

SUPREME COURT OF NIGERIA
28TH JANUARY, 2011. SC. 39/2010
CORAM:- D. MUSDAPHER, M. MOHAMMED, C. M.
CHUKWUMA-ENEH, J. A. FABIYI, O. O. ADEKEYE, JJSC

HON. EMMANUEL BWACHA APPELLANT
AND
1. HON. JOEL DANLAMI IKENYA
2. INDEPENDENT NATIONAL RESPONDENTS
ELECTORAL COMMISSION (INEC)
3. PEOPLES DEMOCRATIC PARTY

ESTOPPEL - Issue estoppel - Scope of - Flexibility - The formulation of issue estoppel has not been static - It has been expanded to meet circumstances calling for application of the policy - That there must be an end to litigation (H1)

ESTOPPEL - Issue estoppel - Identity of parties - Essence of - This requirement does not mean that the parties in both suits must be identical - It suffices that necessary parties to the relevant issue are the same (H2)

ESTOPPEL - Issue estoppel - Sameness of parties - Absence of - Where two necessary parties to the issue were absent in the earlier suit - The condition is not met - And the principle cannot be applied (H3)

ESTOPPEL - Issue estoppel - Finality of decision - Absence of - Where the relevant issue was not determined with finality in the earlier suit - The doctrine will not apply to bar it from being raised in another suit (H4)

ELECTIONS - Substitution of candidates - Cogency of reason - Where the reason given - Is that earlier submission was made "without enough information" - It is neither cogent nor verifiable (H5)

ELECTIONS - Claims - Form - Clear claim under s. 34 Electoral Act 2006 - That failed to state the subsection in issue - Cannot be de-

feated as the omission is inconsequential (H6)

FACTS

The 1st respondent, as plaintiff, sued the appellant, 2nd respondent, and 3rd respondent, as defendants, before the Federal High Court Kaduna, challenging the action of 3rd respondent in substituting his name with that of appellant as 3rd respondent's senatorial candidate for Taraba South Senatorial District in April, 2007 general elections. Appellant, who was the main target of 1st respondent's claims, reacted by not only filing a counter affidavit to the affidavit in support of the originating summons but also filed a notice of preliminary objection supported by an affidavit. The ground of the preliminary objection was that 1st respondent was estopped from raising the issue of substitution of candidate in his action, the same having been raised and decided in an earlier suit between the parties in suit No. FHC/ABJ/M/126/07.

It was in evidence however, that the appellant and 3rd respondent were not parties to the alleged earlier suit. Moreover, the learned trial judge in the earlier suit had refused to consider the issue of substitution when it was raised in that suit, for the reason that 3rd respondent was not made a party thereto. Accordingly, the issue was not decided on the merit. The trial court heard the preliminary objection together with the substantive suit. In its judgment delivered on 5th April, 2007, it dismissed the preliminary objection and gave judgment to 1st respondent as per his claims. Aggrieved, appellant appealed to the Court of Appeal which appeal was dismissed. Still dissatisfied, appellant has come on a further and final appeal to Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether from the facts and circumstances of this case, the learned Justices of Court of Appeal were right when they held that the issue of substitution raised by the 1st Respondent in the Federal High Court Kaduna, was not caught by the doctrine of issue estoppel.

2. Whether the learned Justices of the Court of Appeal were right when they held that the reason contained in the letter for substitution of the 1st Respondent was not cogent and verifiable.

3. Whether the learned Justices of the Court of Appeal were

right when they held that the fact that the claim of the 1st Respondent in his originating summons at the trial court was not brought under any sub-section of section 34 of the Electoral Act, 2006, is inconsequential.”

HELD (Unanimously dismissing the appeal per **MOHAMMED JSC**)
Issue estoppel - Scope of - Flexibility

1. The doctrine of issue estoppel has been traced to the English case of *Duchess of Kingston* (1775 - 1802) All ER Rep 623, but its formulation has not been fixed or static. It has been expanded in several cases to meet circumstances which call for application of the policy of law that underlines the doctrine of estoppel per rem judicatam, namely, that there must be an end to litigation. Such extension of the doctrine is found in *Fidelitus Shipping Co. Ltd. v. Export-Chleb* (1965) 2 All ER 4 at 10 where it was applied to issues determined at the interlocutory stage. (p. 85 B)

Issue estoppel - Identity of parties - Essence of

2. The state of law was also stated by this court in *Ikemi and Ors. v. Efamo & Ors.* (2001) 10 NWLR (Pt. 720) 1 at 11 - 12 and 17 - 18 where this court stated :-

“The principle that for a defence of issue estoppel to succeed there must be identity of the parties, does not mean that all the parties in the previous suit must be made parties in the latter suit. It is sufficient, where there are several parties in the previous suit, that those of the parties who were necessary parties to the issue in the previous suit, are the same as in the latter suit.” (p. 85 G)

Issue estoppel - Sameness of parties - Absence of

3. Where one or more of the conditions are not met, issue estoppel cannot be applied. Starting with the condition that the parties must be the same in the previous and the present suits, it is indisputable that in the present case, the parties in the suit at the Federal High Court Abuja, were different from those before the Federal High Court, Kaduna. Significantly, the Appellant who was to take the place of the 1st Respondent as the substituted candidate for Southern Taraba State Senatorial District, was not a party to the suit at the Federal High Court, Abuja. Furthermore, the political party, the PDP, the 3rd

