

SUPREME COURT OF NIGERIA
THURSDAY 17TH DECEMBER, 2009. SC. 334/2009
CORAM:- G. A. OGUNTADE, F. F. TABAI,
I. T. MUHAMMAD, J. A. FABIYI, O. O. ADEKEYE, JJSC

PROF. CHARLES CHUKWUMA SOLUDO APPELLANT
AND
MR. VALENTINE OSIGBO & ORS. RESPONDENTS

APPEALS - Ground - Leave - Appellants do not require leave to raise a ground - That the CA granted the injunction it did - When issue of jurisdiction has not been settled - As this is a question of law (H1)

ORDERS OF COURT - Election - Nomination - Status quo - CA ought to have given an order - Which confines the parties to state of things as it was before litigation started (H2)

FACTS

Plaintiffs/1st – 4th respondents commenced this action at the Federal High Court Abuja. In its judgment, the court declined jurisdiction in the matter. Dissatisfied, 3rd and 4th respondents brought an appeal to the Court of Appeal against the judgment of the trial court that declined jurisdiction. The appeal on jurisdiction is yet to be decided.

Meanwhile, the Court of Appeal gave an order of injunction in favour respondents. Appellant was aggrieved and thus he appealed to the Supreme Court, challenging the jurisdiction of the court to make such an order. In reply, learned counsel to respondents raised preliminary objection that appellant requires the leave of court to raise his ground of appeal.

HELD (Unanimously staying the interlocutory order of Court of Appeal per **OGUNTADE JSC**)

APPEALS - Ground - Leave

1. In other words, the High Court could not have made the orders made by the court below as it said it had no jurisdiction

tion to hear the suit. The first primary duty of the court below being one to resolve jurisdiction could not extend to granting reliefs to the 1st to 4th respondents on the supposition that the issue of jurisdiction had been resolved one way or the other. There is no doubt that the court below could properly make preservatory orders which will ensure that the res in dispute is not destroyed such as to foist on the court a situation of complete helplessness should the appeal succeed. But the court below did more than that. It pre-recognised a right in the 1st to 4th respondents to seek reliefs from court even at a time when jurisdiction was still to be determined. I am unable to agree with Mr. Taiwo Abe that the appellants require the leave of court to raise a ground that the court below granted the injunction it did when the issue of jurisdiction has not been resolved. This in my view is clearly a question of law. Put it in another language, it is whether a court without jurisdiction could make orders on the issues in contest in a dispute without first determining the question of jurisdiction. (p. 2985 H)

Election - Nomination - Status quo

2. The order, made by the court below is not just a preservatory order. It in fact prevents the appellant from taking part in the elections given the schedule by which INEC is to operate. The court below should only have given an order which confines the parties to the state of things as it was before litigation started. That in my view means that the parties should not be prejudiced by the court order or given an advantage over the others.

In the light of the above, I make an order staying the orders made by the court below which restrains the cross-appellant (P.D.P.) and INEC from recognizing, endorsing, accepting or ratifying the selection of the appellant (SOLUDO) as candidate of the cross-appellant in the 6/2/2010 election in Anambra State. The order restraining the appellant (SOLUDO) from parading himself as candidate of the cross-appellant (PDP) is very much unnecessary and uncalled for in the light of the available facts.

It is directed that INEC accord to the appellant

(SOLUDO) and cross-appellant (P.D.P.) all the rights, advantages and privileges available to all the candidates in the February 2010 elections and that they not be prejudiced or disadvantaged in any manner. This is without prejudice to whatever judgment or orders that may be subsequently made on the suit filed by 1st to 4th respondents against the appellant (SOLUDO) and cross-appellant (P.D.P.). (p. 2986 D)

REPRESENTATION

Mr. P. I. N. Iwueto, SAN, Ogo Tim-Menakaya (Mrs.), Vera Opaluwa-Nwobi (Mrs.), Okey Ezeofor, J. I. Idigo Nwosu (Mrs.), I. K. Bezimo, P. O. Nwankwo, C. K. Alabi, N. C. Ughanze, B. A. Orji, for the Appellant

Mr. Sani Abubakar, Aliyu Yakubu, Rotimi Ogunjide for the 1st and 2nd Respondent

Taiwo Abe, Kenneth Nkwocha for the 3rd and 4th Respondent

Chief J.K. Gadzama, SAN, Chief Olusola Oke, A. C. Ozioko, H. I. Okoli, D. H. Bwala, J. O. Nwosu, O. M. Abdulsalam, Ukpai Ukairo, Garba Ibrahim, O. Akyibo, U. M. Jawur, for the 5th Respondent
Chief Amaechi Nwaiwu, SAN with Bem Atetan, Ngozi Udokwu (Mrs.), Ifeanyi Okechukwu for the 6th Respondent

