

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON WEDNESDAY THE 17TH DAY OF DECEMBER, 2015**  
**BEFORE HIS LORDSHIP, HONOURABLE JUSTICE A.F.A**  
**ADEMOLA**  
**JUDGE**

**SUIT NO: FHC/ABJ/CS/806/14**

**BETWEEN:**

- |   |   |                   |
|---|---|-------------------|
| <ol style="list-style-type: none"><li>1. PEOPLES PROGRESSIVE PARTY (PPP)</li><li>2. BETTER NIGERIA PROGRESSIVE PARTY (BNPP)</li><li>3. PEOPLES REDEMPTION PARTY (PRP)</li></ol> | } | <b>PLAINTIFFS</b> |
|---|---|-------------------|

**AND**

- |  |   |                         |
|--|---|-------------------------|
| <ol style="list-style-type: none"><li>1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)</li><li>2. HONOURABLE ATTORNEY-GENERAL OF THE FEDERATION</li></ol> | } | <b>===== DEFENDANTS</b> |
|--|---|-------------------------|

**JUDGMENT**

A. FACTS: This is an originating summons dated 29<sup>th</sup> day of October, 2014 and filed on 3/11/14 by Plaintiffs' Counsel, Ayo Omoeaupen, Esq and Chibuzor C. Ezike, Esq Legal practitioners of Umar & Alofe for the above named Plaintiffs, seeking for the determination of the following questions as well as claiming certain reliefs from the Court.

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**FEDERAL HIGH COURT**

**ABUJA**

*Att. Fatima Abdul*  
*25/11/16* *Secy (G)*

**FEDERAL HIGH COURT**

**ABUJA**

**CASHIER'S OFFICE**

Signature.....

*Officer*  
*25/11/16*

Questions for Determination.

- i. Whether the National Assembly is competent to enact section 78(7) (ii) of the Electoral Act, 2010 (as amended) in relation to the de-registration of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs, being political parties in view of the provisions of Sections 1(3), 40, 222 and 228 of the 1999 Constitution of the Federal Republic of Nigeria, (as amended).
- ii. Whether the 1<sup>st</sup> Defendant possesses the powers to de-register the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Plaintiffs based on the provision of Section 78(7) (ii) of the Electoral Act, 2010 (as amended) in view of the provisions of sections 1(3), 40, 222, 228, 153 and Section 15 of part 1 of the Third Schedule of the Constitution of the Federal Republic of Nigeria, (as amended).
- iii. Whether the advertorials of the 1<sup>st</sup> Defendant which contained the announcement and the reason for the de-registration of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Plaintiffs published by the Daily Sun Newspapers of Friday, December 7, 2012 and Thursday, December 13, 2012 respectively without due notices, inquiries, investigations, meetings and or prior information did not amount to the violation of the right to fair hearing of the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Plaintiffs as enshrined and guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and African Charter on Human and People's Rights, Cap. A9, Laws of the Federation of Nigeria, 2004 and therefore, void, unlawful, wrongful and unconstitutional.

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*APC*  
*25/1/16*

### PLAINTIFFS RELIEFS:

1. **A DECLARATION** that section 78(7) (ii) of the Electoral Act, 2010 (as amended) is unconstitutional, invalid, null and void to the extent of its inconsistency and a violation of the provisions of sections 1(3), 40 and 221 – 229 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. **A DECLARATION** that the 1<sup>st</sup> Defendant, the Independent National Electoral Commission (INEC) cannot de-register the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Plaintiffs, being political parties, except in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
3. **A DECLARATION** that the purported de-registration of the 1<sup>st</sup>, 2<sup>nd</sup>, and the 3<sup>rd</sup> Plaintiffs by the 1<sup>st</sup> Defendant on the basis of section 78(7)(i) and (ii) of the Electoral Act, 2010 (as amended) without affording the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Plaintiffs the opportunities of being heard amounted to gross violation of Sections 36 and 40 and Sections 221 and 222 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
4. **AN ORDER** of the Honourable Court nullifying and or setting aside the purported de-registration of the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Plaintiffs as announced by the 1<sup>st</sup> Defendant on Thursday, 5<sup>th</sup> December, 2012 and published in the Daily Sun Newspapers of Friday, December 7, 2012 and Thursday, December 13 2012 as same is illegal, unconstitutional and null and void.
5. **AN ORDER** directing and or mandating the 1<sup>st</sup> Defendant to restore the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Plaintiffs as political parties in Nigeria and as well as directing the 1<sup>st</sup> Defendant, her officers and or agents to continue to recognize and deal with the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Plaintiffs as political parties in Nigeria.

