

IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ABEOKUTA, OGUN STATE
ON MONDAY THE 26TH DAY OF SEPTEMBER, 2022
BEFORE THE HON. JUSTICE J.O. ABDULMALIK
JUDGE

SUIT NO: FHC/AB/CS/80/2022

BETWEEN:

HON. ENILOLOBO OLANREWaju SOLOMON - PLAINTIFF

AND

- 1. PEOPLES DEMOCRATIC PARTY (PDP)**
- 2. DR. IYORCHIA AYU**
- 3. SENATOR SAMUEL ANYANWU - RESPONDENTS**
- 4. HON. UMAR BATURE**
- 5. MR SUNDAY SODIPE**
- 6. INDEPENDENT NATIONAL ELECTORAL COMMISSION**

JUDGMENT

By way of an Amended Originating Summons dated and filed 24th day of June 2022, Plaintiff seeks the following reliefs:-

*“A **DECLARATION** that the names of persons contained in Exhibit AA7 are Ad-hoc delegates of the 1st Defendant from the Wards' Congresses that the PDP conducted in Wards 1 to 7 covering the Abeokuta South Constituency 1 of Ogun State on the 30th day of April, 2022 is in compliance with Article 15(2) (e) and Article 25 (5) (a) & (b) of the 1st Defendant's Constitution*

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(as amended in 2017), Article 1 (b) (i) of Part I (Page 5) and Article 4 (xii) of Part II (Page 9) of the Electoral Guidelines for Primary Elections of 7th March, 2022 of the 1st Defendant.

2. **A DECLARATION** that the 1st -4th Defendants are bound by its Constitution (as amended in 2017) and its Electoral Guidelines for Primary Elections dated 7th day of March, 2022 as well as Section 84 (5) (a) - (c) and (8) of the Electoral Act 2022 by presenting only candidates elected by Ad hoc delegates for the forthcoming election to be organized by the 6th Defendant and who were duly elected at the Wards' Congresses as Ad hoc delegates.

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3. **A DECLARATION** that only the elected Ad-hoc Delegates at the Ward Congresses of the 1st Defendant in Wards 1-7 covering Abeokuta South Local Government Constituency 1, on the 30th day of April, 2022 and witnessed by the officials of 6th Defendant are the authentic Ad-hoc delegates of the 1st Defendant to present a candidate to represent the 1st Defendant for the Abeokuta South Constituency 1 in the forthcoming Ogun State House of Assembly election to be organized by the 6th Defendant.

4. **AN ORDER OF INJUNCTION** restraining the 1st - 4th Defendants, their officers, agents or privies from using any other Ad hoc delegates or recognizing any other candidate and Ad hoc delegates other than the Plaintiff as candidate to

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represent the 1st Defendant as the candidate for the Abeokuta South Constituency 1 whose name is contained in Exhibit AA8 as the winner of the primary election conducted by the Ad-hoc delegates (whose names are contained in Exhibit AA7 attached to the affidavit in support of the originating summons respectively.

5. **AN ORDER OF INJUNCTION** restraining the 6th Defendant, its officials, agents, privies or assigns from recognizing or permitting to vote or participate in any manner whatsoever the 5th Defendant or any other person as candidate of the 1st Defendant for the Abeokuta South Constituency 1 apart from the Plaintiff who has been elected by the recognized Ad-hoc Delegates whose names are contained in Exhibit AA7 attached to the affidavit in support of the originating summons.

6. **AN ORDER OF MANDATORY INJUNCTION** directing the Defendants to recognize the Plaintiff and all the ad-hoc delegates whose names are contained in Exhibit AA7 attached to the Affidavit in Support of this Originating Summons to and for the Plaintiff to be recognized as the candidate representing the 1st Defendant in the Abeokuta South Constituency 1 at the forthcoming Ogun State House of Assembly Election to be conducted by the 6th Defendant in Ogun State.

ALTERNATIVELY, an Order of Court directing the 1st-4th and 6th Defendants to conduct another primary election using the

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result of the ad hoc delegate list of the delegate ward congress held on the 30th of April, 2022 to determine who will represent the 1st Defendant in the forthcoming Ogun State House of Assembly election for Abeokuta South Constituency 1.

7.**AND** for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.”

In support of the Originating Summons is an affidavit of thirty one paragraphs deposed to by the Plaintiff. I find relevant the depositions contained in paragraphs **3, 4, 10, 15** to **29** of the affidavit in support. It reads as follows:-

- “1. That I am registered member of the Peoples Democratic Party (PDP) in Ogun State and I was elected as an ad-hoc ward delegate at the ward congress of the PDP in Ogun State conducted on 30th April, 2022.
2. That the Independent National Electoral Commission (INEC) in line with its statutory duties monitored the said congress held on 30th April, 2022, wherein I was elected as an ad-hoc delegate and my name is contained in the list of the elected ad hoc ward delegate and result sheet monitored and certified by INEC.
3. That the following names are some of the Ad-hoc delegates elected from the from Wards 1 to 7 of Constituency 1 of the Abeokuta South Local Government

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Area of Ogun State during the Wards Congresses of the 1st Defendant that held in the respective Wards throughout Ogun State on the 30th day of April, 2022, and are members of the 1st Defendant. They are:

- i. ADEIGBE IDAYAT
- ii. HON. SHONDE AYOBAMI
- iii. HON. SHOGBESAN OLUWAJINMI
(Ad hoc Delegate Ward 1)
- iv. HON. OGUNYEMI FAUSAT
- v. HON. SOMUYIWA RITA
- vi. HON. ALHAJA YUSUF KEHINDE ADEBISI
(Ad hoc Delegate Ward 2)
- vii. HON. ADEYANJU ADEPEJU
- viii. HON. FASASI AZEEZAT
- ix. HON. AKALA KEHINDE
(Ad hoc Delegate Ward 3)
- x. HON. TAOREED GANIYAT
- xi. HON. KELANI OLABODE
- xii. ON. OLADIMEJI NOSIMOT
(Ad hoc Delegate Ward 4)
- xiii. HON. BASIRAT AKIODE
- xiv. HON. AKINLABI BOLARINWA ARIKE
- xv. HON. ALH. KAMILA OYEGUNLE
(Ad hoc Delegate Ward 5)
- xvi. HON MR. SODRUDEEN AYODEJI
- xvii. HON MRS. FUNMI AJADI

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xviii. HON MR FASIU AJADI

(Ad hoc Delegate Ward 6)

xix. HON. MR. DADA KOLAWOLE ODUNTAN

xx. HON. MRS ADENEKAN BOLAJI

(Ad hoc Delegate Ward 7)

(For themselves as Ad hoc delegates elected at the Peoples Democratic Party (PDP) Wards Congresses in Wards 1 to 7 of Abeokuta South Local Government Area of Ogun State on the 30th day of April, 2022 and monitored by INEC)

The membership cards of the Ad-hoc delegates are now shown and jointly marked **Exhibit AA2**. Their respective affidavit of statement of facts accompany this affidavit in support is collectively marked as **Exhibit AA2a**.

4. That I know that all the names of the Ad-hoc delegates who were elected during the Delegate congress monitored by the 6th Defendant were received by the 6th Defendants. Now shown and jointly marked **Exhibits AA3** are the certified true copies of the 6TH Defendant monitor check list covering the 7 wards in Abeokuta South Constituency 1 Area, Ogun State.

10. The 4th Defendant issued a press statement dated May 20, 2022 to the effect that by virtue of Section 84(8) of the Electoral Act, 2022, delegates to vote at the indirect Primaries and National Convention of political parties to elect candidates for elections shall be those democratically elected for that purpose

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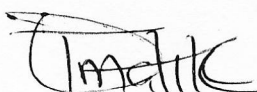
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only. Now shown and marked **Exhibit AA4** is the press statement of May, 20, 2022.

15. That I am aware that the Wards' Congresses of the 1st Defendant for the purpose of electing the 3 Ad ho Delegates from each of the 7 Wards, that is ward 1 to 7, was conducted at the various Wards' designated Centers on the 30th day of April 2022 in Ogun State in accordance with the Constitution of the 1st Defendant and its Electoral Guidelines for Primary Elections. A copy of both the Constitution of the 1st Defendant (as amended in 2017) and its Electoral Guidelines for Primary Elections effective March 7th, 2022 are attached and marked as "**Exhibits AA5 and AA6**" respectively.

16. That I am aware that Article 15(2) (e) and Article 25 (5) (a) & (b) of the 1st Defendant's Constitution (as amended in 2017), Article 1 (b) (i) of Part I (Page 5) and Article 4 (xii) of Part I (Page 9) of the Electoral Guidelines for Primary Elections of 7th March, 2022 of the 1st Defendant, provides for 3 Ad hoc Delegates to be elected from each of the ward 1 to 7 Wards in Abeokuta South Constituency 1, thus bringing the total number of Ad hoc Delegates in Abeokuta South Constituency 1 with 7 wards to 21 in addition to 1 national Delegate makes the list 22 Delegates.


17. That the results of the Wards' Congresses of the 1st Defendant that was conducted in the 7 Wards of the Abeokuta South Constituency 1 witnessed the election of 21 Ad hoc Delegates



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and one National Delegate from Abeokuta South Local government. Certified True Copies of the results in Wards 1 to 7 of Abeokuta South Constituency 1 issued by the 6th Defendant on application are collectively attached and marked as **Exhibit AA7**.

18. That I had applied to the 6th Defendant for the Certified True Copy (CTC) of the Monitor checklist of ad hoc delegates and the result congress of the ward submitted to it by the 1st Defendant after the conduct of the Wards Congresses on the 30th day of April, 2022 in Ogun State. The Certified True Copy (CTC) of the said monitor checklist of the ad hoc delegates and the said result sheet of the ward congress containing the names of all the Ad hoc delegates are attached and marked Exhibit **AA3** and Exhibit **AA7** above.
19. That I am aware that Exhibit AA3 contains the signatures of the 6th Defendant's monitors who supervised the Congress at the various 15 Wards in Abeokuta South Local Government in Ogun State and in addition, I attach copies of the 6th Defendant's Monitors INEC Checklist for Political Party Congresses (PDP) that was conducted in the 7 wards in Abeokuta South Constituency 1, on the 30th day of April, 2022.
20. That I know as a fact that the 6th Defendant (INEC) monitored the Wards Congresses that was conducted in each of the 7 Wards in Abeokuta South Constituency 1 from which the 22 Ad hoc Delegates who were elected on the 30th day of April, 2022.