Respondent herein which was the party empowered under the Electoral Act to substitute a candidate contesting the election under its ticket, was also not a party to the suit of the 1st Respondent at the Federal High Court Abuja. Thus, it is beyond doubt that two necessary parties in whose absence the issue of substitution could not have been finally determined, were clearly absent at the Abuja trial Federal High Court, not having been made parties to the suit. (p. 86 C)

C Issue estoppel - Finality of decision - Absence of

4. The decision of the Court of Appeal now on appeal, no doubt recognized the fact that the decision of the trial Abuja Federal High Court above on the relief of substitution of candidate, was not a final decision on the issue to qualify it for the application of the plea of issue estoppel. Therefore, as the issue of substitution of candidate was not effectively and finally determined against the Appellant and the 3rd Respondent in the 1st Respondent's suit heard and determined by the Federal High Court Abuja, the 1st Respondent was perfectly justified in law in including and raising the same issue in his latter action at the Federal High Court Kaduna, for determination without any fear of that claim being affected by a defence of issue estoppel as rightly found by the trial court and affirmed by the court below. (p. 87 B)

F ELECTIONS - Substitution of candidates - Cogency of reason

5. It is not in dispute between the parties in this appeal that the only reason given for the substitution of the 1st Respondent with the Appellant, as the candidate of the 3rd Respondent in the National Assembly Election of 21st April, 2007, in the letter, Exhibit 7 sent to the 2nd Respondent, INEC, is that the name of 1st Respondent was submitted without enough information. This particular reason given for the substitution of candidate by the 3rd Respondent in a letter sent to the 2nd Respondent had come before this court for determination in the case of *Ehinlanwo v. Oke* (2008) 16 NWLR (Pt. 1113) 357 at 426 where Onnoghena JSC said: -

"Coming now to the reason given for the substitution which is stated to be 'without enough information', I agree with the trial court and the learned senior counsel for the Appellant that the said reason,

if it may be so considered/regarded, amounts to no reason at all, neither is it cogent and verifiable, as satisfactorily required."

I am bound by this decision, as the reason given for the substitution of candidate in the letter of substitution in that decision is the same as the reason given in the letter of substitution, Exhibit 7 in the present case. (p. 88 D) B

ELECTIONS - Claims - Form

6. It is quite plain in my view that the fact that section 34 of the Electoral Act and the words 'substitute candidate' and 'cogent and verifiable reasons,' featured prominently in the above question for determination followed by featuring of the same section 34 of the Electoral Act, 2006 and said words in reliefs 1, 2 and 4 sought by the 1st Respondent in his originating summons, the facts leave no one in doubt that the claims of the 1st Respondent were specifically brought under section 34 (2) of the Electoral Act. This is because of the three sub-sections (1), (2) and (3) of section 34 of the Electoral Act, 2006, only sub-section (2) talks of giving cogent and verifiable reasons by political parties in their application to change their candidates to be forwarded to the Independent National Electoral Commission under that section of the Electoral Act. C D E

I entirely agree with the decision of the trial court affirmed by the court below that the fact that the claims of the 1st Respondent were not under any sub-section of section 34 of the Electoral Act, 2006, is indeed inconsequential. (p. 90 A) F

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. New evidence may displace an issue estoppel

In the foregoing cases, this court decided that the doctrine of issue estoppel so far as it affects civil proceedings, may be stated as a situation where a party to civil proceedings is not entitled to make as against the other party, an assertion, whether of fact or of the legal consequences of facts, the correctness of which is an essential element in the previous cause of action or defence in previous proceedings between the same parties or their predecessors in title and was found by a court of competent jurisdiction in such previous civil proceedings to be incorrect, unless further material which is relevant to G H

the correctness or incorrectness of the assertion and could not by reasonable diligence have been adduced by that party in the previous proceedings, has since become available to him. (p. 94 E)

REPRESENTATION

- B DR. A. A. Izinyon SAN with P. M. Ayam and Hannatu Abdurrahman (Mrs.) for the Appellant.
M. A. Musa with I. E. Markus, D. N. Ugwu (Miss) and Deji Morakinyo for 1st Respondent.
- C 2nd Respondent absent and not represented but duly served.
Chief Olusola Oke with Chief I. O. Ajana, Mureen Onyukwe (Miss) and U. Ezeta for 3rd Respondent.