6. **AN ORDER** of perpetual injunction restraining the 1<sup>st</sup> Defendant from further attempting to implement and or implementing and enforcing the said de-registration policy of the 1<sup>st</sup> Defendant against the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Plaintiffs, their offices, properties and assets.

It is supported by a 10 paragraph affidavit as deposed to by Miss Blessing Ogbonna, Litigation Secretary of No. 14 Mekness Street, Off Zigumchor Street, Wuse Zone 4, Abuja with Exhibits PPP 1 – 12, BNPP 1 and PRP 1 – 2. Also filed is the Plaintiffs written address dated 29/10/14 and filed on 3/11/14.

Upon service, the 2<sup>nd</sup> and 1<sup>st</sup> Defendants filed notices of preliminary objections. The 2<sup>nd</sup> Defendant's notice of preliminary objection is dated 31<sup>st</sup> December, 2014 and filed on 28/01/15 and a written address in support of the notice of preliminary objection. The 2<sup>nd</sup> Defendant's grounds of objection are:

1. The suit is statute barred.
2. The suit is an abuse of Court process.

In the second Defendant's argument on issue one he opined that whether by virtue of the provisions of Section 2 of the Public Officers Protection Act CAP 41 LFN, this suit is not statute barred. Section 2(a) of the Public Officers Protection Act states thus:

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"Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, law, duty or authority, the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within 3 months next after the Act, neglect or default complained of or in case of a continuance of damage or injury within three months next after the ceasing thereof."

The 2<sup>nd</sup> Defendant referred to Ibekwe v. NNPC (2011) 6 NWLR (pt 1243) 245 at 261 – 262 paras. FF. He also referred to Kolawole Ind. Co. Ltd vs. A. G. Federation (2012) 14 NWLR (pt. 1320) 221 at 243 paras D – E where the Court of Appeal stated that in considering whether an action is statute barred or not one has to look at the writ of summons and statement of claim.

On issue two (2) in respect of abuse of Court process, the 2<sup>nd</sup> Defendant submitted that the Plaintiffs in their paragraphs L, M. and O of the affidavit in support of their originating summons that they are parties to suit No FHC/ABJ/CS/408/11 and that same suit is still pending as at the time of filing of this suit. He also referred to the case of

F.O.M Plc vs UBA Plc (2010 1 NWLR (pt. 1176) 583 at 599  
paras E – G.

The 1<sup>st</sup> Defendant also formulated two issues for  
determination.

The 1<sup>st</sup> Defendant in a motion on notice dated 9<sup>th</sup> April,  
2015 and filed on 16/04/15 prayed the Court for an order  
striking out/dismissing the Plaintiffs/Respondents suit in its  
entirety for incompetence and lack of jurisdiction to entertain  
same; and

- (2) Any further order or other orders as the Court may deem fit  
to make in the circumstances of this case.

The grounds upon which this application were brought are:

- (1) The action is statute barred having not been  
instituted within three months after the cause of  
action arose.
- (2) The suit discloses no reasonable cause of action  
against the 1<sup>st</sup> Defendant/Applicant.
- (3) The basis upon which the Plaintiffs found their claim  
is inadmissible hearsay evidence.
- (4) The facts not being one that the Court will  
commence to exercise its adjudicatory power or  
renders the suit most.