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21. That I know as a fact that Ad hoc Delegates are responsible for the purpose of electing the parties' candidates for the offices of the Governor of the State, Member of National Assembly (Senate and House of Representatives), House of Assembly and election of National Delegates for the purpose of electing the Presidential Candidate of the 1st Defendant.

22. That I am aware that the timelines for activities of the 1st Defendant's Primary Elections are as follows:

i. The election of Local Government Area National Delegates by Ad hoc Delegates will take place by Thursday 5th day of May, 2022

ii. State Assembly Congress for the election of the party candidates for the House of Assembly is schedule for Sunday the 22nd day of May, 2022.

iii. The House of Representative Congress for election of party candidates for a member House of Representatives scheduled for Sunday the 22nd May, 2022.

iv. The Senatorial District Congress for Election of Senatorial Candidates is schedule for Monday 23rd May, 2022.

v. Special Congress for Gubernatorial is schedule for Wednesday 25th May, 2022.

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- vi. Presidential Primary Election is scheduled to hold on the 28th/29th May, 2022.
23. The duly elected Ad hoc Delegates from the ward 1 to 7 Wards of Abeokuta South Local Government in Ogun State participated in the elections mentioned in paragraph 22ii above and have elected me to represent the 1st Defendant as its candidate for Abeokuta South Constituency 1 in the forthcoming Ogun State House of Assembly Election. Now shown and mark **Exhibit AA8** is the result of my election as the candidate to represent the 1st Defendant in House of Assembly election to be organized by the 6th Defendant.
24. That I am aware that after the election of the 21 ward delegates, who were duly elected at the Ward Congresses that held on the 30th day of April, 2022 in the Wards 1 to 7 of the Abeokuta South Constituency 1 of Ogun State and monitored by the 6th Defendant, the 1st - 4th Defendants are bent on using a list of the delegates who were never elected at any Wards Congress of the party but arbitrarily appointed by 5th Defendant in clear violation of the 1st Defendant's Constitution and Guidelines for the conduct of Primaries.
25. That the complaint referenced above came to my attention on the 22nd of May, 2022 on the day fixed for the primary election of the candidate to represent the 1st Defendant in the Abeokuta South Constituency 1. A letter of complaint to that effect to the 1st to 4th Defendants is now shown and mark **Exhibit AA9**.

(Signature)

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RANK: *CEO*
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26. That I verily believe that the 1st – 4th Defendants will refuse to act on the Petition in Exhibit AA8 due to the fact that they have a plan to unlawfully change and/or substitute my name and the authentic delegates list as evidenced in exhibit AA7 containing names of the delegates with strangers who did not emerge from the duly conducted Wards Congresses.
27. That since after the election of 22nd May, 2022 the 1st to 4th Defendants have continued to carry on as if all is well in a bid to betray due process of my election.
28. That the plan of the 1st - 4th Defendants to work with the 5th Defendant as the candidate to represent the 1st Defendant and as its candidate for the Abeokuta South Constituency 1 is gaining momentum by the day, notwithstanding the fact that the 5th Defendant has been produced by an illegal means and unrecognized delegates which will affect my right to contest as a candidate after emerging in line with the provision of Exhibit AA5 and AA6 above and the Ad-hoc delegates would have been short changed.
29. That on the 26th day of May, 2022 at about 10:00am in the office of Deji Enisenyin Esq., of No 23, Olusegun Osoba Way, Oke-Ilewo Abeokuta, Ogun State during a briefing session, I was informed by Deji Enisenyin of counsel handling this matter for the Plaintiff of the following facts which I verily believe to be true:

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- a. That only Ad hoc Delegates who were duly elected on the 30th day of April, 2022 at the Wards' Congresses that was conducted in each of the 7 Wards making up Abeokuta South Constituency 1 totaling 21 Ad hoc Delegates in all are the lawful Ad hoc Delegates to participate in any of the Primaries of the 1st Defendant in Abeokuta South Local Government, Ogun State.
- b. The Ad-hoc delegates names contained in Exhibit AA7 having emerged from the Wards' Congresses that was conducted in the 7 Wards of Abeokuta South Constituency 1 on the 30th day of April, 2022 and monitored by INEC (6th Defendant) are the authentic Ad hoc Delegates of the 1st Defendant to elect a candidate to represent the 1st Defendant in the Ogun State House of Assembly election to be organized and conducted by the 6th Defendant.
- c. That the 1st- 5th Defendants are bound by the 1st Defendant's Constitution and Electoral Guidelines for Primary Elections.
- d. That the 1st- 5th Defendants cannot arbitrarily generate a list of Ad hoc Delegates who did not emerge from the Wards' Congresses of the party that was conducted on the 30th day of April, 2022 in Abeokuta South Constituency 1 to produce the 5th Defendant.

