

SUPREME COURT OF NIGERIA
FRIDAY 17TH OCTOBER, 2011. SC.157/2011
CORAM:- F. F. TABAI. O. O. ADEKEYE,
S. GALADIMA, N.S. NGWUTA, O. ARIWOOLA, JJSC

HON. ABUBAKAR SADIQ YAR'ADUA APPELLANTS
AND ORS.

AND

CONGRESS FOR PROGRESSIVE RESPONDENTS
CHANGE (CPC)

COURTS - Judicial power - Entitlement to - For a person to be entitled to invoke judicial power - He must show that his personal interest will be or has been adversely affected (H1)

COURTS - Discretion - Exercise of - Condition - Person seeking indulgence of court must place before it - Sufficient materials in order to assist court exercise its discretion in his favour (H2)

PARTIES - Joinder of - Application for - Delay - Applicants seeking to be joined in the suit between the two sets of respondents - Ought to have promptly joined the action at trial court (H3)

FACTS

In an action instituted at the Federal High Court Abuja in Suit No. FHC/ABJ/CS/126/11, appellants sought for an order directing 5th respondent to accept them as authentic winners of the primary election conducted by the Katsina State Chapter of the Congress for Progressive Change (CPC). The Court granted the reliefs sought by appellants. On appeal by 1st respondent, the Court of Appeal Abuja Division set aside the judgment of the Federal High Court. Appellants being dissatisfied appealed to the Supreme Court, seeking to set aside the judgment of the Court of Appeal and restore the judgment of the trial Federal High Court.

It was at this moment that applicants came up with their application pursuant to section 6(6) of the Constitution of the Federal Republic of Nigeria 1999, Order 2 Rule 28(1), (4) and Order 8 Rule 12(2) of the Supreme Court (as amended) 1999, seeking for an

extension of time within which to seek leave to be joined as necessary parties to the appeal, leave to be joined as respondents in the appeal, order that all processes filed and served in the matter be served on applicants and an order that all subsequent processes in the appeal reflect the joinder of applicants as co-respondents. In response, appellants filed counter-affidavit to the application, contending that the application is brought in bad faith, as applicants have proffered no reason why they did not seek to be joined at the two lower courts. The Court is therefore urged to refuse the application.

HELD (Unanimously dismissing the application per **MUHAMMAD JSC**)

COURTS - Judicial power - Entitlement to

1. The applicants who claim to be registered members of the 1st respondent, a political party in this country, like any other citizen, have every right to seek protection under the laws of this country including the Constitution of the Federal Republic of Nigeria. AFORTIORI, they have every right to have recourse to the provision of section 6 of the Constitution which generally vests judicial powers in our courts of law and which shall extend, according to subsection [6][b] of that section to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. However, it is important to note that for a person to be entitled to invoke judicial power, the settled principle of law is that he has to show that either his personal interest will immediately be, or has been adversely affected by the action or that he has sustained an injury to himself and which injury and interest are over and above the general public. (p. 2998 A)

COURTS - Discretion - Exercise of - Condition

2. This court has stated the law and even the practice in a number of decisions, that for a person to approach this court or any other court for that matter, with an application which

seeks the court's indulgence, such a person is duty bound to place sufficient materials before the court in order to assist the court exercise its discretion in his favour. Such discretionary exercise must be founded upon facts and circumstances presented to the court from which a conclusion governed by law will have to be drawn. It is also said that judicial exercise of discretion is not arbitrary or fanciful because it is done with sufficient, correct and convincing reasons.

I fail to find such sufficient materials in this application. If I were to grant such indulgence, it will then be an indulgence not rooted in any legal principle known to law and practice. Thus, in considering the interest of justice it should always be borne in mind that the interest of justice does not mean just the interest of the applicants, it also includes the interest of the respondents and the court. It is that justice which is handed according to law. Thus, where a person seeks to be joined in a matter as a necessary party, interest of justice requires him to display before the court sufficient materials showing that he does not only have interest in the subject matter but that his absence/non participation in the subject matter will stultify the proceeding thereof. (pp. 3000 G/3004 F)

PARTIES - Joinder of - Application for - Delay

3. It has been seen in this matter that several decisions were doled out by both the trial court and the court below between the two sets of respondents without the necessity of joining the applicants. Can the applicants really be called necessary parties for the effective and effectual determination of the subject matter under litigation? I do not think so.

I am in complete agreement with the judicial dicta pronounced in the two cases cited above. In the present application, the applicants should not have waited that long to seek to join the legal tussle between the two sets of respondents. They should have promptly and expeditiously joined the tussle at the trial court. Delay, they say defeats equity. The law, they say, aids the vigilant and not those who sleep. Vigilantibus et non dormientibus jura subveniunt.

It is in these circumstances that I find no merit in the applica-

tion. The application is hereby refused and same is dismissed by me. (p. 3004 H)

REPRESENTATION

B Mr. Rickey Tarfa SAN, with him A. J. Owonikoko SAN, Mrs. J. O. Babayemi, Miss. J. Ogun, for the applicants.

Mr. Ismaila Alasa, with him Joshua Akor and Jideofor Nwosu for the 1st - 3rd respondents.

C Mr. A. B. Bakre, with him A. T. Soremi, A. A. Adebayo (Mrs.) etc for the 4th respondents.

Mr. A. D. Ama for the 5th & 6th respondents

Mr. K. K. Eleja, with him S. A. Oke, Clifford Omoseghia, and Miss K. T. Sulyman for the applicants.

