

COURT OF APPEAL
ABUJA DIVISION
23RD MARCH, 1999. CA/A/EPPR/12/99
CORAM:- D. MUSDAPHER, A. M. MUKHTAR, G. A. OGUNTADE,
J. T. AKPABIO, D. O. EDOZIE, JJCA

CHIEF OLU FALAE APPELLANT
AND
GENERAL OLUSEGUN OBASANJO & ORS. RESPONDENT
(NO. 1)

EVIDENCE - Affidavit - Defect in form - Should not vitiate the affidavit - By virtue of S. 84 of the Evidence Act.

ELECTION PETITION - Decree No. 6 of 1999 - Provisions of S. 59 - Can not be cut down by the rules of the Federal High Court - The duty on the court under the section - Is to allow an applicant to inspect the documents in possession of the Chief Electoral Officer.

INTERPRETATION OF STATUTES - Electoral Decree No 6 of 1999 - Interpretation of - The court must look for guidance primarily within the four walls of the Decree - Exceptions thereto.

STATUTES - Decree No 6 of 1999 - The intention of the makers - Is to make the process of the Presidential election transparent - And allow any person who is dissatisfied - To have a ready access to the electoral documents in the possession of INEC.

FACTS

Sequel to an election petition brought by the petitioner challenging the election of the 1st respondent as the President of the Federal Republic of Nigeria, the petitioner filed an application on 16/3/99 praying for an order to be allowed to inspect some electoral documents on the possession of the respondent.

The application was opposed by the respondents on the follow-

ing grounds inter alia: that the affidavit in support of the application is defective and; that the applicant in invoking the powers vested in the court by Decree No. 6 of 1999 should follow the relevant rules of the Federal High Court.

HELD (Unanimously granting the application per the leading ruling of **OGUNTADE JCA**)

Interpretation of statutes - Electoral Decree No. 6 of 1999

1. I should start this ruling by stating that the Electoral Decree No.6 of 1999 relevant to this case is a special legislation and it is generally considered by the law to be sui generis. That being the case, this court must look for guidance primarily within the four walls of the Decree and it is only when this is lacking can the court fall back on the relevant court rules and case law. (p. 1016 H)

Statutes - Decree No. 6 of 1999 - The intention of the makers

2. It seems to me that the clear intention of the makers of Decree No.6 of 1999 is to make the process of the Presidential Election transparent; and that in the event any one is dissatisfied with the process, that person should have a ready access to the electoral documents in the possession of INEC. The language of section 59 of Decree No.6 of 1999 is lucid and clear and any attempt to put a gloss on it must be resisted. The provision clearly says what it means. (p. 1017 B)

Evidence - Affidavit

3. The argument that the affidavit in support of the motion is defective overlooks the provision of section 84 of the Evidence Act which provides that a defect in form should not vitiate the affidavit under consideration. It would seem to me therefore that notwithstanding the lacunae pointed out by Mr. Sofola in respect of the said affidavit, the same is still valid for the purpose of this application. (p. 1017 C)

Election Petition - Decree No. 6 of 1999

4. I also do not think that the rules of the Federal High Court can be

invoked to cut down or curtail the ambit or purview of section 59 of Decree No.6 of 1999. I appreciate the industry of the learned SANs Mr. Kehinde Sofola and Chief Afe Babalola who have produced before us several judicial decisions and some legal books. My view however is that the duty on the court as set out in section 59 is clear. It is to allow an applicant to inspect the documents in possession of the Chief Electoral Officer (i.e 2nd respondent) provided the inspection is for the purpose of initiating or maintaining an election petition. (p. 1017 E)

REPRESENTATION

CHIEF G.O.K. AJAYI SAN & 10 Ors for the Petitioner

CHIEF AFE BABALOLA SAN & 32 Ors for the Respondents

CASE REFERRED TO

New Nigeria Bank Plc v. I.B.W. Enterprises (1998) 6 NWLR (Pt.554) 446 at 454

LEAD.JUDGMENTBY OGUNTADE JCA

The petitioner by his application filed on 16/3/99 prays for an order to be allowed to inspect the following documents in the possession of the respondents:

(i) All the ballot papers utilised by all voters in the voting exercise at all the polling stations.

(ii) All Forms EC 8A reflecting the results of the votes cast at the polling stations throughout the country at the Presidential election.

(iii) All Forms EC 8B produced in respect of the collation exercise at ward level throughout the country.

(iv) All Forms EC 8C in respect of the collation exercise at the Local Government level throughout the country.

(v) All forms EC 8D issued in respect of the collation exercise at State level throughout the country.