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- e. That there is a deliberate effort by the 1st - 4th Defendants to violate the 1st Defendant's Constitution and Electoral Guidelines for Primary Elections in Ogun State.
- f. That Article 15(2) (e) and Article 25 (5) (a) & (b) of the Constitution of the 1st Defendant (as amended in 2017), Article I(b) (i) of Part I (Page 5) and Article 4 (xii) of Part II (Page 9) of the Electoral Guidelines for Primary Elections of the 1st Defendant dated 13th March, 2022 as well as Section 84 (5) (a) - (c) and (8) of the Electoral Act 2022 makes it mandatory for the 1st Defendants to comply strictly with those provisions in the election of ad hoc delegates of the 1st Defendant.
- g. That my election as evidenced in Exhibit AA8 above is the only legitimate election that the 1st to 4th Defendants, inclusive of the 6th Defendant must recognize."

Learned Counsel for Plaintiff argued on the one issue raised for Court's determination to wit:-

"Whether having regard to **Article 15(2) (e) and Article 25 (5) (a) & (b) of the Constitution of the 1st Defendant (as amended in 2017), Article 1 (b) (i) of Part I (Page 5) and Article 4 (xii) of Part III (Page 3) of the Electoral Guidelines for Primary Elections of 7th March, 2022 of the 1ST Defendant and Section 84(8) of the Electoral Act 2022** and all the circumstances of this suit, the Plaintiffs are entitled to the reliefs sought."

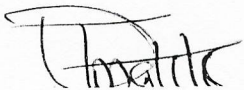
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He argued on a plethora of judicial authorities, to mention a few, **Oloruntoba & Ors v Prof. P. A. Dopamu & Ors (2008) 7 NWLR PT. 1085 1 @ 35; Ojo v Akinanoye (2014) LPELR-22736 (CA) pp 56 - 57, and Kotoye v C.B. N (1989) 1 NWLR (Pt. 98) 419,** that a Court will grant declaratory reliefs where the Plaintiff has furnished sufficient facts before it to warrant the grant of same. He maintained that such relief will be granted even where the relief has been rendered unnecessary by the lapse of time, so long as at when the action was instituted, the Plaintiff raised substantial issues of law.

He submits that the provisions of **Article 15(2) (e)** of the 1st Defendant's Constitution as amended in 2017, which provides for the function of the Ward Congress to include "election of ward delegates to the party congresses" recognises Ad hoc delegates in line with **Article 1 (b) (i) of Part I** of the **Electoral Guidelines** for Primary Elections (Page 5) and **Article 4 (xii) of Part II** of the **Electoral Guidelines** for Primary Elections (Page 9).

He drew court's attention to the fact that **Article 15(2) (e)**, and **Article 25 (5) (a) & (b)** of the 1st Defendant's Constitution (**as amended in 2017**), **Article 1 (b) (i) of Part I (Page 5)** and **Article 4 (xii) of Part II (Page 9)** of the **Electoral Guidelines** for Primary Elections of 13th March, 2022 of the 1st Defendant and **Section 84(8) of the Electoral Act 2022**, respectively used the word "SHALL". As such, he insists the 1st to 4th Defendants' are mandated to comply with the strict provisions of the 1st Defendant's Constitution and the Electoral Act and that, it is only



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at the conclusion of the primaries that the ad hoc delegates shall cease to function. He relied on **Article 2** of the 1st Defendant's Constitution. Thus, he argued that the Courts have jurisdiction to interfere when a matter relates to the violation of the Political Party's Constitution as in this case. He referred to **APC v Karfi (@ 526, paras A -B; Mato v Hember & Ors (2018) 5 NWLR (Pt. 1612) 258 at 294.**

In conclusion, learned counsel submits that Exhibits **AA3, AA5, AA6, AA7, and AA8** filed along with the affidavit in support, constitutes serious evidential weight in favour of Plaintiff's Suit, since the exhibits shows that the 6th Defendant monitored the primaries. He urged Court to hold that the compilation of a list of false Delegates and conversion of same by 1st Defendant, to be the ad hoc Delegates list of wards 1-7 of the Abeokuta South Constituency 1 is the height of impunity by 1st Defendant, which this Honourable Court should not allowed to stand. He urged Court to grant Plaintiff's reliefs sought in its entirety.

In opposition to this Suit, the 1st 4th, 5th and 6th Defendants' all filed a counter affidavit to the Originating Summons. However, the 5th Defendant filed a Notice of Preliminary Objection in addition to his Counter affidavit.

5TH DEFENDANT'S NOTICE OF PRELIMINARY OBJECTION: -

The Notice of Preliminary Objection is dated and filed 10th day of August 2022. Learned counsel on behalf of 5th Defendant, raised an objection to the jurisdiction of this Honourable Court to

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entertain this suit and consequently prayed for Plaintiff's suit be struck out and or be dismissed. The grounds upon which the 5th Defendant's Preliminary Objection are hinged are as follows: -

1. That the Plaintiff failed to comply with the mandatory provision of ORDER 3 RULE 9 of the Rules of this Honourable Court and Rule 4 (2) (d) of the Federal High Court (Pre-Election) Practice Directions 2022 by failing to accompany the amended originating summons with an affidavit of non-multiplicity of action on the same subject matter, a condition precedent to the Court assuming jurisdiction in the matter.
2. The cause of action in this suit, the election of the three (3) Ad-hoc Ward delegates in the Seven (7) Wards of Abeokuta South Constituency 1 upon which the purported election of Plaintiff as candidate for the Abeokuta South Constituency 1 is predicated occurred on the 30th day of April 2022.
3. The instant originating summons of the Plaintiff dated and filed on the 2nd day of June 2022 was filed a period outside the Fourteen (14) days prescribed under SECTION 285 (9) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
4. The Plaintiff, not being an Aspirant to the Ward Ad-hoc delegates election lacks the locus standi to file this instant suit."