D CASES REFERRED TO

Thomas v. Olufosoye (1986) 1 NWLR (pt. 18) 669

Duwin v. Beneks (2000) 15 NWLR (pt. 689) 66

Ekwenife v. Wayne W. A. Ltd. (1989) 5 NWLR (pt. 122) 422

E Shell Petroleum Dev. Co. v. Lawson Jack (1998) 4 NWLR (pt. 545) 249

Egwu v. Modunkwu (1997) 4 NWLR (pt. 501) 588

Unilag v. Aigoro (1985) 1 NSCC

Saffieddine v. CP (1971) 1 All NLR 8

F Afolayan v. Ogunmide (1990) 1 NWLR (pt. 127) 369

Ibrahim v. Shagari (1983) All NCR 507

Shonekan v. Smith (1964) 1 All NLR 168

Oduola v. Coker (1981) SC 197

Gbadamosi v. Dairo (2001) 6 NWLR (pt. 708) 137

G Kigo Nig.) Ltd. v. Holman Bros Nig. Ltd. (1990) NSCC 204

Bank of Ireland v. Union Bank (1998) 7 SCNJ 385

Re: Arowolo (1993) 2 NWLR (pt. 275) 317

H STATUTE & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, s. 6(b)

Supreme Court Rules (as amended) 1999, O. 2 r. 28(1), (4), O. 8 r. 12(2)

LEAD JUDGMENT BY MUHAMMAD JSC

This is a Motion on Notice brought pursuant to section 6[6] [8] of the Constitution of the Federal Republic of Nigeria, 1999; Order 2 Rule 28[1], [4]; Order 8 Rule 12 [2] of the Supreme Court Rules [1999] as amended. The applicants herein, prayed for the following reliefs:

1. AN ORDER of extension of time within which to seek leave to appeal.

2. AN ORDER granting leave to the Applicants/Parties seeking to be joined as Respondents in the appeal.

3. AN ORDER of this Honourable Court directing that all processes filed and served in the suit be served on the Appellant/ Parties seeking to be joined through their Counsel as indicated below for the purpose of appearing and/or defending this appeal.

4. AN ORDER that pursuant to the grant of this application, all subsequent processes in this appeal reflect the joinder of the Applicants herein as co-respondents.

While moving the motion on Notice, learned counsel for the applicants Mr. K. K. Eleja stated that the grounds upon which the motion is brought are set out in the motion on Notice and they are as follows:

1. The applicants/Parties seeking to be joined as Respondents are members of the 1st Respondent herein who participated in the Primary Elections conducted by the 1st Respondent on the 13th day of January, 2011 for legislative positions in Katsina State.

2. The Applicants/Parties seeking to be joined won the said primary elections conducted by the 1st Respondent on the 13th day of January, 2011 in their respective constituencies and were declared winners by the 1st Respondent.

3. The 1st Respondent subsequently submitted the names of the Applicants/Parties seeking to be joined to the 5th Respondent herein according to the provisions to the Electoral Act which said submission was accepted by the 5th Respondent.

4. The Appellants/Respondents herein instituted an action at the Federal High Court, Abuja in Suit No: FHC/ ABJ/CS/126/ 11 where they prayed among other things for an order directing the

5th Respondent to accept their names as the valid elected candidates in the primaries conducted by the Katsina State Chapter of the 1st Respondent.

B 5. The Federal High Court granted the prayers of the Appellants/Respondents herein in its judgment delivered on the 25th day of February, 2011 and ordered the 5th Respondent to accept the appellants as the validly elected candidates of the 1st Respondents.

C 6. The 1st respondent thereafter appealed to the Court of Appeal seeking to set aside the judgment of the Federal High Court, Abuja.

D 7. On the 9th day of April, 2011, elections were conducted by the 5th Respondent where the 1st respondent was returned as the winner in the various constituencies where the Applicants/Parties seeking to be joined won in the Primary Elections as candidates of the 1st Respondent.

E 8. The Court of Appeal on the 20th day of April, 2011 delivered its judgment where it set aside the judgment of the Federal High Court delivered on the 25th of February, 2011 and declared that the Primary Elections conducted by the 1st Respondent on the 13th day of January 2011 and which was won by the Applicants/Parties seeking to be joined was the only valid Primary Elections authorised by the 1st Respondent herein.

F The Appellants/Respondents subsequently appealed to this Honourable Court to set aside the judgment of the Court of Appeal.

G From the commencement of the suit at the trial court, to the Court of Appeal and the Supreme Court, the Applicants/Parties seeking to be joined were never parties to the suit.

G The Applicants/Parties seeking to be joined are necessary parties who will be directly affected by the outcome of this appeal.

H After the judgment of the Court of Appeal, the 1st Respondent issued Certificates of Return to the Appellants who by the judgment of the Court of Appeal are not the authentic candidates sponsored by the 1st Respondent herein in the April General Elections.

There are good grounds for the joinder of the Parties seeking to be joined as Co-Respondents in this appeal in order for the issues before this Honourable Court to be effectively and

finally judicially determined.

Learned counsel for the applicants stated further that the motion is supported by an affidavit of 24 paragraphs sworn to by the 1st applicant. There is also filed a further affidavit in support filed on 21/9/2011.

Learned counsel for the applicants placed reliance on all the depositions in the two affidavits, more particularly on paragraph 6 of the main affidavit in support. B

Learned counsel for the applicants submitted that from the commencement of the suit at the Federal High Court, Abuja (trial court) to the Court of Appeal Abuja (court below) and at the Supreme Court, the applicants/parties seeking to be joined were never parties to the suit/appeal. He stated that the applicants are necessary parties who will be directly affected by the outcome of this appeal and that joinder of the applicants will aid in the effective and judicial determination of the suit. C D

It was argued further that the applicants' names were submitted by (CPC) Congress for Progressive Change, 1st respondent herein, for the Party Primaries Scheduled on 14/11/2011. They contested for the primaries and won. The interest of the applicants will be affected by the final outcome of the appeal in this court. Learned counsel for the applicants urged this court to grant this application in the interest of justice. E

Learned senior counsel for the appellants/respondents (whom I shall refer to herein as 1st set of respondents) in this application, Mr. R. Tarfa, in his submissions in opposition to the application, stated, inter alia, that he filed a 10 paragraph counter-affidavit on 5/7/11. It was sworn to by one Bamikole M. Aduloju. Three exhibits (A-C) were attached to the counter affidavit. F G

The learned SAN submitted that the applicants were aware of the existence of the suit and the appeal but they never took action. It is only after the decision of the Court of Appeal that they want to be joined as respondents. The applicants, he stated further, have proffered no reason why they did not seek to be joined at the two courts below. They stood by to watch the party fight for their own cause. They are not necessary parties the determination of the appeal. Their application is an abuse of the process of this court and the applicants' conduct constitutes a forum shopping as they chose to move from one H

court to another filing several processes on same subject matter. It was argued further that the essence of the applicants' application is to delay this appeal. Learned SAN for the

1st set of respondents urged this court to refuse this application in the interest of justice.

