by these provisions, as he is not a political appointee as envisaged by the above provisions.
- f. That the Central Bank of Nigeria is entirely (100%) owned by the Nigerian Federal Government, and therefore constitutes a federal government agency.
- g. That public service in Nigeria encompasses service in governmental departments and agencies, including the Central Bank of Nigeria, herein the plaintiff is the Governor.
- h. That the Plaintiff, as the Governor of the Central Bank of Nigeria, is a person employed in the **"public service of the Federation"**.
- i. That consequently, the relevant section of the 1999 Constitution applicable to the Plaintiff is section 137(1) (g) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, which provides thus: **"A person shall not be qualified for election to the office of President if being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election"**.

- j. That the said section **137(1) (g)** of the 1999 Constitution provides that the Plaintiff is to resign, withdraw or retire from the office of Governor of the Central Bank of Nigeria at least 30 days before the date of the **2023** presidential elections; and not 30 days before a Political Party's primaries as envisaged by section **84(12)** of the Electoral Act, **2022**.
4. That at the said meeting held to review this matter at our office, Mike Ozekhome's Chambers, **Plot 2215, Cadastral Zone, Nile Street, (Opposite Maitama Police Station), Maitama, Abuja, on Tuesday, 3rd May, 2022, at about 1:00pm**, I was also informed by Chief Mike Ozekhome, SAN, in his capacity as the lead counsel to the Plaintiff in this suit and fully seized of the facts herein and I verily believe him to be true as follows:
- a. That section **84(12)** of the Electoral Act, **2022** is inconsistent with the provisions of section **137(1) (g)** of the **1999** Constitution.
 - b. That the Constitution of the Federal Republic of Nigeria is the highest law of the land, the grundnorm and *fons et origo*, and therefore, any provision or law that is inconsistent with it shall be null and void to the extent of its inconsistency.
 - c. That this was the reasoning of Hon. Justice Evelyn Anyadike of the Federal High Court, Umuahia Judicial Division, who struck down section **84(12)** of the Electoral Act, **2022**, in **Suit No. FHC/UM/CS/26/2022 – Between CHIEF NDUKA EDEDE V. ATTORNEY GENERAL OF THE FEDERATION**. A certified true copy of the judgment of Hon. Justice Evelyn Anyadike of the Federal High Court, Umuahia Judicial Division is hereby attached and marked **Exhibit A**.
 - d. That the learned Justice held that section **84(12)** was in clear violation of the provisions of the Constitution and therefore, is unconstitutional, null, void and of no effect whatsoever and howsoever.
 - e. That the effect of this judgment is that section **84(12)** of the 1999 Constitution is no longer in existence; nor form part of laws of Nigeria, and therefore cannot have any effect on the Plaintiff whatsoever and howsoever.

- f. That the Plaintiff is within his rights to contest any party's primaries while still serving as the Governor of the Central Bank of Nigeria.
- g. That this suit seeks a determination of the status of the plaintiff who as Governor of Central Bank of Nigeria, desires to contest elections as president of the Federal Republic of Nigeria.
- h. That the Defendants are making frantic efforts to disqualify the Plaintiff from participating in the presidential primaries scheduled for **30th and 1st June, 2022**.
- i. That there is the urgent need for this honourable court to hear this suit and determine the right of parties before the All Progressives presidential Primaries.
- j. That except this suit is heard timeously, the Plaintiff shall be wrongfully disqualified from participating in the presidential Primaries.
- k. That the Defendants will not be prejudiced by a grant of this application.
- l. In the circumstances, we shall be grateful if this suit is set down for hearing of the substantive Originating Summons by this honourable court.
- m. This honourable court is vested with the jurisdiction and powers to grant the reliefs sought herein, in the interest of justice.
- n. That the parties will not be prejudiced by a grant of this application as it will serve the overriding interest of justice and expeditious determination of this suit and ultimately, the rights of the parties to this suit.
- o. That this honourable court has the inherent powers to order a departure from the rules in order to eliminate unnecessary delay in the hearing of this suit which shall meet the justice of this suit.
- p. That it is a public policy that the business of this honourable court be conducted with utmost dispatch in a manner to avoid delays.
- q. That the Plaintiff/Applicant is prepared to do all things legally and humanly possible towards expeditiously prosecuting this suit, if this honourable court allows this present application inclusive of prayers sought to depart from the Rules of this

honourable court as well as filing of the counter affidavits and reply in the substantive suit.