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Learned counsel for 5th Defendant formulated three issues, to wit:-

- a. Whether this originating summons is filed in compliance with the rules of this Honorable Court and the provisions of the Federal High Court (Pre-Election) practice Directions 2022.
- b. Whether this action by the Plaintiff is not statute barred.
- c. Whether the Plaintiff has the locus standi to file this suit.

On issue one, he drew Court's attention to **Order 3 Rule 9** of the **Federal High Court (Civil Procedure) 2019**, in aid of his submission that the absence of Plaintiff's affidavit of non-multiplicity of action on the subject matter, is as mandated by the afore Rules of this Honorable Court, is fatal to Plaintiff's suit. He cited **Tabik Investment Ltd & Anor v GTB (2011) LPELR-3131 (SC)**. He urged Court to so hold.

On issue two, "Whether this action by the Plaintiff is not statute barred"; learned counsel contends that, the Plaintiff's suit, being a Pre-election matter, which falls within **Section 285 (14) (a)** of the **1999 Constitution Federal Republic of Nigeria**, the Plaintiff ought to have filed its action not later than fourteen days from 30th of April 2022, when the ward ad hoc election was conducted. As such, by 2nd of June 2022, when this Suit was instituted, the Plaintiff's suit filed, was statute barred. He submits, thus, that Plaintiff's suit is incompetent and should be dismissed. He relied on the case of **Oni v Fayemi (2019) LPELR- 49299 (SC)**.

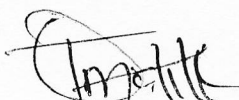
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On issue three, which borders on "*locus standi*", learned counsel contends that the Plaintiff is not an aspirant who participated in the primary election but a ward ad hoc delegate, as such, lacks the requisite *locus standi* to institute this suit. He cited the case of **Wushishi v Imam (2017) 18 NWLR (Pt. 1597) 175 @ 213**. He submits that all Plaintiff's reliefs relate only to the conduct of the purported ward ad hoc delegates of 30th April 2022, thus Plaintiff is bereft of *locus standi*, he urged Court to uphold this Preliminary Objection raised and dismiss Plaintiff's suit.

The Plaintiff/Respondent in opposition to 5th Defendant's Notice of Preliminary Objection, drew Court attention to his total compliance with the provisions of **Order 3 Rule 9** of the **Federal High Court (Civil Procedure) 2019**. He submits that by virtue of the case of **Iwunze v F.R.N (2014) LPELR-22254 (SC)**, an amendment once made relates back to the date of filing, thus it is not in contemplation of the Rules of this Court, that another affidavit of non-multiplicity of action should be filed. He urged Court to find in favour of Plaintiff and discountenance this Objection.

On issue two; "*Whether this suit is Statute- barred*", learned counsel for Plaintiff, submits that the 5th Defendant have misconceived the cause of action of Plaintiff's suit. He insists that Plaintiff's suit do not border on the conduct of the Ward Congress of 30th April 2022. but rather that the cause of action herein this suit, occurred on 22nd May 2022 when the alleged illegal act of not recognizing the primary election of the Plaintiff by the delegates



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whose names are contained in Exhibit **AA7** and paragraphs **25** of the affidavit in support of the Amended Originating Summons. He cited **A.G Adamawa & Ors v A.G. Federation (2014) LPELR-2321 (SC)**. He submits that it was on 22nd May 2022, that the officials of 1st Defendant made visible attempts to use a different ad hoc delegates list other than the names of the persons who emerged as ad hoc delegates of the 30th day of April 2022.

He urged Court to recognize the delegates list used in the 22nd May 2022 election, which led to the emergence of Plaintiff as 1st Defendant's candidate for the forthcoming House of Assembly elections for Abeokuta South Constituency 1.

On issue three, which borders on *locus standi*, learned counsel argued that a community reading of the affidavit in support of the Amended Originating Summons clearly described the Plaintiff as aspirant in the said primary election of the 1st Defendant. He also pointed Court to the facts and documents placed before Court, to evidence Plaintiff's *locus standi*. He cited the case of **Ojukwu v Ojukwu (2008) 2 SC (Pt. 111)**.

Learned counsel urged this Honorable Court to dismiss this Notice of Preliminary Objection with substantial cost and proceed to hear this Amended Originating Summons on the merit.

RESOLUTION OF 5TH DEFENDANT'S NOTICE OF PRELIMINARY OBJECTION: -

It is pertinent to reproduce the position of the law in the resolution



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of the first issue raised by 5th Defendant, to wit:- “Whether this originating summons is filed in compliance with the rules of this Honorable Court and the provisions of the Federal High Court (Pre-Election) practice Directions 2022.” **Order 3 Rule 9(2)(d)** of the **Federal High Court (Civil Procedure) Rule 2019** provides thus:-

“9. (1) An originating summons shall be as specified in the Form 3, 4 or 5 in Appendix 6 to these Rules, with such variation as circumstances may require.