B Mr. Alasa who appeared for the 1st - 3rd respondents of the "2nd set of respondents" stated that he filed no counter affidavit as he did not intend to oppose the application.

C Mr. Bakare, for the 4th respondent of the "2nd set of respondents' stated that he filed a counter affidavit of 16 paragraphs on 23/09/11. It was sworn to by one Sesan Suleiman. It was averred in the counter-affidavit that the parties seeking to be joined in the suit are complete strangers to the case at hand. That the parties seeking to be joined were never parties to any of the earlier proceedings in this D matter. There is nothing to show that the applicants were ever nominated by the 1st respondent prior to the Court of Appeal's judgment. Learned counsel urged this court to refuse this application.

E Mr. Auta appeared for the 5th and 6th respondents from the 2nd set of respondents. He stated that they are not opposing the application and they did not file any counter affidavit.

F In order to allow for a proper grasp of the genesis to this application, it is pertinent for me to set out clearly what transpired from the initial stage to the present position of this application. The applicants averred that they are members of the 1st respondent of the 2nd set of respondents who were nominated and sponsored by the 1st respondent for the April, 2011 election into various legislative positions both at Federal and State levels. The applicants participated in the Primary Elections conducted by the 1st respondent on the 13th G day of January, 2011 for legislative positions aforesaid. They won the said Primary elections of 13/1/2011 and were declared winners and duly elected candidates of the 1st respondent for the National Assembly Election for Katsina State ten [10] Senatorial and Federal Constituencies consisting of (1) Katsina Central Senatorial District (2) H Katsina North Senatorial District (3) Daural Maiaduwal Sandamu Federal Constituency (4) Mashiil Dutsi Federal Constituency (5) Kankial Kusada Federal Constituency (6) Manil Bindawa Federal Constituency (7) Kaital Jibiya Federal Constituency (8) Katsina 35 Federal Constituency (9) Funtua Federal Constituency and (10)

Kankaral Faskaril Sabuwa Federal Constituency. The applicants each, represented the respective Constituency as listed above in the order their names appear seriatim. Subsequently, the 1st respondent submitted the names of the applicants to the 5th respondent in accordance with the provisions of the Electoral Act and the names were accepted by the 5th respondent. Meanwhile, the 1st set of respondents instituted an action at the trial court in Suit No. FHC/ABJ/CS/126/11 praying that court, among other things, for an order directing the 5th respondent to accept their names as the validly elected candidates in the primaries conducted by the Katsina State chapter of the 1st respondent. The trial court granted the prayers of the 1st respondents in its judgment of 25th February, 2011 and ordered the 5th respondent to accept the 1st set of respondents as the validly elected candidates of the 1st respondent. The 1st respondent appealed to the court below seeking to set aside the judgment of the trial court.

The applicants averred further that on the 9th day of April, 2011, elections were conducted by the 5th respondent where the 1st respondent was returned as the winner in the various constituencies where the applicants won as candidates in the primary elections of the 1st respondents. On the 20th of April, 2011, the court below delivered its judgment, setting aside the judgment of the trial court of 25th of February, 2011 and declared that the Primary Elections conducted by the 1st respondent on the 13th of January, 2011, which was won by the applicants was the only valid Primary Election authorized by the 1st respondent. Subsequent to this judgment of the court below, the 1st set of respondents/applicants appealed to this court seeking to set aside the said judgment. These are the salient facts as provided by the applicants in their grounds upon which the Motion on Notice was premised and as per the deposition of facts contained in the affidavit in support of the Motion on Notice. It is to be noted further, from the names of the parties afore stated and as stated unequivocally, positively and directly by the applicants, from the commencement of the suit at the trial court, to the court below and up to this court, were never parties in the matter.

However, when the appeal SC. 157/2011 was entered by this court, the applicants by their Motion on Notice which was filed in this court on the 30th of June, 2011 [Motion under consideration], seeking

now to be joined as parties whose interest will be affected by the outcome of the appeal, thereby making them to be necessary parties to the appeal. Applicants averred that there are good grounds for the joinder in order for the issues before this court to be effectively, finally and judiciously determined. ***The applicants who claim to be***

registered members of the 1st respondent, a political party in this country, like any other citizen, have every right to seek protection under the laws of this country including the Constitution of the Federal Republic of Nigeria. AFORTIORI, they have every right to have recourse to the provision of section 6 of the Constitution which generally vests judicial powers in our courts of law and which shall extend, according to subsection [6][b] of that section to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. However, it is important to note that for a person to be entitled to invoke judicial power, the settled principle of law is that he has to show that either his personal interest will immediately be, or has been adversely affected by the action or that he has sustained an injury to himself and which injury and interest are over and above the general public.

See: Thomas v. Olufosoye (1986) 1 NWLR (Pt.18) 669.

The applicants have in an attempt to show that they have interest in the matter in litigation before the two courts below and this court, averred in the following paragraphs of their further affidavit in support as follows:

“4. That I am a card carrying and financial member of the 1st Respondent and was the candidate nominated and sponsored by the 1st respondent for the election to the Senate of the Federal Republic of Nigeria for Katsina Central Senatorial District of Katsina State in the April, 2011 General Elections which has since been held and concluded.

5. That the applicants/parties seeking to be joined as respondents are members of the 1st respondent herein who participated in the Primary Elections conducted by the 1st respondent on the 13th day of January, 2011 for legislative positions in Katsina State.

