

SUPREME COURT OF NIGERIA
7TH DECEMBER, 2012. SC. 339/2011
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, C. B. OGUNBIYI,
S. S. ALAGOA, JJSC**

HON. ABUBAKAR BALA APPELLANT
AND
1. MR. MUSA DIKKO
2. MR. PETER YOHANNA
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
4. RESIDENT ELECTORAL
COMMISSIONER FCT RESPONDENTS

MOTIONS - Legal practitioner - Failure to sign - In absence of credible evidence of signing by a legal practitioner - Court of Appeal rightly held that the motion was incompetent (H1)

APPEALS - Courts - Jurisdiction - Motions - Determination - Court of Appeal not being final court - Rightly determined on merit the motion it struck out - In case its decision on same is faulted on appeal (H2)

ELECTIONS - Actions - Joinder of party - Condition - Party wishing to be joined in existing action - Must have direct or legal interest in same (H3)

FACTS

The Peoples Democratic Party (PDP) conducted primary elections for the nomination of its candidates for the Federal Capital Territory Chairmanship election into Area Councils within the Territory. At the end of the exercise 2nd respondent (Mr. Peter Yohanna) emerged as the party's candidate having polled the highest number of votes cast at the said election. As required by law, 2nd respondent nominated appellant (Hon. Abubakar Bala) as his running mate for the Bwari Area Council Chairmanship/Vice Chairmanship election.

However less than 60 days to the date of the council election, 3rd respondent (Independent National Electoral Commission) published a list of candidates for the said election for various political parties. However, 2nd respondent's name was omitted and in fact was substituted with that of 1st respondent on the list.

Following this development, 2nd respondent filed this action at the Federal High Court, Abuja for the resolution of the dispute by judicial review of the action of 3rd respondent. At the end of the hearing, the court held in favour of 2nd respondent as the authentic P.D.P's candidate for the council election. After the election, 2nd respondent and appellant were returned as winners thereof. They were thus sworn in as chairman and vice-chairman respectively of the council. Being dissatisfied with the judgment of the trial court, 1st respondent filed an appeal against same at the Court of Appeal, Abuja. He urged the court to allow his appeal, nullify the election of 2nd respondent and affirm 1st respondent as the candidate of PDP and winner of the election. Appellant in his belief filed a motion on notice seeking to be joined in the appeal. In its ruling, the court dismissed the application. Being aggrieved, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right in holding that the Appellant's Motion for joinder was incompetent on ground that same was signed for the Appellant's lead counsel by another person.

2. Whether the Court below was correct in refusing to join the Appellant as a Respondent in the appeal before it."

HELD (Unanimously dismissing the application per

MOHAMMED JSC)

MOTIONS - Legal practitioner - Failure to sign

1. On the face of the motion by the appellant filed on 23/3/2011, it is quite plain that it was prepared by a Counsel whose name was shown as M. A. Ebute but for reasons which have not been disclosed, the Motion was not signed by him. Not only that it was signed by a person whose identity is not apparent on the face of the motion. Although learned counsel to the Appellant claimed that the motion was signed by Aderogba

of counsel who also deposed and signed the affidavit in support of the motion, there is no evidence from any paragraph of the affidavit supporting the claim of the learned counsel. In any case even if that were the position, it would have been unethical and quite contrary the Rules of Professional conduct in the Legal profession for Aderogba of counsel to have filed the Motion and also at the time pose as a vital witness in the affidavit in support of the case of his client, the applicant now Appellant. The Motion paper being a court initiating process not having been signed by the Appellant/Applicant and in the absence of cogent and credible evidence that it was signed by a Legal Practitioner acting as counsel of the Appellant/Applicant, the court below was right in holding that the Motion was incompetent. In this respect therefore, striking out the same Motion was quite in order. (p. 3055 E)

APPEALS - Jurisdiction - Motions - Determination

2. Under the rules of the Court below, after striking out the Motion filed on 23/3/2011, there was nothing left before that Court for determination on the merit. However, not being a final court in the land, the court below was alert to its duties to proceed and determine the Motion on the merit just in case its decision on the competence or otherwise of the motion, could be faulted on appeal. (p. 3056 B)