CASES REFERRED TO

- D Kalu v. Uzor (2004) 12 NWLR (Pt. 886) 1 at 33
Agu v. Ikewibe (1991) 3 NWLR (Pt. 180) 385
Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 36
Ikeni v. Efamo (2001) 10 NWLR (Pt. 720) 1 at 11
Akinfolarin v. Akinola (1994) 3 NWLR pt. 335 pg. 659
- E Ogbogu v. Ugwuegbu (2003) FWLR (Pt. 161) 1825
Ebba v. Ogodo (2000) 10 NWLR (Pt. 675) 387 at 407
Mohammed v. Olawunmi (1993) 4 NWLR pt. 287 pg. 254
Oyerogba v. Olaopa (1998) 3 NWLR (Pt. 968) 565 at 622
Ehinlanwo v. Oke (2008) 16 NWLR (Pt. 1113) 357 at 426
- F Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 367 at 478
Oshoboja v. Amuda (2000) 13 NWLR (Pt. 685) 427 at 441
Sun Insurance Plc. v. Adegoroye (2003) 11 NWLR pt. 831 pg. 37
Rotimi Ameachi v. INEC & Ors. (2007) 9 NWLR (Pt. 1040) 504

STATUTE & RULES REFERRED TO

Electoral Act, 2006, s. 34
Supreme Court Rules, O. 6 r. 6

LEAD JUDGMENT BY MOHAMMED JSC

The 1st Respondent in this appeal was the Plaintiff at the Federal High Court Kaduna where he filed his action against the Appellant and the 2nd and 3rd Respondents as Defendants in an Originating Summons posing the following questions for determinations.

"1. Whether in view of section 34 of the Electoral Act,, 2006 which requires political parties wishing to substitute candidates to give 'cogent and verifiable' reasons, the 2nd Defendant can substitute the Plaintiff's name as a senatorial candidate for no reason at all.

2. Whether in view of the judgment of the Federal High Court, Abuja dated the 27th March, 2007, wherein the Economic and Financial Crimes Commission's list of 'corrupt' candidate and the Report of the Administrative Panel of Inquiry otherwise called the Ayua Panel were quashed, the 2nd Defendant can rely on the list and report to substitute the Plaintiffs name with that of the 3^d Defendant." The Plaintiff/1st Respondent then proceeded and claimed the following reliefs-

"1. A declaration that by virtue of section 34 of the Electoral Act, 2006, political parties seeking to substitute candidates must give 'cogent and verifiable' reason for the substitution.

2. A declaration that the 1st Defendant's letter dated 5th February, 2007 which substituted the Plaintiffs name with that of the 3^d Defendant as PDP candidate for southern Taraba Senatorial District, is null void and of no effect having failed to meet the requirement of Section 34 of the Electoral Act.

3. A declaration that in view of the judgment of the Federal High Court, dated 27th March, 2007, wherein the E. F. C. C. list and the administrative panel of inquiry report were quashed, the said list and report can no longer be a basis for substituting the Plaintiffs name with that of the 3^d Defendant.

4. A declaration that by virtue of section 34 of the Electoral Act, 2006, political parties seeking to substitute candidates must give 'cogent and verifiable' reason for the substitution.

5. An order compelling the 1st Defendant to disregard the said letter of the 2nd Defendant and to re-insert or re-install the Plaintiff's name as the PDP senatorial candidate for Taraba South in the forthcoming elections in all its registers, books, ballot and other official documents."

The Appellant who was the main target in the claims in the suit, reacted by not only filing a counter affidavit to the affidavit in support of the Originating Summons but also filed a Notice of Preliminary Objection supported by an affidavit to the action against him. The ground of the Preliminary Objection was that the Plaintiff/ 1st Re-

spondent was estopped from raising the issue of substitution of candidate in his action, the same having been raised and adjudicated upon in an earlier suit between the parties, by the Federal High Court, Abuja in suit No. FHC/ABJ/M/126/07.

After hearing the parties on the Originating Summons and the Preliminary Objection to it, the learned trial Judge in a considered judgment delivered on 5th April, 2007, dismissed the Preliminary Objection and granted the reliefs claimed by the Plaintiff/1st Respondent. The Appellant, who was not satisfied with the decision of the trial court, appealed against it to the Kaduna Division of the Court of Appeal, which after hearing the appeal, in a unanimous decision given on 18th July, 2008, dismissed the appeal and affirmed the decision of the trial court. The Appellant who is still dissatisfied with the judgment of the Court of Appeal, is now on a further and final appeal to this court and had submitted in his Appellant's brief of argument the following three issues for the determination of the appeal.

The issues are:-

1. Whether from the facts and circumstances of this case, the learned Justices of Court of Appeal were right when they held that the issue of substitution raised by the 1st Respondent in the Federal High Court Kaduna, was not caught by the doctrine of issue estoppel. (Encompassing grounds 1 and 2 of the notice of appeal).

2. Whether the learned Justices of the Court of Appeal were right when they held that the reason contained in the letter for substitution of the 1st Respondent was not cogent and verifiable. (Encompassing ground 3 of the notice of appeal).

3. Whether the learned Justices of the Court of Appeal were right when they held that the fact that the claim of the 1st Respondent in his originating summons at the trial court was not brought under any sub-section of section 34 of the Electoral Act, 2006, is inconsequential (Encompassing ground 4 of the notice of appeal)."