- r. That no party will be prejudiced if this application is granted, as it will serve the overriding interest of justice and expeditious hearing and determination of the entire suit, while allowing the Plaintiff/Applicant exercise his constitutional right to this honourable court.
 - s. That this application is to enhance the expeditious hearing of this suit as well as to further the ends of fair hearing and administration of justice on the Plaintiff who has stands the risk of been denied his right.
 - t. That he knows as a fact that this honourable court has the inherent powers to order a departure from its rules in order to eliminate unnecessary delay in the hearing of this suit.
 - u. That he also knows as a fact that it is a public policy that the business of this honourable court be conducted with utmost dispatch in a manner to avoid delays.
5. That it will be in the interest of justice to grant this application.
6. That I depose to this affidavit in good faith, conscientiously, believing same to be true and correct in accordance with the oaths acts laws of the Federation of Nigeria, 2004.


.....
DEPONENT

Sworn to at the Court of Appeal of Nigeria
Registry, Abuja this day of May, 2022.



EXH. A

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA
05 MAY 2022
11 AMAN ESQ
SIGN

(52)

4/51

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE UMUAHIA JUDICIAL DIVISION
HOLDEN AT UMUAHIA
ON FRIDAY THE 18TH DAY OF MARCH, 2022
BEFORE THE HONOURABLE JUSTICE E. N. ANYADIKE
JUDGE

SUIT NO: FHC/UM/CS/26/2022

BETWEEN:

CHIEF NDUKA EDEDE

=====

PLAINTIFF

AND

THE ATTORNEY GEN. OF FEDERATION

===

DEFENDANT

Parties absent

Emeka Ozoani SAN for the Plaintiff with M. E. Dibia Esq, S. O. Mberekpe Esq, and Peace Nwoke Esq.

Chris Nevo Esq with Caleb Aluya Esq for the Defendant.

Court:

Judgment delivered in open Court and reliefs granted as prayed.

SGD

E. N. ANYADIKE

JUDGE

18/3/2022.

paid
FEDERAL HIGH COURT-UMUAHIA
1506-2662-585
25 MAR 2022
CAS

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FEDERAL HIGH COURT
UMUAHIA
REGISTRAR
DATE 25.03.2022

53

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE UMUAHIA JUDICIAL DIVISION
HOLDEN AT UMUAHIA
ON FRIDAY THE 18TH DAY OF MARCH, 2022
BEFORE THE HONOURABLE JUSTICE E. N. ANYADIKE
JUDGE

SUIT NO: FHC/UM/CS/26/2022

BETWEEN: PLAINTIFF
CHIEF NDUKA EDEDE =====
AND DEFENDANT
ATTORNEY-GENERAL OF THE FEDERATION =====

JUDGMENT

The Plaintiff commenced this suit against the Defendant by way of Originating Summons dated 7th day of March 2022 and filed on 8th day of March 2022.

By the Originating Summons the Plaintiff is seeking for the determination of the following questions:-

1. Whether by the combined effect of Sections 1(3), 6(6)(a) and (b), 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the provisions of Section 84(12) of the Electoral Act, 2022 can validly limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the

FHC/UM/CS/26/22 CHIEF NDUKA EDEDE V. ATTORNEY GEN. OF FEDERATION Page 1



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FEDERAL HIGH COURT
UMUAHIA
REGISTRAR *Shuaib Kudu*
DATE 18/3/2022
(Snr Admin)

54

purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office at least 30 days before the date of the election.

2. Whether by the combined effect of Sections 1(3), 6(6)(a) and (b), 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the provisions of Section 84(12) of the Electoral Act, 2022 in so far as it seeks to limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office at least 30 days before the date of the election, is not unconstitutional, ultra vires and inconsistent with the Constitution, invalid and therefore null and void in its entirety?

Upon the determination of the above questions, the Plaintiff is now seeking for the following reliefs:-

1. A Declaration that Section 84(12) of the Electoral Act, 2022 cannot validly and constitutionally limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such

(55)

person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election.