ACTIONS - Elections - Joinder of party

3. In the circumstances of this case and on the undisputed facts on record, I completely agree with the court below that the Appellant had not disclosed sufficient interest in the 2nd Respondents suit that was determined at the trial Court and consequently, in the appeal now pending at the Court below by the 1st Respondent who lost at the trial Court. The situation would have been quite different if the subject matter of the suit at the trial court and the Court of Appeal relates or pertains to any dispute arising from the conduct of the election for the Chairman/Vice Chairman of Bwari Area Council of the Federal Capital Territory, which the Appellant contested with the 1st Respondent and won. That election into the Area

Council that was conducted on 10/4/2010, not being the subject of the dispute or suit at the trial Court nor in the appeal now pending at the Court of Appeal, certainly the Appellant has no business in seeking to be joined in the appeal and the Court below was on firm ground in dismissing his application as lacking in merit. This is because for a party wishing to join or be joined in an existing action he must have a direct or legal interest in order to take advantage of the requirement of the law. It is not enough for such a party to show that he has indirect interest in the pending case. (p. 3058 D)

REPRESENTATION

A. I. Aderogba with H. A. Osigbemhe and M. N. Mba (Mrs.), for the Appellant. Steve Adehi for the 2nd Respondent
D 1st, 3rd, 4th and 5th Respondents absent.

CASES REFERRED TO

Oduola v. Coker (1981) SC 197
Dikko v. Yusuf (2004) 7 MJSC 1
E Yakubu v Governor of Kogi State (1995) 8 NWLR (Pt.414) 386
A.G Federation v. Abubakar (2007) 10 NWLR (Pt.1041)
Ikonne v Commissioner of Police (1986) 4 NWLR (Pt. 36) 473.
INEC v. Adams Oshiomole (2009) 4 NWLR (Pt.1132) 607
F Edet v. Chief of Air Staff (1994) 2
Adewunmi v. Oketade (2010) 3 SCNJ 368
Central bank of Nigeria v Katto (1994) 4 NWLR (Pt. 339) 446.
Oduola v. Coker (1981) SC 197

RULES REFERRED TO

Supreme Court Rules, O.6 r.8 (6)

LEAD JUDGMENT BY MOHAMMED JSC

H On 21/11/2009, the Peoples Democratic Party (PDP) conducted primaries for the nomination of its candidates for the Federal Capital Territory Chairmanship election into Area Councils within the Territory. At the end of the exercise Mr. Peter Yohanna, the 2nd Respondent in this appeal, emerged as the candidate of the Peoples Democratic Party (PDP) having polled the highest number of votes at the

primaries for Bwari Area Council. As required by law, the 2nd Respondent nominated Hon. Abubakar Bala, the Appellant in this Court who was the applicant in the Court below, as his running mate for the Bwari Area Council Chairmanship/Vice Chairmanship election slated for 10/4/2010. However less than 60 days to the date of the Federal Capital Territory Area Council election, the 3rd Respondent in this Court, Independent National Electoral Commission (INEC), on 8/3/2010 published a list of candidates for the said election for various Political Parties but omitted Mr. Yohanna's name as the Peoples Democratic Party (PDP) Chairmanship candidate for Bwari Area Council and attempt was made to substitute his name with that of the 1st Respondent Mr. Musa Dikko who, following this development filed an action at the Federal High Court for the resolution of the dispute by Judicial review of the action of the 3rd Respondent. At the end of the hearing of the case, the trial Court found for the Plaintiff now 2nd Respondent who was affirmed as the chairmanship candidate for the P.D.P. for Bwari Area Council in the election slated for 10/4/2010.