LEAD JUDGMENT BY OGUNTADE JSC

I have given consideration to the facts relied upon in support of the application and the submission on law by counsel. The submission of Mr. Taiwo Abe for the 3rd and 4th respondents that all the grounds of appeal challenging the exercise of discretion must of necessity be of mixed law and fact is untenable. There is no dispute that the 1st, 2nd, 3rd and 4th respondents had been the plaintiffs before the Federal High Court of FCT, Abuja. That court declined jurisdiction. The 3rd and 4th respondents brought an appeal against the judgment of the High Court of FCT. The appeal on jurisdiction is yet to be decided. The court below's duty guided by the appeal before it is to determine the issue of jurisdiction. A court without jurisdiction cannot make valid orders.

In other words, the High Court could not have made the orders made by the court below as it said it had no jurisdiction to hear the suit. The first primary duty of the court

below being one to resolve jurisdiction could not extend to granting reliefs to the 1st to 4th respondents on the supposition that the issue of jurisdiction had been resolved one way or the other. There is no doubt that the court below could properly make preservatory orders which will ensure that the

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C *am unable to agree with Mr. Taiwo Abe that the appellants require the leave of court to raise a ground that the court below granted the injunction it did when the issue of jurisdiction has not been resolved. This in my view is clearly a question of*

D *law. Put it in another language, it is whether a court without jurisdiction could make orders on the issues in contest in a dispute without first determining the question of jurisdiction.*

The order, made by the court below is not just a preservatory order. It in fact prevents the appellant from taking part in the elections given the schedule by which INEC is to operate. The court below should only have given an order which confines the parties to the state of things as it was before litigation started. That in my view means that the parties

E *should not be prejudiced by the court order or given an advantage over the others.*

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In the light of the above, I make an order staying the orders made by the court below which restrains the cross-appellant (P.D.P.) and INEC from recognizing, endorsing, accepting or ratifying the selection of the appellant (SOLUDO) as candidate of the cross-appellant in the 6/2/2010 election in Anambra State. The order restraining the appellant (SOLUDO) from parading himself as candidate of the cross-appellant (PDP) is very much unnecessary and uncalled for in

G *the light of the available facts.*

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It is directed that INEC accord to the appellant (SOLUDO) and cross-appellant (P.D.P.) all the rights, advantages and privileges available to all the candidates in the February 2010 elections and that they not be prejudiced or dis-

advantaged in any manner. This is without prejudice to whatever judgment or orders that may be subsequently made on the suit filed by 1st to 4th respondents against the appellant (SOLUDO) and cross-appellant (P.D.P).

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ADEKEYE JSC

The challenge is against the order of the Lower Court which exercised its discretion on the side of granting an interlocutory order that parties shall maintain status quo pending the hearing of the appeal before the court. It is a trite principle of law that such interlocutory order shall be granted by the court not as a matter of course but to exercise its discretion judiciously and judicially based on the peculiar circumstances of the case. The discretion is not supposed to be exercised to destroy the substratum in seeing that justice is not only done but must be manifestly done. This court cannot but interfere with the discretion exercised by the lower court in the Ruling delivered on the 16th of December, 2009.

It is the order of this court that the interlocutory order be discharged while parties maintain status quo ante bellum. The right and privileges of all parties in preparation for the forthcoming gubernatorial election in February, 2010 in Anambra State shall be maintained.

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MUHAMMAD JSC

Having gone through the volumes of the processes filed in respect of this application, some of them just filed this morning, and in addition listened to the oral submissions by the respective parties, I cannot but agree with my Lord, Oguntade, JSC, by staying the lower court's order made on 16th of December, 2009. I adopt other orders contained in Oguntade's ruling of today.

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FABIYI JSC

At the trial High Court, the 3rd - 6th respondents' suit was struck out on ground of lack of jurisdiction. They appealed to the Court of Appeal (court below) which in effect slammed an order of

injunction on the appellant in the 1st appeal who was incompetent as the grounds of appeal are not of law in strict sense.

I have viewed the grounds of appeal of the appellants carefully. The grounds of appeal in the 1st appeal are all ones of law such as jurisdiction and the like. So also are most of the grounds in the cross-appeal. The preliminary objection must be and is hereby overruled.

Viewed in a proper manner, the order of injunction granted by the court below was most unwarranted as a court should not make an order of injunction on a completed act such as selection of candidate already carried out by PDP. In short, the ruling of the court below handed out on 16th day of December, 2009 is hereby stayed to the effect that all the parties should now be as they were when hostilities started and matter commenced at the trial court. Orders as prayed.

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