2. A Declaration that the provisions of Section 84(12) of the Electoral Act, 2022 which seeks, tends or purports to limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election, is grossly ultra vires and inconsistent with Sections 6(6)(a) and (b), 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, invalid, illegal, null, void and of no effect whatsoever.
3. AN ORDER OF COURT nullifying and/or setting aside Section 84(12) of the Electoral Act, 2022 for being unconstitutional, invalid, null and void to the extent of its inconsistency with the Section 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
4. AN ORDER OF COURT directing and compelling the Defendant to FORTHWITH delete the provisions of Section 84(12) from the Electoral Act, 2022 with immediate effect.

(56)

In compliance with the Rules, the Summons is supported by a 31 paragraphs affidavit and Written Address. Attached to the affidavit is the Plaintiffs voter's card information marked exhibit 1.

In opposition, the Defendant filed a 7 paragraphs affidavit of fact and a Written Address dated 10th day of March 2022 on 14th day of March 2022.

In response to the Defendant's affidavit of facts, the Plaintiff filed a 5 paragraph Further Affidavit on 11th day of March 2022 and attached to it is the Plaintiffs party membership card and marked exhibit A.

FACTS OF PLAINTIFF'S CASE:

The facts upon which the suit is premised are contained in the relevant paragraphs 3, 4, 7, 9, 11, 12, 13, 17 and 27 of the Plaintiffs supporting affidavit to wit:-

Paragraph 3: That the Plaintiff is a Constitutional Lawyer, Politician and a citizen of the Federal Republic of Nigeria having been born in Nigeria with his both parents as well as grandparents being citizens of Nigeria.

Paragraph 4: That the Plaintiff is also a registered voter and was duly issued with Voter's Card by the Independent National Electoral Commission (INEC) and have continually exercised his civil duties and franchise since return to democratic rule in 1990 till date. A copy of the Plaintiff Voter's Card Information is attached as Exhibit 1

(57)

Paragraph 7:

That the Plaintiff equally has constitutional interest in ensuring that he is governed by elected political office holders of his choice; and have always voted for his preferred candidates in all election since 1999 to date.

Paragraph 9:

That I know as of fact that under the Constitution of the Federal Republic of Nigeria every political office or public office holder has the constitutional right and also eligible to vote or be voted for at any Convention or Congress of any political party, of his choice, for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election.

Paragraph 11:

That many of the nationalistic persons or politicians, whom the Plaintiff desires to vote for various elective political offices are political office or public office holders.

Paragraph 12:

That many of these political office or public office holders may be desirous of resigning, withdrawing or retiring from any political or public office, which they presently occupy, at least 30 days before the date of the election, to enable them become qualified and eligible to vote or be voted for at any Convention or Congress of their party.

Paragraph 13:

That regrettably Defendant, being the Chief Law Officer the Federal Government of Nigeria has now advised the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to sign into law the Electoral Act 2022, including the provisions of Section 84(12) thereof.

Paragraph 17:

That Section 84(12) of the Electoral Act, 2022 has unconstitutionally taken away the constitutional right of every political appointee to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, thereby breaching the Plaintiff's right to have any of his preferred candidate, who be presently political appointees and willing to resign, withdraw or retire from the said political or public office, at least 30 days before the date of the election, to participate in any election, in Nigeria against the express provisions of the Constitution.

Paragraph 27:

That it is in the interest of justice for Section 84(12) of the Electoral Act, 2022 to be struck down for being unconstitutional, null and void to the extent of its inconsistency with the Constitution of the Federal Republic of Nigeria 1999 (as amended).

ISSUES:

(59)

The sole issue formulated by the Plaintiff for determination is:

“Whether by the combined effect and interpretation of (3), 6(6)(a) and (b), 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the provisions of Section 84(12) of the Electoral Act, 2022 is not in conflict with the express provision of the 1999 Constitution on the qualification and/or disqualification of persons employed in the public service of the federation or of any state?”

He submitted that Section 84(12) of the Electoral Act, 2022 is in direct conflict with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which has clearly mandated all the persons employed in the civil or public service of the federation or state to resign, withdraw or retire at least 30 days before any of the elections he or she intends to contest as clearly spelt out in Sections 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

He posited that the implication therefore is that any other law which introduces any other restriction or disqualification which is not contemplated in the constitution shall be void to the extent of its inconsistency with the provision of the constitution. He referred to Section 1(3) of the 1999 Constitution (as amended) and the case of GOVERNOR OF EKITI STATE V. OLUBUNMO (2017) 3 NWLR PART 1551 PAGE 1 AT 32 PARA C-F PER NWEZE JSC.