These three issues were adopted by the 1st and 3rd Respondents in their Respondents brief of argument. The 2nd Respondent, Independent National Electoral Commission, was absent and not represented on the day this appeal was heard. The court was however satisfied that the 2nd Respondent was not only duly served with all the processes in this appeal, comprising the Appellant's brief of argument and the 1st and 2nd Respondents' brief of argument respec-

tively, but was also served with the hearing notice to attend the hearing of the appeal. This stand taken by the 2nd Respondent is in line with the provision of order 6 rule 6(1) of the rules of this court which gives parties who do not have active interest in any appeal in which they are parties, not to file separate briefs other than the one filed by the other parties. The absence or non-participation in this appeal by the 2nd Respondent is therefore covered by the rules of court. B

In his argument in support of the first issue for determination in this appeal, learned senior counsel for the Appellant referred to the second relief claimed by the 1st Respondent in his suit No. FHC/ABUJ/M/126/07 filed at the Federal High Court Abuja, the decision of that court on the second relief given on 27th March, 2007, the reliefs claimed by the 1st Respondent in his fresh suit No. FHC/KD/80/07 filed at the Federal High court Kaduna on 30th March, 2007 and it submitted that the court below erred in law when it held that the issue of substitution raised by the 1st Respondent in his suit at the Kaduna Federal High Court, was not caught by the doctrine of issue estoppel considering the fact that the same issue of substitution was earlier canvassed by the 1st Respondent in an earlier suit filed by him at the Abuja Federal High Court. Learned senior counsel referred to the definition of the word 'substitution' in the decision of this court in Ugwu v. Ararume (2007) 12 N. W. L. R. (Pt. 1048) 367 at 478 and argued that the issue of substitution was in fact raised and determined between the parties in the earlier suit at the Abuja Federal Court, to deprive the 1st Respondent of the right to raise the same issue again in his later action at the Kaduna Federal High Court on account of issue estoppel. A book, The Doctrine of Res-judicata by Spencer Bower, Turner and Handley at page 189 and a number of cases including Hoystead (1926) AC. 155, Ikeni v. Efamo (2001) 10 NWLR (Pt. 720) 1 at 11, ANPP v. Senator Usman Albishir and Another S.C. 133/2009 delivered on 19th February 2010, Braithwaite v. M. S. A. Lines (1999) 13 N. W. L. R. (Pt. 36) 611, Ijale v. A. G. Leventis Co. Ltd. (1959) All NLR 762, (1959) SCNLR 255 and Agu v. Ikewibe (1991) 3 NWLR (Pt. 180) 385 were cited and relied upon by the learned senior counsel in support of this submission. Learned senior counsel concluded on this issue by strongly submitting that on the authorities relied upon in the books and cases cited, it was wrong in law for the court below to have held that because the parties in suit C D E F G H

No. FHC/ABJ/M/126/07 filed in the Federal High Court Abuja are mostly different from the parties in suit No. FHC/KD/CS/80/2007 filed at the Federal High Court Kaduna, the plea of issue estoppel was inapplicable, pointing out that if the court below had approached the issue of parties with the distinction between cause of action estoppel and issue estoppel in mind, the decision of that court would have been different.

For the 1st Respondent his learned counsel pointed out that the trial court and the court below were right in their finding that the parties and the issue in the two suits brought by the 1st Respondent at the Federal High Court Abuja and Kaduna respectively, are distinctively different and therefore the plea of issue estoppel does not arise in accordance with the law; that for a plea of issue estoppel to be successfully raised, the three conditions stated in the cases of *PDP v. K.S.I.E. and 4 others* (2006) 3 NWLR (Pt. 968) 565 at 622; *Oshoboja v. Amuda* (2000) 13 NWLR (Pt. 685) 427 at 441 and *Ikeni v. Efamo* (2001) 10 NWLR (Pt. 720) 1, must be satisfied. These conditions according to the learned counsel, include that the same question must be for decision in both proceedings, which means that the question for decision in the current suit must have been decided in the earlier proceedings, that the decision relied upon to support the plea of issue estoppel must be final, and that the parties must be the same. Learned counsel finally argued on this issue that in the present case, the parties in the two suits are not the same and the issues are also not the same and that being the case, the plea of issue estoppel cannot succeed.

In the 3rd Respondent's brief of argument, its learned counsel whose oral arguments were also on the same line, strongly submitted that the Court of Appeal was right in holding that the plea of issue estoppel would not apply to this case since the parties in suit No. FHC/ABJ/M/126/07 filed in the Federal High Court Abuja were substantially different from the parties in suit No. FHC/KD/CS/80/2007 filed in the Federal High Court, Kaduna and that no conclusive decision was given on the issue of substitution by the Federal High Court, Abuja. Citing and relying on several decisions of this court on the conditions for the application of the plea of issue estoppel such as *Ebba v. Ogodo* (2000) 10 NWLR (Pt. 675) 387 at 407, *Ikeni v. Efamo* (2001) 10 NWLR (Pt. 720) 1 at 15, *Oyerogba v. Olaopa* (1998) 3

NWLR (Pt. 968) 565 at 622, Kalu v. Uzor (2004) 12 NWLR (Pt. 886) 1 at 33, Ogboga v. Ugwuegbu (2003) FWLR (Pt. 161) 1825 and Omnia Nigeria Ltd. v. Dyktrade Ltd. (2007) All FWLR (Pt. 394) 201 at 239, learned counsel urged this court to resolve this issue against the Appellant.