On the basis of the judgment of the trial Court, the 2nd Respondent Mr. Yohanna and the Appellant Hon. Abubakar Bala contested the election held on 10/4/2010 and emerged winners as Chairman and Vice Chairman respectively of Bwari Area Council and were duly returned accordingly by the 3rd and 4th Respondents in this Court and subsequently were sworn to serve in their respective offices. The 1st Respondent, Mr. Musa Dikko who was not satisfied with the judgment of the trial Federal High Court, appealed against it to the Court of Appeal urging the Court to allow his appeal, nullify the election of the 2nd Respondent as Chairman and affirm him as the candidate of the Peoples Democratic Party (PDP) and winner of the election as Chairman of Bwari Area Council. Believing that Mr. Yohanna, the 2nd Respondent and the appellant as Chairman and Vice Chairman of the Council respectively have a joint interest in the pending appeal at the Court of Appeal where Mr. Yohanna is the 1st Respondent, the appellant applied to be joined in that appeal as the 4th Respondent. The application dated 22/3/2011 was filed on 23/3/2011. This Motion was heard on 24/5/2011 and in its Ruling delivered on 30/6/2011, the Court of Appeal dismissed the applicant, now appellant's application to give rise to the present appeal.

When this appeal was taken on 11/10/2012, 1st, 3rd and 4th Respondent were absent and not represented but have been duly served with hearing notices for the hearing of the appeal on that date. The 2nd Respondent on his part though represented by Counsel, filed no Respondent brief of argument on being served with the Appellant's brief of argument. Thus, pursuant to the provision of Order 6 Rule 8(6) of the Rules of this Court, the 1st, 3rd and 4th Respondents whose briefs of argument were already in place, were deemed to have adopted their respective briefs of argument at the hearing of the appeal. The two issues identified in the Appellant's brief of argument are -

- "1. Whether the Court of Appeal was right in holding that the Appellant's Motion for joinder was incompetent on ground that same was signed for the Appellant's lead counsel by another person.*
- 2. Whether the Court below was correct in refusing to join the Appellant as a Respondent in the appeal before it."*

In the 1st Respondent's brief of argument similar issues as raised in the Appellant's brief but differently worded, were formulated as follows:-

- "1. Whether or not the Motion filed by Appellant before the lower court was competent having been signed on behalf of the legal Practitioner by an anonymous person.*
- 2. Whether or not the Appellant had disclosed sufficient interest in the subject matter of the suit to warrant his being joined on appeal as a co-respondent before the lower court."*

On their part, the 3rd and 4th Respondents in their joint brief of argument, have chosen to adopt the issues as raised in the appellant's brief of argument.

In support of the first issue, learned counsel to the Appellant has argued that taking into consideration that the learned Counsel Isaac Adebawale Aderogba who deposed and signed the affidavit in support of the Appellant's Motion filed at the Court below on 23/3/2011 on behalf and with the consent of the applicant, as one of the Counsel representing the applicant, the Court below was wrong in refusing to compare the signature on the affidavit with that on the Motion paper to arrive at the decision that it was signed by the same Aderogba on behalf of the leading counsel Mr. M. A. Ebute. Relying on a number of cases including *INEC v. ADAMS OSHIOMHOLE*

(2009) 4 NWLR (Pt.1132) 607 at 633 - 637 and EDET v. CHIEF OF AIR STAFF (1994) 2 NWLR (Pt.324) 41 at 65-66, the Appellant/Applicant's Counsel concluded that the Motion filed on 23/3/2011 was quite competent.

Learned Counsel for the 1st Respondent in his own submission on this issue, is of the view the Appellant's Motion in question was clearly signed by an unidentified person and that by the decision of this Court in ADEWUNMI v. OKETADE (2010) 3 SCNJ 368 AT 373 - 374, where it was held that the issue of signature of a party on a Court process is not a mere technicality that can be brushed aside the Motion was incompetent. That in the present case where Aderogba deposed to the affidavit in support of the application but failed to disclose his identity in signing the Motion over the name of M. A. Ebute who prepared the Motion papers, had resulted in making the motion incomplete. The 3rd and 4th Respondents in their joint brief of argument on this issue, agreed with the lower court in its finding that it was not the duty of a Court of law to be comparing signatures in a process with one in the affidavit so as to ascertain that it was signed by a counsel.