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DATE 18/03/2022

(20)

He submitted that the law is trite that where the provisions of an Act are inconsistent with the Constitution, the constitution will prevail. He referred to ADEYAJU V. WAEC (2002) 13 NWLR PART 785 PAGE 479 AT 499 - 500 PARA G - B.

He added that aside the provisions of the constitution of Nigeria 1999 (as amended) the Universal Declaration of Human Rights, Article 21, which is same as Article 25 of the International Convention on Civil & Political Rights stipulate that every citizen has right to vote and to be elected at genuine election which shall be by universal and equal suffrage and pointed out that Nigeria subscribes to these two and cannot seek to depart from global best electoral practices in this time and age.

He submitted that the provisions of an ordinary statute are subject to, and cannot render nugatory the provisions of the constitution. He relied on:

GOVERNOR OF OYO STATE V. OBA AFOLAYAN
(1995) 8 NWLR PART 413 PAGE 292 AT 329 PARA D - E.

He submitted that the law is trite that a right conferred by the constitution cannot be taken away by any other law. He referred to AQUA LIMITED V. ONDO STATE SPORTS COUNCIL, (1988) LPELR 527.

He submitted that a person who is qualified to contest an election by virtue of Constitution cannot be disqualified by operation of any other law in force in Nigeria. He made reference to:

AGI V. PDP 2016 LPELR 425688.

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REGISTRAR NWA CHWANKA C.
DATE 15/03/2022
(Snr. Admin)

(62)

NIGERIA OILSEEDS & CHEMICAL PRODUCTS
LIMITED V. ATTORNEY GENERAL IMO STATE
(1984) 5 NCLR 487;

MUSA & ORS V. INEC & ORS (2002) LPELR - 11119
(CA) at Pages 77 - 79, paras A - C.

He submitted that no statutory provision or any Act of the National Assembly can counteract, override, negate or derogate from the sacrosanct provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) notwithstanding the noble intention or purpose of the statute.

He referred to-

INEC V. MUSA (2003) LPELR - 24927 (SC); NWLR,
PT. 806, PG.72.

He submitted that the time-line has been set and adequately provided for by the Constitution and there was no need any more for the National Assembly to embark on a needless legislative surplusage, in clear contradiction of the Constitution with massive and far reaching political and undemocratic implications, as most eligible Nigerians would be deliberately disenfranchised or barred from pursuing their legitimate political ambitions or aspirations, simply because they were in service of their fatherland. Corollary to that is that some citizens may not participate in their party conventions/congress because their preferred aspirants are not on the ballot box.

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UMUAHIA
REGISTRAR Nduka Edede
DATE 18/02/2022

63
He referred to

(1982)

AG. OGUN STATE V. A.G. FEDERATION
NSCC 1,

INEC V. MUSA (2003) 3 NWLR (Pt. 806) 72.

He submitted that while it is the National Assembly that has the competence to amend, change or alter the provision of an existing law, vide the legitimate process, it cannot so do, in violation of the provisions of the Constitution, besides, where the Constitution has already covered the field or addressed the issue intended by the Act, the new provision will be regarded as invalid or inconsistent and therefore illegal and null and void.

He referred to-

ABIA STATE & 35 ORS V. A. G. FEDERATION (2002)
6 NWLR (PT. 763) 264 at 369.

MARWA & ORS V. NYAKO & ORS. (2012) LPELR -
7837 (SC).

A. G. ABIA V. A. G. FEDERATION (2003) 6 NWLR
(PT. 763) 264.

It is submitted therefore that the provisions of Section 84(12) of the Electoral Act, 2022 for adding new grounds for the disqualification of a person for office or to vote and or be voted for is an addition to the constitutional provisions on the subject matter and is unconstitutional, null and void and liable to be expunged from the Act.

(64)

He concluded that the court is also duty bound to interpret the Constitution whenever it is called to do so.