6. That the applicants/parties seeking to be joined won the said primary elections conducted by the 1st respondent on 13th day of January, 2011 and were declared winners and duly elected candidates of the 1st respondent for the National Assembly Election for Katsina State in the following constituencies:

1. Hon. Abubakar Sadiq Saidu Yar' adua - Katsina Central Senatorial District B

2. Hon. Hadi Abubakar Sirika Katsina North Senatorial District Alh. Salisu Ado DauralMaiaduwalSandarnu Federal Constituency Sani Bello Mashl - Mashil Dutsi Federal Constituency C

Ahmed Usman Babba - Kankia/Kusada/Ingawa Federal Constituency Isa Lawa Dodo - Mani/Bindawa Federal Constituency

Salisu Suleiman - KaitaiJibiya Federal Constituency Sheikh Umar Abubakar - Katsina Federal Constituency Dr. Mansur Abdulkadir Funtua/Dandume Federal Constituency Abbas Abdullahi Machika - D Kankaral Faskari/Sabuwa Federal Constituency

7. That the 1st respondent subsequently submitted the names of the applicants/parties seeking to be joined to the 5th respondent herein according to the provisions of the Electoral Act which said submission was accepted by the 5th respondent. E

8. That the appellants/respondent herein instituted an action at the Federal High Court, Abuja in Suit No. FHC/ABJ/CS/l26/11 where they prayed among others for an order directing the 5th respondent to accept their names as the valid elected candidates in the primaries F conducted by the Katsina State Chapter of the 1st respondent.

9. That the Federal High Court granted the prayers of the appellants/respondents herein in its judgment delivered on the 25th day of January, 2011 and ordered the 5th respondent to accept the appellant as the valid elected candidates of the 1st respondent. G

That the 1st respondent thereafter appealed to the Court of Appeal seeking to set aside the judgment of the Federal High Court, Abuja. That on the 9th day of April, 2011 elections were conducted by the 5th respondent where the 1st respondent was returned as the winner in the various constituencies where the applicants/parties seeking to be joined won as candidates in the Primary Elections of the 1st respondent. H

That the Court of Appeal on the 20th day of April, 2011

delivered its judgment where it set aside the judgment of the Federal High Court delivered on 25th February, 2011 and declared that the Primary Elections conducted by the 1st respondent on the 13th day of January, 2011 and which was won by the applicants/parties seeking to be joined was the only valid Primary Elections authorized by the 1st respondent herein.”

It is clear from the averment of the applicants that:

[i] No evidence of membership of the 1st respondent is shown by the applicants;

[ii] no evidence of nomination and sponsorship of the applicants by the 1st respondent to the 5th respondent has been shown;

[iii] no evidence has been exhibited to show that primary elections were conducted by the 1st respondent on 13/1/2011 for legislative positions in Katsina State;

[iv] no evidence exhibited to show that the said election conducted by the 1st respondent on 13/1/2011 were won by the applicants.

[v] there is nothing to show that the names of the applicants were submitted to the 5th respondent.

[vi] there is nothing to show that elections were conducted by the 5th respondent on the 9/4/2011 where the 1st respondent (CPC) was returned as the winner in the various constituencies where the applicants won as candidates in the Primary Elections of the 1st respondent.

In this application, the above are some of the concomitant factors or requirements which are necessary, in my view, to support the application. They are very vital in determining this application, but the applicants have woefully failed to supply them to support their application.

This court has stated the law and even the practice in a number of decisions, that for a person to approach this court or any other court for that matter, with an application which seeks the court's indulgence, such a person is duty bound to place sufficient materials before the court in order to assist the court exercise its discretion in his favour. Such discretionary exercise must be founded upon facts and circumstances presented to the court from which a conclusion governed by law will have to be drawn. See Duwin v. Beneks (2000)

15 NWLR (pt. 689) 66. ***It is also said that judicial exercise of discretion is not arbitrary or fanciful because it is done with sufficient, correct and convincing reasons.*** See: Ekwenife v. Wayne W. A. Ltd. (1989) 5 NWLR (pt. 122) 422 at 448, Shell Petroleum Dev. Co. v. Lawson Jack (1998) 4 NWLR (pt. 545) 249 at 280, Egwu v. Modunkwu (1997) 4 NWLR (pt. 501) at 588. In Unilag v. Aigoro (1985) 1 NSCC, Bello, JSC (as he then was but later CJN, of blessed memory), relying on the case of Jones v. Curling 13 Q.B. p. 262, stated that the guiding principle in exercise of discretion is that, it being judicial, must at all times be exercised not only judicially but also judiciously on sufficient materials. See further: Saffieddine v. CP (1971) 1 All NLR 8. ***I fail to find such sufficient materials in this application. If I were to grant such indulgence, it will then be an indulgence not rooted in any legal principle known to law and practice.*** By mere looking at the affidavit evidence, I seem to be convinced by the evidence placed before the court through counter affidavits by the respondents in whose favour the pendulum of the scale of justice must tilt. This is because, I studied the counter-affidavits filed by the 1st set of respondents and that of the 4th respondent from the 2nd set of respondents. In their counter-affidavit of the 16 paragraphs which was sworn to by Mr. B. M. Aduloju, a counsel from Mr. Tarfa (SAN's) chambers, the 1 - 43 respondent 1st appellants stated, among other things that:

“4(i). At the time suit No. FHC/ABJ/CSII26/2011 was filed at the Federal High Court Abuja, the applicants herein were aware of same but were content to let their battle be fought by the 1st respondent. Congress for Progressive Change (CPC) whilst they stood aside.

ii. When judgment was delivered by the Federal High Court on 25th February, 2011, the applicants continued to stand by whilst the appeal CA/A/232/2011 was prosecuted and argued by the parties content to stand by.

iii. The said suit and appeal were celebrated in the mass media and was public knowledge.

iv. All the applicants herein were during the subsistence of the suit at the Federal High Court and the appeal of the Court of Appeal, card carrying members of the 1st respondent herein, CPC.

v. During the pendency of the appeal at the Court of Appeal,

the applicants herein caused to be filed at the Federal High Court Katsina suit No. FHC/KT/CSII2/2011 a suit against the 2nd- 35th appellants herein and 1st - 5th respondents herein as defendants in the matter which bordered on the subject matter of the appeal.

vi. The said applicants in the said suit obtained an interim order
B of injunction in the suit to wit;

AN ORDER of interim injunction restraining the 36th defendant, their servants, agents and or privies from issuing Certificates of Return for the Katsina North Senatorial District, Katsina State and
C other legislative positions respectively to the 1st to 34th defendants pending the hearing and determination of the motion on notice.

vii. During the pendency of suit No. FHC/KT/CS/121/2011 but after the judgment of the Court of Appeal, the 1st respondent herein on behalf of the applicants also caused to be filed before the Federal
D High Court, Abuja i.e. suit No.FHC/ABJ/CSII2/2011 wherein the reliefs sought were substantially the same as that of paragraph 4(v) above.

viii. The Federal High Court declined jurisdiction to entertain the suit on the grounds inter alia that it constitutes an abuse of process
E in view of the pendency of the instant appeal and motion for injunction pending appeal.