On the face of the motion by the appellant filed on 23/3/2011, it is quite plain that it was prepared by a Counsel whose name was shown as M. A. Ebute but for reasons which have not been disclosed, the Motion was not signed by him. Not only that it was signed by a person whose identity is not apparent on the face of the motion. Although learned counsel to the Appellant claimed that the motion was signed by Aderogba of counsel who also deposed and signed the affidavit in support of the motion, there is no evidence from any paragraph of the affidavit supporting the claim of the learned counsel. In any case even if that were the position, it would have been unethical and quite contrary the Rules of Professional conduct in the Legal profession for Aderogba of counsel to have filed the Motion and also at the time pose as a vital witness in the affidavit in support of the case of his client, the applicant now Appellant. Consequently pursuant to the decision of this court in ADEWUNMI VS. OKETADE (2010) 3 SCNJ 368 at 373-374, ***the Motion paper being a court initiating process not having been signed by the Appellant/Applicant and in the***

absence of cogent and credible evidence that it was signed by a Legal Practitioner acting as counsel of the Appellant/Applicant, the court below was right in holding that the Motion was incompetent. In this respect therefore, striking out the same Motion was quite in order.

Under the rules of the Court below, after striking out the Motion filed on 23/3/2011, there was nothing left before that Court for determination on the merit. However, not being a final court in the land, the court below was alert to its duties to proceed and determine the Motion on the merit just in case its decision on the competence or otherwise of the motion, could be faulted on appeal. See CENTRAL BANK OF NIGERIA VS KATTO (1994) 4 NWLR (Pt. 339) 446.

The second issue in this appeal is whether or not the appellant as applicant in the Court below had disclosed sufficient interest in the subject matter of the suit/appeal now pending at the Court below to warrant his being joined on the appeal on the part of the respondents, as the 4th respondent. In support of this issue, learned Counsel to the Appellant identified the sole reason why the Court below refused the Appellant/Applicant's application to be joined as 4th Respondent in the pending appeal as being that the Appellant/Applicant did not participate in the primaries at which the 2nd Respondent, to whom the appellant/Applicant was a running mate, took part and emerged as the candidate of the Peoples Democratic Party (PDP). Learned Counsel argued that the Appellant/Applicant having satisfied the requirement in his application that he was to be affected by the decision of the Court below after hearing the appeal on the relief sought in the appeal, the application ought to have been granted if cases such as ODUOLA VS COKER (1981) SC 197 at 227 and DIKKO VS YUSUF (2004) 7 MJSC 1 at 52, are taken into consideration. Learned Counsel finally argued that since the candidacy of the 2nd Respondent and the Appellant to contest the Federal Capital Territory (F.C.T.) Area Council election of 10/4/2010 was affirmed as the result of which the two parties contested and won the Chairmanship election together, the application ought to have been granted by the court below.

The view taken by the 1st Respondent on this second issue is that the appellant having conceded that the proceedings at the trial

Court did not affect him in any way, the only reason for his wanting to join the appeal was that he did not want to be on the same ticket with the Appellant at the Court below who is the 2nd Respondent in this Court in the event that the Appellant at the court below is adjudged the legitimate candidate of the peoples Democratic party (PDP). This, according to the learned counsel, made the application for join-
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 der rather speculative and that the applicant not having disclosed any justifiable interest in the subject matter of the suit, did not meet the criteria for an applicant seeking to be joined as a party in an appeal as Respondent by virtue of the decision this court in YAKUBU
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 vs GOVERNOR OF KOGI STATE (1995) 8 NWLR (Pt.414) 386 at 404. The 3rd and 4th Respondents did not present any argument on this issue leaving it to the court to arrive at the appropriate decision without their input. The two Respondents are on good course having regard to their status and role in the conduct of elections under the
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 1999 Constitution and the Electoral Act 2006 which was on force at the time the dispute between the parties arose. The observations of this court in the case of ATTORNEY GENERAL OF THE FEDERATION v. ABUBAKAR (2007) 10 NWLR (Pt.1041), is quite instructive.