He called in aid –

NYAME V. FEDERAL REPUBLIC OF NIGERIAN
(2009) LPELR – 8872 (CA).

He urged the Honourable Court to apply the Blue Pencil Rule to strike down Section 84(12) of the Electoral Act, 2022 and save the remainder of the Act and the Labour and resources put into making it for the benefit of all Nigerians without derogating from their constitutionally guaranteed rights, also recognised by the domesticated African Human Rights Charter.

RESOLUTION OF ISSUES

I adopt the lone issue canvassed on both sides rephrased to wit:

Whether the provision of Section 84(12) of the Electoral Act, 2022 is in conflict with the provisions of Sections 1(3), 6(6)(a) & (b), 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and ought to be declared null and void and deleted.

I shall reproduce the above sections of the law here under,

Section 84(12) of the Electoral Act, 2022 provides that no political appointee at any level shall be voting delegate or be voted for at the convention or congress of any political party for the purpose of the nomination of candidates for any election.

FHC/UM/CS/26/22 CHIEF NDUKA BDEDE V. ATTORNEY GEN. OF FEDERATION Page 13

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UMUAHIA
REGISTRAR *W. Chukwura C.*
DATE 18/03/2022
(*Snr. Admin*)

(65)

Section 66(1)(f) of the 1999 Constitution provides - "No person shall be qualified for election to the senate or the House of Representatives if -

(f) he is a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment thirty days before the date of election;"

107 - (1)(f) "No person shall be qualified for election to a House of Assembly if -

(f) he is a person employed in the public service of the Federation or of any State and he has not resigned, withdrawn or retired from such employment thirty days before the date of election;"

137 - (1)(g) "A person shall not be qualified for election to the office of President if -

(g) being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election;"

182 - (1)(g) "No person shall be qualified for election to the office of Governor of a State if -

(g) being a person employed in the public service of the Federation or of any State he has not resigned, withdrawn or retired from the employment at least thirty days to the date of the election;"

In the face of Sections 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the 1999 Constitution, what is the purport of Section 84(12) of the Electoral Act,

FHC/UM/CS/26/22 CHIEF NDUKA EDEDE V. ATTORNEY GEN. OF FEDERATION Page 14

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FEDERAL HIGH COURT
UMUJAHIA
REGISTRAR, W.A. Chukwu
DATE: 18/03/2022
(-Snr. Admin)

22. I mean what does Section 84(12) of the Electoral Act 2022 tend to achieve.

(66)

By the said Section 84(12) of the Electoral Act, 2022, every political appointee both at the local, state and National levels shall not vote for candidates of their choice and shall not be voted for as a candidate for any election at any political party Convention or Congress in Nigeria. The implication is that political appointees who by virtue of their appointments are public office holders are automatically disenfranchised from voting and being voted for at party conventions and congresses where candidates for local, State and National elections shall emerge. On the other hand the citizens are also disenfranchised from voting for their preferred candidates who are political appointees/public office holders who wishes to contest for election at such conventions and congresses.

It is common knowledge that candidates for elections in Nigeria are commonly chosen at party conventions and congresses. A candidate who wishes to contest for any political position who is also a member of a political party must first pass the huddle of being nominated at such conventions and congresses before his name will be submitted and included in the list of candidate for elections. Whereby such political appointees who wishes to contest in the future elections are denied the right to vote or be voted for at party congresses and conventions, then they are automatically disenfranchised from contesting in the National elections.

The Sections 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the 1999 Constitution has already made provisions that such political appointees can

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UMUAHIA
REGISTRAR
10/02/2022

67

contest for elections so long as they resign, withdraw or retire from their respective employments at least 30 days to the date of elections.

The question now is if a political appointee who is a member of a political party and who is desirous of contesting an election is denied the right to vote and be voted for at the party convention and congress, and therefore does not emerge as a party flag bearer for election, how then will such a person be voted for at the election even if he resigns or retires or withdraw 30 days to the date of such election.

The effect is that this new Section 84(12) of the Electoral Act, 2022 places a limitation on the voting rights of political appointees in Nigeria irrespective of whether they want to contest for elections or not. It places a disenfranchisement on the political appointees who may wish to contest for elections to serve their father land. It also places restrictions on citizens of Nigeria who may wish to vote for candidates of their choice who are political appointees for election as all levels in Nigeria.