What calls for determination in the first issue in this appeal is whether the court below was right in holding that the case of the Plaintiff/1st Respondent before the trial Federal High Court Kaduna was not caught or affected by the doctrine of issue estoppel. ***The doctrine of issue estoppel has been traced to the English case of Duchess of Kingston (1775 - 1802) All ER Rep 623, but its formulation has not been fixed or static. It has been expanded in several cases to meet circumstances which call for application of the policy of law that underlines the doctrine of estoppel per rem judicatam, namely, that there must be an end to litigation. Such extension of the doctrine is found in Fidelitus Shipping Co. Ltd. v. Export-Chleb (1965) 2 All ER 4 at 10 where it was applied to issues determined at the interlocutory stage.*** The fact that the doctrine has been received into our laws in this country by a long line of authorities is not at all in doubt. In Ladega & Ors. v. Durosimi & Ors. (1978) NSCC 175 at 179 Eso JSC stated the principle thus:-

“A party is precluded from contesting the contrary of any precise point which has been distinctly put in issue and with certainty, determined.”

In that case issues were joined before the court in regard to a larger area of land whereas the claim for declaration of title was in regard to a smaller area of land. Those issues were determined by the court. It was held that the doctrine of issue estoppel would apply in such circumstances so as to make those issues to create an issue estoppel in a subsequent litigation between the same parties over a larger area of land.

The state of law was also stated by this court in Ikemi and Ors. v. Efamo & Ors. (2001) 10 NWLR (Pt. 720) 1 at 11 - 12 and 17 - 18 where this court stated :-

“The principle that for a defence of issue estoppel to succeed there must be identity of the parties, does not mean that all the parties in the previous suit must be made parties in

the latter suit. It is sufficient, where there are several parties in the previous suit, that those of the parties who were necessary parties to the issue in the previous suit, are the same as in the latter suit."

See also other decisions of this court in *Ogbogu v. Ugwuogbu* (2003)

^B FWLR (Pt. 161) 1825 and *Omnia Nigeria Ltd. v. Dyktrade Ltd.* (2007) All FWLR (Pt. 394) 201 at 239 where conditions for the application of the plea of issue estoppel were, stated.

There is no doubt whatsoever that from the decisions in the cases discussed above, that the three conditions stated must exist before any plea of issue estoppel can succeed. Therefore, ***Where one or more of the conditions are not met, issue estoppel cannot be applied. Starting with the condition that the parties must be the same in the previous and the present suits, it is indisputable that in the present case, the parties in the suit at the Federal High Court Abuja, were different from those before the Federal High Court, Kaduna. Significantly, the Appellant who was to take the place of the 1st Respondent as the substituted candidate for Southern Taraba State Senatorial District, was not a party to the suit at the Federal High Court, Abuja. Furthermore, the political party, the PDP, the 3rd Respondent herein which was the party empowered under the Electoral Act to substitute a candidate contesting the election under its ticket, was also not a party to the suit of the 1st Respondent at the Federal High Court Abuja. Thus, it is beyond doubt that two necessary parties in whose absence the issue of substitution could not have been finally determined, were clearly absent at the Abuja trial Federal High Court, not having been made parties to the suit.*** As to who are necessary parties, this court explained in the case of *Kalu v. Uzor* (2004) 12 N.W.L.R. (Pt. 886) 1 at 33 as follows-

^H *"Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled, unless they are parties to the action, instituted by the Plaintiffs."*

It is for this reason that I hold that the learned trial Judge of the Abuja

Federal High Court was on a firm ground when she refused to give a final decision of the relief on substitution when she said: -

"On relief 2 - there is no evidence that it is the 8th Respondent that substituted his name. In the Electoral Act power to substitute is in a party who sponsored and nominated that candidate. INEC has no power to do so. In the absence of evidence to this effect, I refuse relief 2." B

The decision of the Court of Appeal now on appeal, no doubt recognized the fact that the decision of the trial Abuja Federal High Court above on the relief of substitution of candidate, was not a final decision on the issue to qualify it for the application of the plea of issue estoppel. Therefore, as the issue of substitution of candidate was not effectively and finally determined against the Appellant and the 3rd Respondent in the 1st Respondent's suit heard and determined by the Federal High Court Abuja, the 1st Respondent was perfectly justified in law in including and raising the same issue in his latter action at the Federal High Court Kaduna, for determination without any fear of that claim being affected by a defence of issue estoppel as rightly found by the trial court and affirmed by the court below. C D E

In the case at hand, the three conditions for the application of issue estoppel, namely, the parties are not the same in the previous and the latter action and that the issue of substitution was not determined finally in the previous suit, issue estoppel does not arise as rightly found by the trial court and affirmed on appeal by the court below. F

The next issue for determination is whether the learned Justices of the Court of Appeal were right when they held that the reason contained in the letter for the substitution of the 1st Respondent, was not cogent and verifiable. After going through the definition of the words 'cogent' and 'verifiable' extensively in the case of Ugwu v. Ararume (2007) 12" NWLR (Pt. 1048) 367 at 440 - 441, learned senior counsel for the Appellant argued that the court below erred in law in holding that the reason given in the letter of substitution Exhibit 7, was not cogent and verifiable because the reason given in the letter being that the 1st Respondent's name was submitted to the INEC, without enough information, was not only cogent but also verifiable. G H

For the 1st Respondent however, his learned counsel after quoting the contents of the letter of substitution, Exhibit 7 and the provisions of Section 34 (1) and (2) of the Electoral Act 2006, submitted that the reason given for the substitution of the 1st Respondent in Exhibit 7, is not cogent or verifiable if the decisions in the cases of
 B Rotimi Ameachi v. INEC & Ors. (2007) 9 NWLR (Pt. 1040) 504,
 Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 367, Ehinlanwo v. Oke (2008) 16 NWLR (Pt. 1113) 357 at 426 and Pam v. Monday (2008) 16 NWLR (Pt. 1112) 1, are taken into consideration.