The Appellant/Applicant's Motion filed at the court below on
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 23/13/2011, prayed for the order of that Court granting him leave to be joined in the pending appeal as the 4th Respondent. The law is trite that a party seeking to be joined in an appeal particularly as a
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 respondent, must disclose sufficient interest in the subject matter of the dispute between the parties in the pending appeal. See YAKUBU vs GOVERNOR, KOGI STATE (1995) 8 NWLR (pt.414) 386 at 404. In trying to identify the nature of the interest of the Appellant in the appeal, the court below stated as follows in its ruling now on appeal
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 "The 1st Respondent's case at the lower court was that he was the winner of the primary that was conducted on 21/11/2009. From the deposition which I have reproduced here in above, the Applicant did not participate in the said primary. It was after victory of the 1st Respondent in that primary that he nominated the Applicant as his Running mate. Since the Applicant did not take part in the primary the subject matter of litigation at the lower Court where then is his interest in the matter which he wants to defend before this Court? I have also read through the Judgment of the lower Court at

pages 393-446 of the print record of this appeal, and I have failed to see where the judgment has affected the applicant in any material particular."

It is indeed not difficult to see from the findings of the Court below quoted above, action that was brought before the trial Federal High Court arose from the conduct of Peoples Democratic Party primaries for aspirants to the elective positions of Chairmen of Area Council in the Federal Capital Territory. It is also not disputed at all that who was picked as a running mate for the then coming Area Council election on 10/4/2010 by the 2nd Respondent in this part in the said primaries which produced the 2nd Respondent as the declared winner of the primaries which is the subject matter of the dispute or litigation between the parties at the trial Federal High court and the appeal now pending at the Court below, which the Appellant had applied to join as the 4th Respondent. The Judgment of the trial court which is on appeal to the court of appeal, merely affirmed the 2nd Respondent as the winner of the primaries conducted on 21/11/2009. ***In the circumstances of this case and on the undisputed facts on record, I completely agree with the court below that the Appellant had not disclosed sufficient interest in the 2nd Respondents suit that was determined at the trial Court and consequently, in the appeal now pending at the Court below by the 1st Respondent who lost at the trial Court. The situation would have been quite different if the subject matter of the suit at the trial court and the Court of Appeal relates or pertains to any dispute arising from the conduct of the election for the Chairman/Vice Chairman of Bwari Area Council of the Federal Capital Territory, which the Appellant contested with the 1st Respondent and won. That election into the Area Council that was conducted on 10/4/2010, not being the subject of the dispute or suit at the trial Court nor in the appeal now pending at the Court of Appeal, certainly the Appellant has no business in seeking to be joined in the appeal and the Court below was on firm ground in dismissing his application as lacking in merit. This is because for a party wishing to join or be joined in an existing action he must have a direct or legal interest in order to take advantage of the requirement of the law. It is not enough for such a party to***

show that he has indirect interest in the pending case. See IKONNE VS COMMISSIONER OF POLICE (1986) 4 NWLR (Pt. 36) 473.

For the foregoing reasons, I see no merit at all in this interlocutory appeal that had been given accelerated hearing by this Court in order to facilitate the prompt hearing and determination of the appeal now pending at the Court below. Accordingly, the appeal is hereby dismissed. The Ruling of the Court of Appeal delivered on 30/6/2011 is hereby affirmed. I am not making any order on costs.