The 1999 Constitution (as amended) is the supreme law of the land and have made adequate provisions for qualification and disqualification of candidates for elections in Nigeria and Section 84(12) of the Electoral Act, 2022 is not only inconsistent with the provisions of the 1999 Constitution as amended particularly Sections 66, 107, 137 and 182 of the said Constitution, but is also an unnecessary surplusage, overreaching and a total deprivation of the voting rights of Nigeria citizens.

68
here the provisions of an Act are inconsistent with the
tution will prevail and such offending provisions of the
Constitution, null and void and of no effect.

1999 Constitution (as amended).

OF EKITI V. OLUBUNMO (supra)

C V. MUSA (2003) LPELR - 24927 S C

question No: 1 in the negative and question No: 2 in
sed on which I hereby enter judgment for the Plaintiff
as follows:-

Section 84(12) of the Electoral Act, 2022 cannot validly
ally limit, remove, abrogate, disenfranchise, disqualify,
stitutional right or eligibility of any political appointee,
blic office holder to vote or be voted for at any
Congress of any political party for the purposes of
uch person or candidate for any election, where such
gned, withdrawn or retired" from the said political or
least 30 days before the date of the election.

ie provisions of Section 84(12) of the Electoral Act,
its, removes, abrogates, disenfranchises, disqualifies,
onstitutional right and eligibility of any political
al or public office holder to vote or be voted for at any
ongress of any political party for the purposes of
ch person or candidate for any election, where such

IDUKA BDEDE V. ATTORNEY GEN. OF FEDERATION

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DATE 18/02/2024

69

person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election, is grossly ultra vires and inconsistent with Sections 6(6) (a) & (b), 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, invalid, illegal, null, void and of no effect whatsoever.

- 3. I hereby nullify and set aside Section 84(12) of the Electoral Act, 2022 for being unconstitutional, invalid, null and void to the extent of its inconsistency with Sections 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- 4. I hereby Order the Defendant (The Attorney General of the Federation) to delete the provisions of Section 84(12) from the Electoral Act, 2022 with immediate effect.

This is my judgment.

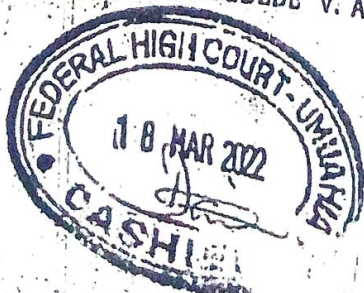
E. N. ANYADIKE
JUDGE
18/03/2022.

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 Umuahia
 REGISTRAR. *[Signature]*
 TE 15/03/2022
 (Sur. Ammir)

APPEARANCES:

Parties absent

Emeka Ozoani SAN with M. E. Dibia Esq, S. O. Mberekpe Esq and Peace Nwoke Esq for the Plaintiff.
Chris Nevo Esq with Caleb Aluya Esq for the Defendant.



IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO.....

BETWEEN

MR GODWIN EMEFIELEPLAINTIFF

AND

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC) } DEFENDANTS
2. ATTORNEY GENERAL OF THE FEDERATION }

PALINTIFF'S /APPLICANT'S WRITTEN ADDRESS IN SUPPORT OF
NOTICE OF MOTION

INTRODUCTION

- 1.0 The Plaintiff/Applicant's application is brought pursuant to the provisions Order 26 rules 2(1), Order 51, Order 7 rule 1(1), Order 13 rule 49, 13 rule 50 and order 56 rules 1 and 8 of the Federal High Civil Procedure rules, 2019, and under the inherent jurisdiction of this honourable court as preserved by section 6 (6) (a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999, as altered.
- 1.2 The motion is praying for the orders and reliefs as contained on the face of the motion paper. The grounds for this application are further contained on the face of the motion paper.
- 1.3 The motion is supported by a six paragraphs affidavit deposed to by one **Maliki Sylvanus**, a Senior Counsel in the law firm of the counsel to the Applicant, Mike Ozekhome's Chambers. We rely on all the averments in the affidavit.