Annexed hereto and marked as Exhibit B is the judgment of the Federal High Court, Abuja.

ix. The 1st respondent herein, on behalf of the applicants has
F appealed against the judgment of the Federal High Court and also applied for a stay of execution of the Federal High Court's judgment pending the determination of their appeal to the Court of Appeal.

The applicant's notice of appeal is hereby annexed and marked
G as Exhibit C.

x. I know as a fact that the counsel who filed the matters at the Federal High Court, Katsina, and Federal High Court, Abuja is also part of the team of the applicants herein.

That this application constitutes an abuse of court process. That
H the applicants' conduct in the circumstance of this application constitutes forum shopping.

7. That the applicants were aware of this matter from the trial court to this instant appeal but neglected or refused not to join same until now.

That the essence of the Applicants' application is to delay this appeal.

That it is in the interest of justice to refuse this application.”
(Underlining supplied by me)

Equally, the 4th respondent (I believe from the 2nd set of respondents Dr. Yusha'u Armaya'u) filed a counter affidavit of 16 paragraphs. It was sworn to by one Sesan Suleiman, a legal practitioner in the law firm of Demola Bakre, stating:

“4. That the parties seeking to be joined in the suit are complete strangers to the case at hand.

That the parties seeking to be joined only started making moves to reap from the judgment of the Court of Appeal as mere opportunists who were actual (sic) never nominated by the 1st respondent prior to the Court of Appeal judgment.

That from the affidavit in support of the application the applicants show clearly that they became interested in the appeal basically in view of the judgment of the Court of Appeal.

14. That there is absolutely nothing to show that the parties seeking to be joined were ever nominated by the 1st respondent prior to the Court of Appeal judgment.

It is in the interest of justice to refuse this application.” (Underlining supplied by me)

It is my findings that:

[a] the respondents were able through credible evidence (especially exhibits 'A' Originating Summons filed by the applicants, among others, at the Katsina Division of the Federal High Court with Suit No. FHC/KT/CS/12/2011 against the 2nd - 35th appellants respondents from the 1st set of respondents and also against 1st- 5th respondents from 2nd set of respondents). This Suit was said to have been filed by the applicants (among others) during the pendency of the appeal at the court below.

[b] During the pendency of the suit filed at Katsina Federal High Court (as in (a) above) the applicants yet filed another suit at the Federal High Court Abuja Suit No. FHC/ABJ/CS/404/2011, containing substantially same reliefs as the one aforementioned in [a]. The Federal High Court, Abuja declined jurisdiction on the ground that the suit constituted an abuse of process in view of the pendency of the instant appeal and a motion for injunction pending appeal.

Exhibit B - Enrolled Order of the said Federal High Court was

attached to the counter affidavit of the 1st set of respondents.

[c] There is evidence also that the 1st respondent from the 2nd set of respondents, (CPC) appealed, on behalf of the applicants against the judgment of the Federal High Court Abuja and also applied for a stay of that judgment Exhibit C - Notice of Appeal was exhibited.

B The applicants filed on 21/9/2011 what they called a reply affidavit to the appellants/respondents counter affidavit filed on 5th July, 2011. This “reply”, I think, should better be referred to as a further affidavit by the applicants. In it, applicants attempted denying
C most of the averments contained in the respondents’ counter affidavit albeit to no avail. Exhibits 5 ‘A’ and ‘S’ which applicants attached to the reply to the counter affidavit, are a confirmation that the applicants were among the 33 plaintiffs who approached the Federal High Court Katsina with their originating summons and other preliminary process.
D Nothing more was exhibited and nothing more was said on, such processes. This reply affidavit has not assisted the applicants in anyway. It rather, complicated their status to look like interlopers.

At the tail end of all the affidavits, counter affidavits and in their oral addresses, the applicants urged this court to grant their application
E “in the interest of justice.” Both sets of respondents too, urge this court to refuse the application “in the interest of justice”. I think the phrase ‘interest of justice’ is not, as held by Kayode Eso, “acarte blanche or licence for an unimpeded exercise of power, even against the rules, in the guise of interest of justice.” See: Willoughby v. Int. Merchant Bank
F Nig. Ltd. (1987) 1 20 NSCC 41 at p.53. ***Thus, in considering the interest of justice it should always be borne in mind that the interest of justice does not mean just the interest of the applicants, it also includes the interest of the respondents and the court. It is that justice which is handed according to law. Thus, where a person seeks to be joined in a matter as a necessary party, interest of justice requires him to display before the court sufficient materials showing that he does not only have interest in the subject matter but that his absence/***
G ***non participation in the subject matter will stultify the proceeding thereof.*** See: Afolayan v. Ogunmide (1990) 1 NWLR (Pt. 127) 369 or (1990) 2 SCNJ 62. ***It has been seen in this matter that several decisions were doled out by both the trial court and the court below between the two sets of respondents without the***
H

necessity of joining the applicants. Can the applicants really be called necessary parties for the effective and effectual determination of the subject matter under litigation? I do not think so. Obaseki, JSC in Ibrahim v. Shagari (1983) All NCR 507 at 524, observed that “courts do not decide questions that have no relevance to the facts. In the absence of facts to which the law can be applied, the courts will not embark on a futile exercise. Courts are established to decide cases based on real and actual facts not to pontificate on imagined or hypothetical facts.” Two years earlier to that decision (immediately cited above), Uwais, JSC (as he then was), in the case of Adesanya v. President (1981) 12 NSCC 146 at (p. 179) made the following general observation on limitation of access to court:

“It is of paramount importance and indeed most desirable to encourage citizens to come to court in order to have the Constitution interpreted. However this is not to say, with respect the meddlesome interlopers, professional litigants or the like should be encouraged to sue in matters that do not directly concern them. In my view, to do that is to open the flood-gate to frivolous and vexatious proceedings. I believe that such latitude is capable of creating undesirable state of affairs.”