MUNTAKA-COOMASSIE JSC

Mr. Peter Yohanna, the 2nd Respondent emerged the winner as the candidate of the Peoples Democratic Party (PDP) at the parties primaries for the Federal Capital Territory Chairmanship election into Area Councils within the Territory. He has scored the highest number of votes at the primaries for Bwari Area council. The 2nd respondent lawfully nominated Hon. Abubakar Bala as his running mate for the Bwari Area Council Chairmanship/Vice Chairmanship election slated for 10/4/2010. Less than 60 days to the date of election, the 3rd respondent, INEC on 8/3/2010 published a list of candidates for the said election but the name of Mr. Yohanna was missing on the list as the P.D.P's. Candidate for Bwari Area council chairmanship election. There was a move to substitute his name with that of the 1st respondent which move has failed. Following this development Mr. Yohanna, the 2nd respondent before us, filed an action at the Federal High Court hereinafter called the trial court, to judicially review the action of the INEC which court entered judgment for the plaintiff now 2nd Respondent Mr. Peter Yohana. He was confirmed by the trial court as P. D. Ps Chairmanship candidate for Bwari Area Council in the election slated for 10/4/2010.

That being the position the 2nd Respondent and the Appellant contested the election and emerged winners as chairman and vice chairman and were duly and lawfully returned by the 3rd and 4th respondents. Both the Appellant Hon. Abubakar Bala- Vice Chairman, and Mr. Yohana were sworn-in. The 1st respondent, Musa Dikko was aggrieved by the decision of the trial court appealed to the Court of Appeal, Abuja Division the application of appellant/applicant to be

joined, as the 4th respondent. This non-granting of the applicant's motion heard on 24/5/2011 led to the present appeal to this court. The 2nd respondent filed no respondents' brief of argument though he was served with the Appellant's brief. By our Rules Order 6 Rule 8(6) the 1st, 3rd and 4th respondents briefs of argument were deemed
B to have been adopted. Each of the Appellant and the 1st respondent distilled two issues for the determination of this appeal. The 3rd and 4th respondents in their joint brief adopted the issues as formulated by the appellant.

C I was permitted by my lord Hon. Justice Mahmud Mohammed JSC to have a preview of his Lordships leading judgment before to-day. I entirely agree with his reasoning and conclusion. I in fact adopt same as mine. For the same reasons his Lordship relies in the lead judgment to dismiss the appeal, I too find that the appeal is devoid of
D any merit same is hereby dismissed by me. The ruling of the lower court delivered on 30/6/2011 is accordingly affirmed. After all the appellant did not participate in the primaries. No order as to costs.

E **OGUNBIYI JSC**

I have read in draft the lead judgment by my brother Mahmud Mohammed and I agree that the appeal is lacking in merit and ought to be dismissed.

F For the appellant to sustain his contention to be joined in the appeal he must disclose an interest which is justiciable in the cause of action. It is not enough that he entertains some fears which might likely affect his interest. The interlocutory appeal is a waste of time and had delayed the hearing of the main appeal at the lower court.
G In the same terms of the lead judgment therefore, I also dismiss the appeal with no order made as to costs.

ALAGOA JSC

H I have read in draft the judgment just delivered by my learned brother Mahmud Mohammed, JSC and I have the following comments to make. From a cursory look at the Appellant's motion filed on the 23rd March, 2011 it is clear that M. A. Ebute who prepared the motion is not the same person who signed same and the Court of

Appeal was quite right in holding that the motion is incompetent and in striking out same. The second issue was whether the Appellant as applicant had disclosed sufficient interest in the subject matter of the suit to be joined as the 4th Respondent. It should be noted that the position being contested for is that of Chairman of Bwari Area Council and not that of vice Chairman. Applicant has not demonstrated what role he intends to play in the appeal when he did not take part in the primaries. It was only after the 2nd Respondent had taken part and emerged victorious as the candidate of the Peoples Democratic Party (PDP) that the 2nd Respondent picked him to run with him. The proceedings in the trial High Court did not really affect the Appellant. The Appellant therefore hadn't sufficient interest in the subject matter pending on appeal. See YAKUBU v. GOVERNOR KOGI STATE (1995) 8 NWLR (PART 414) 386. It is for this and the fuller reasons given by my learned brother no merit in the appeal and dismiss same. I also affirm the ruling of the Court of Appeal delivered on the 30th June, 2011. Parties to bear their own costs.

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