2.0 ISSUE(S) FOR DETERMINATION

- 2.1 The Plaintiff/Applicant formulates the below sole issue for the determination of this application to wit:

WHETHER ARISING FROM THE ENTIRE CIRCUMSTANCES OF THIS APPLICATION, THE PLAINTIFF/APPLICANT HAS PLACED SUFFICIENT MATERIALS BEFORE THIS HONOURABLE COURT TO ENTITLE HIM GRANT THE RELIEFS IN THE TERMS SOUGHT IN THIS APPLICATION

3.0 **LEGAL ARGUMENT**

- 3.1 We submit most humbly that this honourable court has the requisite *vires*, and or jurisdiction to grant the reliefs of the Plaintiff /Applicant as sought in this Application.
- 3.2 For emphasis my noble lords, Order 51 rules 1(1) and (2) of the rules of this honourable provides as follows:

"51-1(1). Where in commencing or purporting to commence any proceeding or at any stage in the course of or in connection with any proceeding, there has by reason of anything done or left undone, been failure to comply with the requirement of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings or any judgement or order".

"(2) The court may on the ground that there has been such a failure as mentioned in the sub-rule (1) of this rule and on such terms as to cost or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in the proceeding or any document , judgement or order ,or it may exercise its powers under this Rules to allow such amendment (if any) to be made and to make such order (if any dealing with the proceedings generally as it thinks fit".

- 3.3 The appellate courts in a load of judicial decisions have restated the enormous powers of this honourable court to order of departure from the rules of this honourable court in the interest of justice. See. **AHMED v. GOVT OF GOMBE STATE & ORS (2021) LPELR-**

53367(CA) and A-G FEDERATION & ORS v. ABUBAKAR & ORS (2000) LPELR-9928(CA).

- 3.4 This honourable court also has the inherent powers to abridge the time for a party to take any step in proceedings so as to avoid delay in the prosecution of his appeal. See **ADEDEJI v. DANKULA & ORS (2007) LPELR-8451(CA).**
- 3.5 Order 56 rules 1 and 8 of the rules of this honourable court further give enormous powers to this honourable court to justice.
- 3.6 More so, this honourable court has the powers to accelerate the hearing of this suit. See the case of **DUWIN PHARMACEUTICAL & CHEMICAL CO. LTD v. BENEKS PHARMACEUTICAL & COSMETICS LTD & ORS (2008) LPELR-974(SC)**, where it was held thus:

"...it has often been advised that in appropriate cases a recourse to an order of accelerated hearing should be preferred to an interlocutory injunction so that the matters in controversy can be settled once and for all. This principle was restated in *Onyesoh v. Nnebedun (supra)* at 341 - where this court, per *Nnaemeka-Agu, J.S.C.* said:- "The better view is, therefore, that whenever it is possible to accelerate the hearing instead of wading through massive affidavits and hearing lengthy arguments on interlocutory injunction, the court should accelerate the hearing and decide finally on the rights of the parties." Per *FRANCIS FEDODE TABAI, JSC* (Pp 45 - 46 Paras E - A).

- 3.7 See also the case of **AONDOAKAA v. OBOT & ANOR (2011) LPELR-9101(CA)**, where it was stated thus:

"Let me start with the orders for accelerated hearing and to abridge the time for filing of Briefs of Argument. At page 2 of the written address of the learned counsel for 1st Respondent, the learned counsel, under 3. ARGUMENTS' had stated thus: "3

(1) we commence our submission by indicating that we will not oppose prayer 2 in the applicant's motion, that is the prayer for accelerated hearing though it is obvious that the affidavit in support has not made any special or strong circumstance to warrant accelerated hearing. We leave it to the discretion of the Court." The Court that is called upon to exercise discretion must do so not only judicially and judiciously but reasonably and wisely too by giving consideration to all the materials relevant to the case and the appropriate law relating thereto. see *University of Lagos vs. Aigoro* (1985) 1 NWLR (pt. 1) 143. Under and by virtue of Order 17 Rule 11 of the Court of Appeal Rules 2007 (the applicable Rules to this motion), this Court, has the power in appropriate circumstances to grant accelerated hearing of an appeal. The Rule provides that: "The Court may, where it considers the circumstances of an appeal to be exceptional or where the hearing of an appeal ought to be accelerated in the interest or justice, waive compliance with the provisions of this order in so far as they relate to the preparation and filing of briefs of argument either wholly or in part or reduce the time limits specified in this order, to such extent as the Court may deem reasonable in the circumstances of the case." The desire of an Appellant to have the appeal heard on accelerated basis is in my view in consonance with the right of fair hearing guaranteed under Section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 that in the determination of his civil rights and obligations, a person shall be entitled to a fair hearing within a reasonable time by a Court or Tribunal. In the circumstances of the instant appeal and on the basis that the application for accelerated hearing is not opposed, it is proper that this Court accedes to that prayer." Per ISAIAH OLUFEMI AKEJU, JCA (Pp 17 - 19 Paras F - C).