C Learned counsel for the 3rd Respondent on the other hand is also of the view that having regard to the provision of section 34 (2) of the Electoral Act 2006 and the decisions of this court in Ugwu v. Ararume (supra) and Ehinlanwo v. Oke (2008) All FWLR (Pt. 442) 1007, the reason given for the substitution of the 1st Respondent in
 D the letter of substitution, is neither cogent nor verifiable.

It is not in dispute between the parties in this appeal that the only reason given for the substitution of the 1st Respondent with the Appellant, as the candidate of the 3rd Respondent in the National Assembly Election of 21st April, 2007, in the letter, Exhibit 7 sent to the 2nd Respondent, INEC, is that the name of 1st Respondent was submitted without enough information. This particular reason given for the substitution of candidate by the 3rd Respondent in a letter sent to the 2nd Respondent had come before this court for determination in the case of Ehinlanwo v. Oke (2008) 16 NWLR (Pt. 1113) 357 at 426 where Onnoghen JSC said: -
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“Coming now to the reason given for the substitution which is stated to be 'without enough information', I agree with the trial court and the learned senior counsel for the Appellant that the said reason, if it may be so considered/regarded, amounts to no reason at all, neither is it cogent and verifiable, as satisfactorily required.”
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I am bound by this decision, as the reason given for the substitution of candidate in the letter of substitution in that decision is the same as the reason given in the letter of substitution, Exhibit 7 in the present case. I am therefore in full agreement with the finding of the trial Federal High Court Kaduna as affirmed by the court below that the reason given in the letter of substitution
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Exhibit 7, does not contain cogent and verifiable reason to justify the substitution of the name of 1st Respondent with that of the Appellant as the PDP candidate for Taraba South Senatorial District of Taraba State in the National Assembly election of 21st April, 2007. This issue is accordingly hereby resolved against the Appellant.

The last issue is whether the learned Justices of the Court of Appeal were right when they held that the fact that the claim of the 1st Respondent in his originating summons at the trial court was not brought under any sub-section of section 34 of the Electoral Act, 2006, is inconsequential. Learned senior counsel for the Appellant has argued that since section 34 of the Electoral Act, deals with three different situations, namely process and time for substitution in sub-section (1), reasons for substitution in sub-section (2) and exceptional circumstances for substitution in sub-subsection (3), failure of 1st Respondent to specify the aspect of section 34 of the Electoral Act that calls for interpretation, the court below in substitute candidates brought affirming the decision of the trial court, was guilty of making a case for the 1st Respondent.

The reaction of the 1st Respondent on this last issue for determination in this appeal is that having regard to his issue one pleaded in his originating summons at the trial court, the issue is beyond argument that it calls for an interpretation of the provision of section 34 (2) of the Electoral Act, 2006. Learned counsel to the 1st Respondent therefore urged this court to regard this issue raised by the Appellant, as totally misconceived.

Learned counsel on behalf of the 3rd Respondent also contended that since the 1st question posed for determination in the 1st Respondent's Originating Summons before the trial Federal High Court Kaduna not only referred to section 34 but also mentioned 'substitute candidate/ and 'cogent and verifiable reasons/ the repetition of these same words in reliefs 1, 2 and 4 claimed by the 1st Respondent, the requirement of the law had been fully satisfied.

In the resolution of this last issue for determination, the answer can be found in the first question posed for determination of trial court by the 1st Respondent in his Originating Summons at page 8 of the record which states

"1. Whether in view of s. 34 of the Electoral Act, 2006 which requires political parties wishing to substitute candidates to give 'co-

gent and verifiable’ reasons the 2nd Defendant can substitute the Plaintiff’s name as a senatorial candidate for no reason at all.”

It is quite plain in my view that the fact that section 34 of the Electoral Act and the words ‘substitute candidate’ and ‘cogent and verifiable reasons,’ featured prominently in the above question for determination followed by featuring of the same section 34 of the Electoral Act, 2006 and said words in reliefs 1, 2 and 4 sought by the 1st Respondent in his originating summons, the facts leave no one in doubt that the claims of the 1st Respondent were specifically brought under section 34 (2) of the Electoral Act. This is because of the three sub-sections (1), (2) and (3) of section 34 of the Electoral Act, 2006, only sub-section (2) talks of giving cogent and verifiable reasons by political parties in their application to change their candidates to be forwarded to the Independent National Electoral Commission under that section of the Electoral Act. Thus, having regards to the clear contents of the questions posed for determination and the reliefs sought in the Originating Summons filed by the 1st Respondent at the trial Federal High Court Kaduna, ***I entirely agree with the decision of the trial court affirmed by the court below that the fact that the claims of the 1st Respondent were not under any sub-section of section 34 of the Electoral Act, 2006, is indeed inconsequential.***

In the result, I find no merit at all in this appeal and the same is hereby dismissed. The decision of the trial Federal High Court Kaduna as affirmed by the court below is hereby further affirmed. I make no order on costs.