(2) An originating summons shall be accompanied by: -

(a)

(b)

(c)

(d) an affidavit of non-multiplicity of action on the same subject matter.”

Quite clearly from the Court’s record, the Plaintiff complied with the above provisions by the affidavit of non-multiplicity of suit dated 2nd day of June 2022. However, when the Plaintiff filed his amended processes, he omitted to deposed to another one. In effect, learned counsel for 5th Defendant raised an objection to this omission. I find it worthy to mention, that from the proceedings of

**FEDERAL HIGH COURT
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this Honorable Court on 14th day of July 2022, learned counsel for Plaintiffs sought and obtained an Order of Court to strike out the names of 2nd to 21st Plaintiffs in this suit, thus the reason for the amendment. The learned counsel for 5th Defendant was in Court on that day, he informed Court that he had no objection to Plaintiffs' application for the amendment. Therefore, where learned counsel for 5th Defendant have not objected to the Amended Originating Summons on the premise that Plaintiff have by his amendment, instituted a new cause of action, I do find that, it will amount to hardship to Plaintiff and undue adherence to technicality. See **Fanfa Oil Ltd. v. AG. of the Federation of Nigeria (2003) 18 NWLR (pt. 852) 453**, where Iguh JSC, had reiterated this principle of law succinctly thus:

"Accordingly, Courts of law should not be unduly tied down by technicalities, particularly where no miscarriage of justice would be occasioned. .."

Noteworthy, the general object of a provision, which the Court must considered, is the intention of the framers of the afore Rules of Court. The interpretation by Court of the intention of the framers of this Rule, must always be in line with reason, justice and legal principles. Therefore, any intention which produces an undesirable result, such as, technicality, shall not to be imputed into a provision, even if possible. Thus, the main essence of an affidavit of non-multiplicity of action, as the names indicates, is merely an averment to the effect, that a party has only filed one suit as its relates to the subject matter before Court, and no

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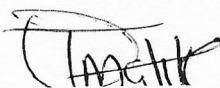
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more. For that purpose, I hold that the Plaintiff's "affidavit of non-multiplicity suit", suffices as compliance with Order **3 Rule 9(2)(d)** of the **Federal High Court (Civil Procedure) Rule 2019**. See **Savannah Bank (Nig.) Ltd. v. Ajilo (1989) 1 N.W.L.R (Pt. 97) 305**. Accordingly, I discountenance the first issue of 5th Defendant's in his Notice of Preliminary Objection. I resolve this issue in favour of Plaintiff.

On issue two raised in 5th Defendant's Notice of Preliminary Objection, to wit: - "*Whether this suit is Statute- barred*". There is no gain said that in order to determine whether an action is statute barred, the Court must examine the Originating Summons, the affidavit in support, to know when the particular wrong, in issue, accrued, and then proceed to compare it with the date the Originating Summons was filed. See **Asaboro V. Pan Ocean Oil Corporation (Nigeria) Ltd (2017) NWLR (Pt. 1563) 42 at 68**. A careful evaluation of Plaintiff's Originating Summons and in particular paragraph **25** of Plaintiff's affidavit in support, mirrors that the date Plaintiff became aggrieved. Paragraph **25** of the affidavit in support reads as follows:-

*"That the complaint referenced above came to my attention on the 22nd of May, 2022 on the day fixed for the primary election of the candidate to represent the 1st Defendant in the Abeokuta South Constituency 1. A letter of complaint to that effect to the 1st to 4th Defendants is now shown and mark **Exhibit AA9**."*

Flowingly, I find that the date of 22nd May 2022 is sacrosanct to Plaintiff's suit, and not 30th day of April 2022, as argued by 5th



Defendant. I resolve this issue in favour of 5th Defendant.

On the third issue formulated by 5th Defendant, which borders on whether Plaintiff possesses the *locus standi* to initiate this action; **Section 152** of the **Electoral Act, 2022** stipulates that:- an

“Aspirant” means a person who aspires or seeks or strives to contest an election to a political office”.

I do find after a careful evaluation of this Amended Originating Summons and the affidavit in support, and most particularly the Plaintiff’s averments contained in paragraphs **1** of his affidavit to wit:-

“That I am the Plaintiff in this case and the candidate elected by Ad-hoc delegates to represent the 1st Defendant as its candidate for Abeokuta South Constituency 1 in the forthcoming Ogun State House of Assembly election to be organized by the 6th Defendant and so familiar with the facts of this case.”