The petitioner through Mr. A.M. Kotoye deposed to an affidavit in support of the motion. Chief G.O.K. Ajayi, S.A.N. argued the application in the terms stated in the motion paper. Mr. Kehinde Sofola, S.A.N.

in reply urged it on us to dismiss the application on the ground that the affidavit in support is defective because the affidavit had not followed the format of the Schedule 1 provided under the Oaths Act, Cap. 333 Laws of the Federation 1990. He said that the deponent had not complied with
B section 13 of Cap. 333. Counsel relied on New Nigeria Bank Plc v. I.B.W. Enterprises (1998) 6 NWLR (Pt.554) 446 at 454.

Further, counsel submitted that an applicant must show that the purpose of the application is to initiate an election petition or to maintain
C one. Counsel took us through the body of the petition filed and submitted that the applicant had the relevant facts in his possession such that it could not be said that he needed to carry out the inspection to maintain the petition. Counsel said that the application was scandalous and brought in bad faith. Mr. Sofola, S.A.N. offered to produced the documents in
D court. He referred to several cases and submitted that inspection could only be ordered after a defence has been filed.

Finally, counsel submitted that the application as framed was too wide; and that applicant should have stated the polling units in respect of
E which he wanted the documents inspected. He urged us to dismiss the application.

Chief Afe Babalola said that the application was premature and that the powers vested in the court under section 50(2) of Decree No.6
F of 1999 should be read, along with paragraph 51 of Schedule 4; and that therefore an applicant should follow the relevant rules of the Federal High Court. Counsel said that the application was predicated on paragraphs 14 and 23 of the petition; and that in any case the applicant had in para-
G graph 14 of his petition raised a notice to produce. It was therefore no longer necessary to ask for inspection. Counsel urged as to dismiss the application.

Chief G.O.K. Ajayi, S.A.N. in a rejoinder explained the difference between an oath, affirmation and a declaration. He then submitted
H that the decision in New Nigeria Bank Plc v. I.B.W. supra was given per incuriam. He said that the objection was misplaced.

I should start this ruling by stating that the Electoral Decree No.6 of 1999 relevant to this case is a special legislation and it

is generally considered by the law to be sui generis. That being the case, this court must look for guidance primarily within the four walls of the Decree and it is only when this is lacking can the court fall back on the relevant court rules and case law.

It seems to me that the clear intention of the makers of Decree No.6 of 1999 is to make the process of the Presidential Election transparent; and that in the event any one is dissatisfied with the process, that person should have a ready access to the electoral documents in the possession of INEC. The language of section 59 of Decree No.6 of 1999 is lucid and clear and any attempt to put a gloss on it must be resisted. The provision clearly says what it means.

The argument that the affidavit in support of the motion is defective overlooks the provision of section 84 of the Evidence Act which provides that a defect in forms should not vitiate the affidavit under consideration. It would seem to me therefore that notwithstanding the lacunae pointed out by Mr. Sofola in respect of the said affidavit, the same is still valid for the purpose of this application.

I also do not think that the rules of the Federal High Court can be invoked to cut down or curtail the ambit or purview of section 59 of Decree No.6 of 1999. I appreciate the industry of the learned SANs Mr. Kehinde Sofola and Chief Afe Babalola who have produced before us several judicial decisions and some legal books. My view however is that the duty on the court as set out in section 59 is clear. It is to allow an applicant to inspect the documents in possession of the Chief Electoral Officer (i.e 2nd respondent) provided the inspection is for the purpose of initiating or maintaining an election petition.

In the circumstances and having regard to the clear provisions of the law, it is just and equitable to allow applicant access to the documents listed above in this ruling for inspection. It is hereby ordered that 2nd respondent should allow the applicant or his agents the opportunity to inspect the electoral documents listed in this ruling in the custody of

the Chief Electoral Officer of the federation and or under the custody of Electoral Commissioner in the States or any other Electoral official throughout the federation.

The 1st respondent or his agent, if he be so advised, may be present at such inspection.

MUSDAPHER JCA

I have taken active part in the preparation of the leading ruling just delivered by my learned brother Oguntade, J.C.A. I accordingly agree with the conclusion arrived at and the consequential orders therein made.

D

MUKHTAR JCA

The lead ruling just delivered by my learned brother Oguntade, J.C.A. has been read in advance by me. I entirely agree with the reasoning and conclusion reached that the orders sought should be granted as prayed to the extent contained in the lead ruling.

AKPABIO JCA

F

I have read in advance the lead ruling of my brother Oguntade, J.C.A. just delivered, and agree with him that the application of the petitioner to be granted leave to inspect certain documents in the possession of 2nd respondent (Chief Electoral Officer of the Federation) be granted. It is a clear provision of section 59(2) of Decree No.6 of 1999 that such applications should be granted for the purposes of either instituting or maintaining the petition. Since the petition has already been instituted, I also hereby grant this application for the purpose of maintaining this petition on the conditions stated in the lead ruling of my learned brother. I also grant the application.

EDOZIE JCA

I had read before now the lead ruling just read by my learned brother Oguntade, J.C.A. I agree with his reasoning and conclusion in granting the application in terms of the consequential orders in the said lead ruling.

B

C

D

E

F

G

H