MUSDAPHER JSC

I have read before now, the judgment just delivered by my Lord Mohammed, JSC with which I entirely agree. His lordship in the judgment has comprehensively discussed all the relevant issues that have arisen for the determination of the appeal. I adopt all the reasonings as mine and I consequently find no merit in the appeal and I dismiss it. I make no order as to costs.

CHUKWUMA-ENEH JSC

I have had the privilege of reading in advance the judgment prepared by my learned brother, Mohammed JSC just delivered. I agree with his reasoning and conclusion arrived at after due consideration of all the issues raised for determination in the matter. B

The appeal has no merit and should be dismissed and I also endorse the orders contained therein.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother, Mohammed, JSC. I agree with the lucid reasons therein advanced to arrive at the conclusion that the appeal lacks, merit and should be dismissed. D

I seek leave to chip in a few words of my own. I shall restrict myself to the appellant's issue 2 which reads as follows:-

"2. Whether the learned Justices of the Court of Appeal were right when they held that the reason contained in the letter for substitution of the 1st respondent was not cogent and verifiable." E

Exhibit 7 was written by the 3rd respondent to the 2nd respondent in its bid to substitute the name of the 1st respondent with that of the appellant as the party's candidate for Taraba South Senatorial District. The said Exhibit 7, reads as follows:-

"SUBSTITUTION: PDP CANDIDATE FOR TARABA SOUTH SENATORIAL DISTRICT, TARABA STATE." F

This is to confirm that Hon. Emmanuel Bwacha is the PDP candidate for Taraba South Senatorial District, Taraba State. Hon. Emmanuel Bwacha substitutes the earlier name for the aforementioned constituency which was submitted without enough information." G

Section 34 (1) and (2) of the Electoral Act, 2006, which provides for valid substitution of a candidate by a party in an election is as follows:-

"Section 34 (1) A political party intending to change any of its candidates for any election shall inform the Commission of such a change in writing not later than 60 days to the election. (2) Any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons." H

From a clear reading of the above reproduced relevant law, a party must inform the Commission in writing of its intention to effect a change of its candidate within 60 days to the election. The information must be in the form of an application which must unequivocally state the reason(s) for the substitution and such reason(s) must be cogent and verifiable. This has been consistently maintained by this court. See: Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 437; Rotimi Amaechi v. Independent National Electoral Commission & Ors. (2007) 9 NWLR (Pt. 1040) 504, Pam v. Monday (2008) 16 NWLR (Pt. 1112) 1; Ehinlanwo v. Oke (2008) 16 (Pt. 1113) 357 at 426.

Exhibit 7 as reproduced above failed to state any valid reason for the desired substitution. The 2nd respondent had no reason to verify; talkless of determining the cogency of same. In my considered, view, it did the right thing by not recognising the Appellant as the candidate of the 3rd respondent for the senatorial district.

For the above reason and the fuller ones ably adumbrated in the lead judgment, I too, feel that the appeal is devoid of merit and should be dismissed. I order accordingly and endorse all consequential orders therein contained.

ADEKEYE JSC

I was privileged to read in draft the judgment just delivered by my learned brother, Mahmud Mohammed JSC. I share the view of my Lord in his reasoning on the issues for determination in this appeal and consequently endorse his conclusion that this appeal be dismissed.

The germane issues raised for determination by the parties were ably considered by my Lord in his lead judgment. They are:-

1) Whether the learned Justices of the Court of Appeal were right when they held that the issue of substitution raised by the 1st Respondent in the Federal High Court, Kaduna was not caught by the doctrine of issue estoppel.

2) Whether the learned Justices of the Court of Appeal were right when they held that the reason contained in the letter for the substitution of the 1st Respondent was not cogent and verifiable.

On issue one, the suits were filed at different times. The parties as embodied in the record of appeal, before the Federal High

Court Kaduna in Suit No. FHC/KD/0180/2007 were:-

Hon. Joel Danlami Ikenya And

(1) Independent National Electoral Commission & 2 Ors.

The suit an originating summons was meant to determine two questions and grant five reliefs. (Vide pages 2 of the Record of Appeal). The parties in suit before the Federal High Court Abuja - No. FHC/ABJ/M/126/2007 were:-

Hon. Joel Danlami Ikenya

And

Professor Ignatius Ayua & 9 Ors.

The cause of action an 'originating summons was brought pursuant to Order 47, Rule 5 (1) (2) (3) of the Federal High Court Civil procedure Rules 2000 and the inherent jurisdiction of the Federal High Court for a judicial review. (Vide page 83 of the record of appeal).

Another action filed by the Appellant and Peoples Democratic Party against the Independent National Electoral Commission and the 1st Respondent before Abuja Federal High Court Abuja in Suit No. FHC/ABJ/M/304/2007 was for the prerogative writs of Mandamus and declaration.