Plaintiff’s afore deposition, I find resonates with Apex Court, in **Ojukwu v Ojukwu (2008) 2 SC (Pt. 111)**, that:-

“A person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligation have been or are in danger of being infringed and that the duty of proof is on the party who has initiated the proceedings”

Premised on the above decision, and considering that learned

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RANK: Adm
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counsel for Defendant have also presented his submission on this same issue, in opposition to the substantive Suit, I shall abide by the settled position of the law, to wit, where an interlocutory matter overlaps with the issues already argued on in the substantive suit, then Courts are enjoined to talk less in the determination of the prayers submitted for resolution. It is safer to refuse such application in the interlocutory stage and order for the hearing of same during the substantive matters. See **Barigha v PDP & 2 Ors (2013) 6 NWLR (PT. 1349) 108**. Flowingly, I hereby discountenance this issue at this stage as I find that both parties have joined issues on whether the Plaintiff have *locus standi*, that is, whether Plaintiff is an aspirant. I find that to determine the issue of *locus standi* at this preliminary stage, will overreach the substantive case, because the afore issue is inter woven with the main suit. Therefore, I accordingly dismiss the Notice of Preliminary Objection in its entirety and I shall proceed to the determination of the substantive Suit on its merit.

In opposition to the Amended Originating Summons, the 1st to 4th Defendants' placed reliance on a ten paragraphed Counter affidavit. I shall reproduce paragraphs **7** thereof, as follows:-

"7. That contrary to the denied paragraphs stated above, I state as follows:

- a. That I know as a fact that the 5th Defendant is the person who won the primary election of the Abeokuta South Constituency 1 of the state house of Assembly and thus the candidate of the 1st defendant.

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- b. That pursuant to the powers conferred on the 6th Defendant by the 1999 Constitution of the Federal Republic of Nigeria, the Electoral Act, 2022 as well as other enabling laws to organize and conduct elections to various public offices throughout the country, the 6th Defendant on 26th February, 2022 release a timetable and schedule of Activities for the 2023 General Elections.
- c. That from the 6th Defendants Timetable and Schedule Activities, political parties such as the 1st Defendant who wishes to nominate candidates for any elective positions were to conduct their primary elections between 4th April 2022 to 3rd June, 2022.
- d. That in view of the above Timetable and Schedule of activities for the 2023 General Election released by the 6th Defendant and in the line with the powers conferred on it by the Constitution of the Peoples Democratic Party, 2017 (as amended) and other enabling law, the National Executive Committee of the 1st Defendant issued an Electoral Guidelines for Primary Elections with an effective date of March, 2022. (**Exhibit AA6** attached to the amended originating summons).
- e. That the 1st Defendant opted to nominate its candidates for elective positions through indirect primaries.

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[Handwritten Signature]

- f. That in view of the above, the 1st Defendant's Electoral Guidelines for Primary Elections provided for the conduct of a special Ward Congress throughout the Country which was inclusive of Ogun State for 30th April, 2022 to nominate three (3) ad-hoc delegates from each Ward in Ogun State who shall be voting delegates at subsequent primaries for the Election of members of the House of Assembly candidates, the House of Representatives, Senate and the Governorship Primary Elections.
- g. That out of the three (3) ad-hoc delegates one should be a woman.
- h. That the National Working Committee (NEC) of the 1st Defendant thereafter appointed members of the Ward Congresses Electoral Committee. In the case of Ogun State, the appointment of the Ward Congresses Electoral Committee headed by **AVM Samson OkonAkpasa** was communicated to the Ogun State Resident Electoral Commissioner of the 6th Defendant by letter dated 28th April, 2022. A copy of the letter of appointment is already attached to the Counter Affidavit of the 5th Defendant.
- i. That the special Ward congresses was successfully conducted by the Ward Congresses Electoral Committee in all the Wards of the 1st Defendant in Ogun State on 30th April,

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 DATE: 28/09/2022

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2022 with three (3) ad hoc delegates emerging in each Ward.

- j. That the special ward congresses were monitored by staffs of the 6th Defendant who were present at the various approved venues of the special ward congress. A copy of the list of venues for the special ward congresses sent to the 6th Defendant by letter dated 27th April 2022 is herewith attached to the Counter Affidavit of the 5th Defendant.
- k. That at the end of the special ward congresses, the ward congresses committee issued a Report to that effect which already attached as the Counter Affidavit of the 5th Defendant.
- l. That the result sheets and names of the winners who emerged at the special Ward Congresses in the prescribed result sheet produced of the 1st defendant were thereafter compiled and officially sent to the 6th Defendant's Resident Electoral Commissioner (REC) in Ogun State by a letter dated 17th May 2022 which was signed by the 1st defendant Ogun State Chairman, Hon. Sikirulai Ogundele and my humble self as Secretary. The party has since applied for a certified copy of the result from the 6th defendant, which is still being awaited. The acknowledgement copy of the said letter dated 17th May 2022 along with the result sheets is already attached to the Counter Affidavit of the 5th Defendant.

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DATE: 28/01/2022

- m. That contrary to paragraphs 3, 21, 23, 25, 28 and 29 (1-g) of the Plaintiff's affidavit in support of his amended originating summons, it was the elected ad-hoc delegates who emerged from the special Ward Congresses in the Seven (7) Wards covering Abeokuta South constituency 1 conducted by the Ward Congresses Electoral Committee appointed by the National Working Committee of the 1st Defendant that was used during the conduct of the 1st Defendant House of Assembly Primary Election in Abeokuta South Constituency 1.
- n. That neither the Plaintiff in this suit nor the persons listed in paragraph 3 of the affidavit in support of the amended originating summons contested or emerged as a Ward ad-hoc delegate of the Peoples Democratic Party (PDP) from any of the seven (7) Wards covering Abeokuta South constituency 1 of Ogun State.
- o. That the conduct of the Ward Congresses in all the Wards in the Wards in the Twenty (20) Local Government Areas in Ogun State was kick started by the purchase of nomination forms by aspiring delegates in Ogun State who must be card carrying and registered members of the Party with their names appearing on the register of the Party as at the date of the delegates election.