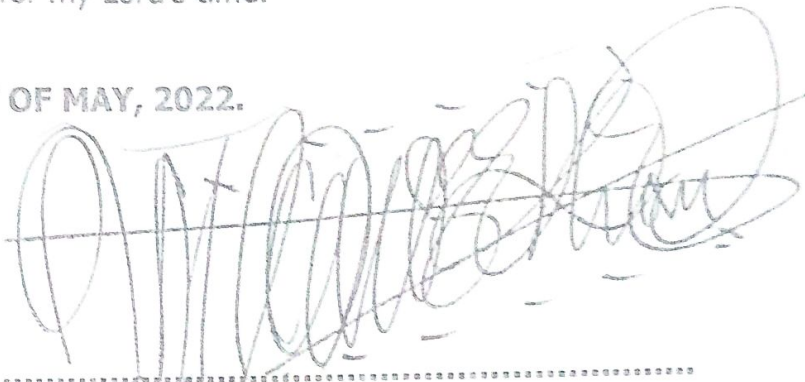
3.8 We humbly urge this honourable court to so hold.

4.0

CONCLUSION

- 4.1 We most respectfully submit and urge this honourable court to so hold, based on the reasons adduced for the need to depart from the rules of this honourable court, the plea to abridge time, and authorities of the cases cited above, that this is a proper case for this honourable court to exercise its discretion in favour of the Plaintiff /Applicant.
- 4.2 We humbly urge my Lord to grant the reliefs sought.
- 4.3 We are much obliged for my Lord's time.

DATED THIS 4TH DAY OF MAY, 2022.



-
✓ Chief Mike A. A. Ozekhome, SAN, OFR,
FCI Arb, LL.M, Ph.D, LL.D
Benson Igbanoi, Esq.
Lady Josephine Mike Ozekhome, LL.M.
Amauche O. Onyedum (Mrs)
Godwin Iyinbor, Esq.
Richard Ebie, Esq.
Onuoha Ejieke, Esq.
S. E. O. Maliki, Esq.
Justin Omogbemeh, Esq.
Queen-Ubokutom I. Umana, (Miss)
Wilson A. Ibhazobe, Esq.
Jeffrey Iluobe Itua, Esq.
Oluchi Vivian Uche (Miss)
Azubuike Solomon, Esq.
Osilama Mike Ozekhome, Esq., LL.M, MBA
Ngozi T. Onyechi (Miss), LL.M, MSC
Adadu Obande, Esq.
Destiny E. Odianosen, Esq.
Dixon C. Odili, Esq.
Aisosa Iriangbonse Ogboro (Miss).

Oshomha Mike Ozekhome, Esq., MBA
Oghenetajiri Ruth Djegbada, (Miss)
Mike Ozekhome's Chambers,
Counsel to the Plaintiff
Ukwe Court,
Plot 2215, Nile Street,
Opposite Maitama Police Station,
Maitama, Abuja,
08035550444, 08022266688
Email: ozekmike@yahoo.com
ozekmike@nigerianbar.ng

FOR SERVICE ON:

- 1. THE 1ST DEFENDANT:
INDEPENDENT NATIONAL ELECTORAL COMMISSION,
(INEC),
PLOT 436,
ZAMBEZI CRESCENT,
MAITAMA,
FEDERAL CAPITAL TERRITORY,
ABUJA.**

- 2. THE 2ND DEFENDANT:
ATTORNEY GENERAL OF THE FEDERATION,
OFFICE OF THE HONOURABLE ATTORNEY GENERAL,
FEDERAL MINISTRY OF JUSTICE,
CENTRAL BUSINESS DISTRICT,
FEDERAL CAPITAL TERRITORY,
ABUJA.**