I am in complete agreement with the judicial dicta pronounced in the two cases cited above. In the present application, the applicants should not have waited that long to seek to join the legal tussle between the two sets of respondents. They should have promptly and expeditiously joined the tussle at the trial court. Delay, they say defeats equity. The law, they say, aids the vigilant and not those who sleep. Vigilantibus et non dormientibus jura subveniunt.

It is in these circumstances that I find no merit in the application. The application is hereby refused and same is dismissed by me.

I make no order as to costs.

MUKHTAR JSC

The applicants in this application seek to be joined as respondents in an appeal filed on 20/4/2011 vide an application for joinder in

this court filed on 30/6/2011. The judgment sought to be appealed against was delivered on the same 20/4/2011. The judgment of the honourable Federal High Court was delivered on 25/2/2011. As is required by the rules of this court, the application is supported by an affidavit, the pertinent depositions of which I will reproduce hereunder. They are:-

“8. The Court of Appeal on the 20th day of April, 2011- delivered its judgment where it set aside the judgment of the Federal High Court delivered on 25th February, 2011 and declared that the Primary Elections conducted by the 1st Respondent on the 13th day of January, 2011 and which was won by the Applicants/Parties seeking to be joined was the only 1st Respondent herein.

The Appellants/Respondents subsequently appealed to this Honourable court seeking to set aside the judgment of the Court of Appeal.

From the commencement of the suit at the trial court, to the Court of Appeal and the Supreme Court, the Applicants/Parties seeking to be joined were never parties to the suit.

The Applicants/Parties seeking to be joined are necessary parties who will be directly affected by the outcome of this appeal. After the judgment of the Court of Appeal, the 5th Respondent issued Certificates of Return to the Appellants who by the judgment of the Court of Appeal are not the valid or authentic candidates sponsored by the 1st Respondent herein in the April General Elections.”

A counter-affidavit was filed, and although further affidavits were filed by the applicants, the pertinent question I wish to ask at this juncture is, have the applicants met the requirements of the principles of law that govern the grant of the application for joinder of parties at any stage of court proceedings?

One of the requirements and questions to be answered is, would the appellants be prejudiced if the applicants are joined as parties? I think they would for if the application is granted and the applicants are joined the appellants may lose out completely on the suit.

The law requires that a party who has any interest in a case, and who is aware of a pending action in a court of law involving this same interest should at the earliest opportunity seek to be joined as a party in the suit. A party cannot fold its arms and wait, leaving other parties

to fight its battle for him as the suit is in progress, only to seek to grab an advantage at the end of the proceedings from the trial and lower appellate level. I am guided by the words of Ademola C.J.N. (of blessed memory) when in the case of Shonekan v. Smith (1964) 1 All NLR 168, he said

“we were satisfied that if she had any interest at all, she was barred from being joined as a party to this action since it was clear that she knew of the action before it originated; she had helped either one or both sides, and she was satisfied to leave it to the plaintiff/respondent to fight her own battle.”

See also Alhaji A. A. Oduola v. John Gbadebo Coker (1981) SC.197, and Gbadamosi v. Dairo (2001) 6 NWLR (pt. 708) 137.

In the present case, the applicants were jumping from one court to another, pursuing suits they have instituted on the same subject matter. This court will not tolerate such opportunistic acts. This step taken by the applicants is like wanting to reap where they did not sow (so to speak). This application is bound to fail, as the applicants have not disclosed cogent reasons why this court should exercise its discretion in their favours. The application fails, and it is hereby refused.

I have read in advance the lead ruling delivered by my learned brother Muhammad J.S.C., and I agree with the more thorough reasoning therein. I also abide by the consequential orders in the said ruling.

GALADIMA JSC

I have had the privilege of reading the Ruling of my Learned Brother, I. T. Muhammad, JSC, just delivered. I agree with his reasoning and conclusions.

The Applicants in their Motion on Notice dated and filed on 30th June, 2011 prayed for the following Orders:

“(1) AN ORDER of extension of time within which to seek leave to be joined as necessary parties to this appeal.

(2) AN ORDER granting leave to the Applicants/parties to be joined as Respondents in this appeal.

(3) AN ORDER of this Honourable Court directing that all processes filed and served in the Suit be served on the Applicants/ Parties seeking to be joined through their Counsel as indicated below

for the purpose of appearing and/or defending this appeal.

(4) AN Order that pursuant to the grant of this application all subsequent processes in this appeal reflect the joinder of the Applicants herein as Co-respondents.”

B Made up of 13 paragraphs the Applicants set out their grounds upon which the application is brought. It would appear, these grounds are panoply or para-phrases of Applicants’ 24 paragraphs affidavit in Support of their application. I shall have the cause in the course of this Ruling to refer to both.

C The 1st - 43rd Respondents in opposing this application filed a Counter Affidavit of 10 paragraphs. 1st, 2nd, 3rd, 5th and 6th sets of respondents do not oppose the application. However the 4th Respondent who is the Katsina State Chairman of Congress for Progressive Change (C.P.C.) in opposition filed his Counter-Affidavit of 16 D paragraphs on 23/09/2011.

On 26/09/2011 we took the application. K. K. Eleja Esq., Learned Counsel for the Applicants, submitted that the Applicants seeking to be joined in the appeal as Respondents are members of the 1st Respondent, who participated in the Primary Election on 13/11/ E 2011 for and declare winners for the various Senatorial Districts and Federal Constituencies in Katsina State. Relying on the depositions in paragraphs 7 - 13 of the Affidavit in support of this application, Learned Counsel contended that from the commencement of the suit at the trial Court to the Court of Appeal and the Supreme Court the F Applicants were never parties to the Suit. It is submitted that the Applicants are necessary parties who will be directly affected by the outcome of the Appeal before the Supreme Court. That as the interest of the Applicants will be affected by the final outcome of this appeal G their joinder will aid in the effective and judicial determination of this Suit and that there is need to reflect their names as necessary parties.