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p. That it is also a requirement of the Party that the individual must be a financial members of the Peoples Democratic Party (PDP).

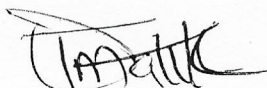
q. That upon purchase of the nomination forms from the PDP, intending Ward Ad-hoc delegates is expected to fill same and return to the Secretariat of the Party in Ogun State.

r. That from the guidelines issued by the National headquarters of the party (PDP) intending Ward Ad-hoc delegates must be members of the Party whose names appear on the Register of Party members collated by the National Headquarters of the Party for use during the Ward Congresses.

s. That it is only the purchase of nomination forms, filing and returning of same coupled with the aspirants names appearing on the Register of Party members in each of the Wards in Ogun State that vest on any aspirants the power of participation in the Ward Ad-hoc Congresses in Ogun State.

t. That in the case of the Plaintiff in this suit and those persons listed in paragraph 3 of the affidavit in support of the amended originating summons, none of them purchased the nomination forms from the Party; filled and returned same and none of them have their names in the Register of Party members compiled by the National Headquarters of the Party for use during the Ward Congresses that took place in Ogun

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DATE: 28/07/2022



State a copy of the Register of Party members for the 7 Wards in Abeokuta South constituency 1 compiled by the National Headquarters of PDP authenticated by the Ward Officials and forwarded use during the Ward Congresses is herewith attached to the Counter Affidavit of the 5th Defendant.

u. That for all intent and purposes, the Plaintiff and the persons listed in paragraph 3 of the affidavit in support of the amended originating summons is not a financial and registered member of the Peoples Democratic Party in Abeokuta South Constituency 1 of Ogun State.

v. That all the PDP membership cards attached to the affidavit in support of the amended Originating Summons and marked as **EXHIBITS AA2** respectively were not issued to the Plaintiff and the 44 persons listed in paragraph 3 by the Party either both at the National or State levels.

w. That following the successful conduct of the Ward Congresses in Ogun State, all other primaries was also successfully conducted, including that for the House of Assembly for Abeokuta South Constituency 1 where the 5th defendant emerged as the candidate.

x. That prior to the emergence of the 5th Defendant as the candidate for the Abeokuta South Constituency 1 in the Ogun State house of Assembly, he purchased the Expression of

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[Signature]

interest and nomination forms of the party for the party primaries screening exercise which he filled and returned and returned to the Party. A copy of the forms are herewith attached as **EXHIBITS MO7-MO 8**.

y. That the 5th Defendant was subsequently screened and cleared to contest the primary election.

z. That the conduct of the Ward Congresses in Abeokuta South constituency 1 of Ogun State for the election of the 3 ad hoc delegates as well as the primaries for the election of candidate for the house of Assembly for Abeokuta South Constituency 1 at which the 5th Defendant emerged as the candidate were conducted in strict compliance with the Guidelines issued by the party and the Electoral Act 2022. A copy of the result sheet declaring the 5th Defendant as winner of the Abeokuta South Constituency 2 primary election is already attached to the Counter Affidavit of the 5th Defendant.

aa. That the 5th Defendant had since been issued with a certificate of Return signed by the 2nd, 3rd and 4th Defendants in their capacities as the National Chairman, National Secretary and National Organizing Secretary respectively of the 1st Defendant (Peoples Democratic Party). A copy of the Certificate of Return is already attached to the Counter Affidavit of the 5th Defendant.

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SIGN: ~~CEO~~ DATE: 28/09/2022

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ab. That neither the Plaintiff nor the 20 persons claiming to be Ward Ad-hoc delegates showed up at the designated venues for the Ward Ad-hoc delegates election.

ac. That the purported Ward Ad-hoc delegates election, allegedly claimed by the Plaintiff and his cronies though not conducted by the Ward Congresses Electoral Committee set up by the National headquarters of the Party and if indeed there was any, such is in the realm of a parallel Congress.”

Learned counsel presented two issues for Court’s consideration, to wit:-

1. “Whether this Honorable Court can interfere in the domestic affairs of the Peoples Democratic Party (PDP) in the conduct of its internal affairs.
2. Assuming this Honorable Court has the power to interfere in the conduct of primaries of the Peoples Democratic Party (PDP) in the conduct of the Ward ad hoc congresses, whether the Plaintiff has shown a violation of the Party’s guidelines in the conduct of its Ward ad-hoc Congress.”

FEDERAL HIGH COURT
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On issue one, he submits that in this instance, where Plaintiff complains about the conduct of the Ad hoc delegates selection and the emergence of the 5th Defendant as the candidate for the Abeokuta South Constituency 1 election for the House of Assembly election in the forthcoming 2023 elections, this Court can still not

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