The law reports are saturated with numerous decisions of this court on the subject matter of issue estoppel. The condition precedent to application of issue estoppel is based on the principle of law that a party is precluded from contending the contrary of any specific point which having been once distinctly put in issue has with certainty been determined against him.

In the case of Ikeni v. Efamo (2001) 10 NWLR pt. 720 pg. 1, the Supreme Court enumerated the elements necessary for determining whether issue estoppel is applicable as:- (a) Whether the parties in the previous proceedings and the current proceedings are same.

(b) Whether the issues are same

(c) Whether the issues are material to the cause of action in the previous and in the latter case and

(d) Whether the issue has been resolved in the previous case.

Other decisions of the court confirming the foregoing elements are:-

Ebba v. Ogoto (2000) 10 NWLR pt. 675 pg. 387

Adomba v. Odiese (1990) 1 NWLR pt. 125 pg. 165

- Fadiora v. Gbadebo (1978) 3 SC 219
 Ezewani v. Onwrdi (1986) 4 NWLR pt. 33 pg. 27
 Udot v. Obot (1989) 1 NWLR pt. 95 pg. 72
 Ekwealor v. Obasi (1990) 2 NWLR pt. 131 at pg. 231
 Oyerogba v. Olaopa (1998) 13 NWLR pt. 583 pg. 509
 B Adedayo v. Babalola (1995) 7 NWLR pt. 408 pg. 383
 Agbogu v. Agbogu (1995) 1 NWLR pt. 372 pg. 411
 Salawu Yoye v. Lawan Olubode & Ors. (1974) 10 SC 209
 Oloriegbe v. Omotesho (1993) 1 SCNj pg. 30, 1 NWLR pt.
 C 270 pg. 386
 Chinwedu v. Nwanegbo Mbamali & Anor. (1980) 3-4 SC pg.
 31
 Akinfolarin v. Akinola (1994) 3 NWLR pt. 335 pg. 659
 Cardoso v. Daniel & Ors. (1986) 2 NWLR pt. 20 pg. 1
 D Akujobi v. Ekenan (1999) 1 NWLR pt. 585 pg. 96
 Mohammed v. Olawunmi (1993) 4 NWLR pt. 287 pg. 254
 Sun Insurance Plc. v. Adegoroye (2003) 11 NWLR pt. 831 pg.
 379
 Anwoyi v. Shodeke (2006) 13 NWLR pt. 996 pg. 34
 E Ajiboye v. Ishola (2006) 13 NWLR pt. 998 pg. 628
 Ikotun v. Oyekanmi (2008) 10 NWLR pt. 1094 pg. 100

In the foregoing cases, this court decided that the doctrine of issue estoppel so far as it affects civil proceedings, may be stated as a situation where a party to civil proceedings is not entitled to make as against the other party, an assertion, whether of fact or of the legal consequences of facts, the correctness of which is an essential element in the previous cause of action or defence in previous proceedings between the same parties or their predecessors in title and was found by a court of competent jurisdiction in such previous civil proceedings to be incorrect, unless further material which is relevant to the correctness or incorrectness of the assertion and could not by reasonable diligence have been adduced by that party in the previous proceedings, has since become available to him. On gleaning through the record for the facts of this case before the trial court - it is obvious that the doctrine of issue estoppel cannot be applicable to the two suits before the Federal High Court Kaduna and Abuja, respectively as the parties, and the subject matter of dispute were different.

The contention of the Appellant is that the reason contained in Exhibit 7 which is the letter of substitution by the Peoples Democratic Party is cogent and verifiable. The issue of substitution of the Appellant with the 1st Respondent is in the front burner in this appeal. This Court had amplified on the provisions of section 34 (2) of the Electoral Act 2006 and particularly that a party which has any cause to substitute a nominated candidate whose name had been submitted to the Independent National Electoral Commission must support such act with cogent and verifiable reasons:

Section 34 (2) of the Electoral Act 2006

Ugwu v. Ararume (2007) 12 NWLR pt. 1048 pg. 367

Ehinlawo v. Oke (2008) All FWLR pt. 447pg. 1087

Rotimi Amaechi v. INEC & Ors. (2007) 9 NWLR pt. 1040 pg.

504

PDP v. K. S. I. E. C. (2006) 3 NWLR pt. 968 pg. 565

Pam v. Mohammed (3008) 16 NWLR pi 1112 pg. 1

The reason given by the 3rd Respondent for the substitution is reflected on page 145 of the record. The relevant portion reads:

“Hon. Emmanuel Bwacha substitutes the earlier name for the aforementioned constituency which was submitted without enough information.”

The letter which emanated from the secretariat of the 3rd Respondent was signed by its incumbent National Chairman and National Secretary.

This court pronounced in the case of Ehinlawo v. Oke (2008) 16 NWLR pt. 1113 pg. 357 that this similar reason given for the substitution of the nominated candidate fell short of the definition of cogent and verifiable reason as required by section 34 (2) of the Electoral Act 2006.

The 3rd Respondent obviously failed to comply with the provisions of section 34 (2) of the Electoral Act 2006 in its substitution of the 1st Respondent with Appellant.

With fuller reasons given by my Lord in the lead judgment, I also subscribe that this appeal lacks merit and must be dismissed. I abide by the consequential orders given in the lead judgment.