Learned Senior Counsel for the 1st - 43rd Appellants/Respondents, RICKEY TARFA (SAN) has submitted that at the time the Suit No. FHC/ ABJ/CS/126!2011 was filed at the Federal High Court, Abuja H (where the Appellants prayed, among others for an order directing the 5th Respondent to allow them as valid elected candidates in the primaries), the Applicants herein were aware of same but stood by for the battle to be fought by the 1st Respondent, C.P.C. On 25/02/2011 the Federal High Court delivered the Judgment. Appeal CN/N232/

2011 was prosecuted by the Appellants and the Applicants did nothing. They only filed at the Federal High Court Katsina Suit No. FHC/KT/CS/12/20 11 against the 2nd - 35th Appellants herein, during the pendency of the appeal at the Court of Appeal. Referring to paragraphs 4(1) - 4(XI) the learned Senior Counsel, summing up, submitted that in the circumstances the applicants do not deserve the exercise of our discretion to grant their application and this must be refused. B

The submissions of DEMOLABAKARE ESQ. Learned Counsel for the 4th Respondent in opposition is more of recapitulation of statements on Oath in the Counter-Affidavit of 16 paragraphs. In sum, it is submitted that the parties seeking to be joined only started making moves to reap from the Judgment of the Court of Appeal as “mere opportunists who were never nominated by the 1st Respondent prior to the Court of Appeal Judgment” C D

In an application of this nature applicant must supply sufficient materials to assist court in exercising discretion in respect thereof. There is absence of adequate and acceptable explanation by the applicants asking this Court to exercise its discretion in their favour. It is the Counter-Affidavit of the 1st - 43rd respondents that has clearly exposed the weakness of this application thereof, particularly paragraphs 4(1) - (XI), 5, 6, 7, 8, 9 and 10. It is reproduced thus: E

“4. (i) At the time Suit No. FHCIABJI/CS/12/2011 was filed at the Federal High Court Abuja, the Applicants herein were aware of same but were content to let their battle be fought by the 1st Respondent, Congress for Progressive Change (CPC) whilst they stood aside. F

(ii) When judgment was delivered by the Federal High Court on 25th February 2011, the Applicants continued to stand by whilst the appeal CNN232/2011 was prosecuted and argued by the parties content to stand by. G

(iii) The said suit and appeal were celebrated in the mass media and was public knowledge.

(iv) All the Applicants herein were during the subsistence of the suit at the Federal High Court and the Appeal of the Court of Appeal, card carrying members of the 1st respondent herein, CPC. H

(v) During the pendency of the appeal at the Court of Appeal, the Applicants herein caused to be filed at the Federal High Court

Katsina Suit No. FHC/KT/CSII2/2011 a suit against the 2nd - 35th Appellants herein and 1st - 5th Respondents herein as Defendants in the matter which bordered on the subject matter of the appeal.

(vi) The said Applicants in the said suit obtained an interim order of injunction in the suit to wit;

B AN ORDER of interim injunction restraining the 36th Defendant, their servants, agents and or privies from issuing Certificates of Return for the Katsina North Senatorial District, Katsina State and other legislative positions respectively to the 1st to 34th Defendants pending the hearing and determination of the motion on notice.

C (vii) During the pendency of Suit No. FHC/KT/CSII2/2011 but after the judgment of the Court of Appeal, the 1st Respondent herein on behalf of the Applicants also caused to be filed before the Federal High Court, Abuja i.e. Suit No. FHCI ABJ/CS/12/2011 wherein the D reliefs sought were substantially the same as that of paragraph 4.5 (v) above.

(viii) The Federal High Court Declined jurisdiction to entertain the suit on the grounds inter alia that it constitutes an abuse of process in view of the pendency of the instant appeal and motion for injunction E pending appeal.

Annexed hereto and marked as Exhibit B is the judgment of the Federal High Court Abuja.

(ix) The 1st Respondent herein, on behalf of the Applicants has F appealed against the judgment of the Federal High Court and also applied for a stay of execution of the Federal High Court's judgment pending the determination of their appeal to the Court of Appeal.

The applicant's notice of appeal is hereby annexed and marked as Exhibit C.

G (x) I know as a fact that the counsel who filed the matters at the Federal High Court, Katsina, and Federal High Court, Abuja is also part of the team of the Applicants herein.

(xi) I also know as a fact that the two suits filed at the Federal High Court Katsina and Abuja bordered on the same subject matter H on appeal.

That this application constitutes an abuse of court process.

That the Applicants' conduct in the circumstance of this application constitutes a forum shopping.

7. That the Applicants were aware of this matter from the trial

court to this instant appeal but neglected or refused not to join same until now.

That the essence of the Applicants' application is to delay this appeal.

That it is in the interest of Justice to refuse this application.

That I swear to this affidavit in good faith and to the best of my knowledge, information and belief that the content is true and correct, in accordance with the Oaths Acts."

From the aforementioned paragraphs of the Counter-Affidavit these questions remained unanswered: Why the applicants who were aware of the Suit No. FHC/ABJ/CS/126/2011 filed by the 1st Respondent were contented to let their battle be fought by the said 1st Respondent (CPC). If they were not so aware, what of when the judgment was delivered by the Federal High Court on 25/02/2011. From all indication the Applicants stood by whilst the parties prosecuted the Appeal No. CN N232/2011 in the Court of Appeal. More revealing still the Applicants took out Originating Summons (Suit No. FHC/ICT/CS/12/2011) against the 2nd - 35th Appellants herein and 1st - 5th Respondents herein as defendants. The subject matters were the same since the applicants obtained an interim injunction nothing was heard of the pending Motion on Notice. After the judgment of the Court of Appeal and whilst suit No. FHC/ICT/CS/12/2011 was pending the 1st Respondent herein, on behalf of the Applicant again caused to be filed before the Federal High Court Abuja (Suit No. FHC/ABJ/CS/12/2011. Wherein the reliefs sought were substantially the same. High Court declined jurisdiction to entertain the Suit on the grounds that it constitutes an abuse of process in view of the pending of the instant appeal and motion for injunction pending the said appeal.

The 1st Respondent herein on behalf of the Applicants herein has appealed against the judgment of the Federal High Court and also applied for a stay of execution of the Federal High Court Judgment pending the determination of their appeal to the Court of Appeal. The Appellants have annexed the Applicants' Notice of Appeal as Exhibit C. For the reason that the two Suits filed at the Federal High Court Katsina and Abuja bordered on the same subject matter on appeal this instant application to my mind, constitute an abuse of Court process.

The applicants were aware of this matter from the trial court to

this instant appeal but neglected or refused not to join same until now for the foregoing reasons and for the more detail contained in the leading Ruling of my Learned Brother I.T. Muhammad this application is refused and it is dismissed. I make no order as to costs.

B

NGWUTA JSC

I had a preview of the judgment delivered by my learned brother, Muhammad, JSC and I agree with His Lordship's reasoning and conclusion. I will however add a few points.

C

The origin of this application is the intra-party squabbles in the Congress for Progressive Change, CPC, Katsina State Chapter. From the processes before this Court, it does appear that two different primary elections were conducted for the Katsina Chapter of the CPC in 2011. One was conducted by the Congress for Progressive Change, CPC, and the other by its Katsina State Chapter. The contest for authenticity between those who alleged that they won the primary election conducted by the Party and those who claim they won the primary conducted by the Party's Katsina State Chapter, gave rise to Suit No. FHC/ABJ/CS/126/11 wherein the Appellants/Respondents herein sought an order directing the 5th Respondent to accept them as the authentic winners of the primary election conducted by the Katsina State Chapter of the party on the basis that this was the legitimate primary election.

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The Federal High Court, Abuja, granted the reliefs sought by the Appellants/Respondents. On appeal by the 1st Respondent, the Court of Appeal, Abuja Division, set aside the judgment of the Federal High Court. The Applicants/Respondents appealed to this Court, seeking to set aside the judgment of the lower Court and restore the judgment of the trial Court. At this point in time the applicants woke up from slumber, as it were, and pursuant to section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999, Order 2 Rule 28(1), (4) and Order 8 Rule 12(2) of the Supreme Court (as amended) 1999 filed a motion praying the following reliefs:

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“An order for extension of time within which to seek leave to be joined as necessary parties to this appeal.

An order granting leave to the Applicants/Parties seeking to be joined as respondents in this appeal.

An order of this Honourable Court directing that all processes filed and served in the suit be served on the Applicants/Parties seeking to be joined through their counsel as indicated below for the purpose of appearing and/or defending this appeal.

An order that pursuant to the grant of this application, all subsequent processes in this appeal reflect the joinder of the applicants herein as co-respondents.” B

The facts are not complicated and there is no material conflict in the entire affidavit evidence.

The first relief is not necessary there being no time frame within which a party shall apply for a joinder. Also relief No. 4 is not necessary as the relief would naturally flow from the grant of the second relief. Reliefs 1 and 4 were withdrawn and struck out. The main relief herein is relief No. 2 and its grant or refusal determines the fate of relief No. 3. C

The main thrust of the argument of the Applicants/Parties seeking to be joined is that they have a stake in outcome of the appeal, that they are necessary parties who will be directly affected by the outcome of the appeal. D

Opposition to the application is based on the fact that the Applicants! E

Parties seeking to be joined are not necessary parties and that in view of the suits filed in the Federal High Court, Katsina, and the Federal High Court, Abuja, on substantially the same subject matter, this application amounts to abuse of process of Court. F

Ground 10 of the 13 Grounds upon which this application is predicated is hereunder reproduced:

“10. From the commencement of the Suit of the trial Court, to the Court of Appeal and the Supreme Court, the Applicants/Parties seeking to be joined were never parties to the Suit.” G

This was repeated as paragraph 14 in the 24-paragraph Supporting Affidavit filed by the Applicants.

Assuming that the applicants are the winners of the authentic primary election in Katsina State in the CPC as they claimed, were they not aware that the matter in which they had so much at stake was the subject matter in a suit in the Federal High Court, Katsina? If they were not aware of the suit at the trial Court, did they not know that the matter was taken up on appeal to the lower court. It is not disputed that the Applicants filed a suit in the Federal High Court, Katsina during the H

pendency of which they filed another one at the Federal High Court, Abuja and since the two suits before the two Divisions of the Federal High Court are substantially based on the same set of facts, the Federal High Court, Abuja, struck out the latter case as abuse of process of Court. In the circumstances, I am satisfied that the Applicants were aware of the case in the trial Court and in the Court below. In fact, it is the decision of the Court of Appeal, Abuja Division, setting aside the judgment of the trial Court that prompted this application for joinder.

An application for joinder may be granted to avoid a multiplicity of actions or to eliminate the possibility of two courts of co-ordinate jurisdiction, giving different and conflicting decisions in two cases that are substantially the same. See *Raxter v. France* (1895) 1 OB 591 523; *Kigo Nig. Ltd. v. Holman Bros Nig. Ltd.* (1990) NSCC 204 at 211 and *Bank of Ireland v. Union Bank* (1998) 7 SCNJ 385 at 396.

On the facts before the Court, the Applicants have already instituted multiple suits on the same subject matter, thereby creating a possibility of two conflicting judgments of two different courts of co-ordinate jurisdiction on the same matter. This application is akin to rushing to close the stable after the horse had bolted.

The applicants may or may not have a right to be joined. If they had that right, their actions and omissions prior to this application adversely affected that right which they can no longer enforce. A party may be joined as a person interested in a suit very early or midstream depending on when he knew of the proceedings. See *Re: Arowolo* (1993) 2 NWLR (pt. 275) 317 at 331. In this case, the applicants were aware of the suits involving their interest. The applicants took a gamble and have to bear the consequences. Even equity that waters down strictures of strict application of law loathes, and will not aid the indolent.

For the above and the more comprehensive reasoning in the lead Ruling, I also dismiss the application as bereft of merits.

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