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*Handwritten signature and date:*  
25/6/16



The 1<sup>st</sup> Defendant's motion on notice is supported by 8 paragraph affidavit deposed to by Alhassan A. Umar Esq. of Independent National Electoral Commission dated and filed on 16/04/15. There is also a written address in support of the motion on notice dated 9/4/15.

The Plaintiffs filed a written address in opposition to the 2<sup>nd</sup> Defendant's notice of preliminary objection of 31/12/14 dated 14/04/15 and filed the same day. The Plaintiffs also filed a counter affidavit to the affidavit in support of the 1<sup>st</sup> Defendant/Applicant of 16/04/15 dated 9/6/15 and filed the same day deposed to by Blessing Ogbonna, Litigation Secretary in the law firm of Umar & Alofe. They also filed a written address in opposition to the written address of the 1<sup>st</sup> Defendant of 9/04/15 dated 8/6/15 and filed on 9/6/15. The 1<sup>st</sup> Defendant filed a counter affidavit to the originating summons of the Plaintiffs dated and filed on 26/06/15. The 1<sup>st</sup> Defendant also filed a written address in opposition to the originating summons dated 26/06/15.

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On the issue of statute of limitation the 2<sup>nd</sup> Defendant's Counsel in paragraph 4.03 of his written address in support of his notice of preliminary objection pointed out that in the Plaintiffs affidavit in support of their originating summons stated that they saw a press release published at page 51 of the Daily Sun Newspapers of 07/12/12 where they were allegedly deregistered as political parties. They submitted that the cause of action accrued from 07/12/12. They further submitted that the Plaintiffs originating summons is dated 03/11/14. By their calculation this suit was instituted 23 months after the cause of action accrued, which in their submission is not in consonance with the spirit and intentions of section 2 of the Public Officers Protection Act, CAP P41 LFN.

In the Plaintiffs written address in opposition to the 2<sup>nd</sup> Defendant's notice of preliminary objection, they submit that the present suit of the Plaintiffs is not caught by the provisions of the Public Officers Protection Act, CAP, P41 LFN. They submitted that their action is centred on the question as



to the constitutionality or otherwise of the action of the 1<sup>st</sup> Defendant. That the de-registration of the Plaintiffs is a constitutional issue. That it is the law that the provisions of the Act will not apply where the action of the Defendant being challenged is unconstitutional. The action of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants bothers on the constitutional rights of the Plaintiffs as guaranteed in sections, 36, 40 and 222 of the 1999 Constitution of the FRN (as amended) which provides for the right to fair hearing. The right to fair hearing carries with it a corresponding and equal right in the person accused of any misconduct to know the case which is made against him. He must know the evidence in support-not merely bare and unsupported allegation and then he must be given the opportunity to contradict such adverse or incriminating evidence see ORISAKWE vs Gov. of IMO STATE & ORS (1982) 3 NCLR 743. Section 40 of the Constitution of the FRN (as amended) provides that:

"Every person shall be entitled to assembly freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not allowed recognition."

Every person including public office holders and civil servants have the freedom to assemble freely and associate with other persons to form and belong to any political party, or trade union or any association for the protection of his interest. Any provision in any law or guidelines inconsistent with the provision of this section is invalid see INEC vs. MUSA (2003) 3 NWLR (pt. 806) 72 at 150 – 151 paras. H-B; 165 paras A C; 166 paras D-G, 208 paras B-F; 213 paras A-C.

This Court therefore holds that issue one i.e. the provisions of section 2 of the Public Officers Protection Act, CAP. P41 of the LFN, 2004 cannot override the provisions of the Constitution. I therefore hold that ground one of the 2<sup>nd</sup> Defendant fails.

On the second leg of the 1<sup>st</sup> Defendant's preliminary objection he alleged that in the Plaintiffs paragraphs l,m,n and o. of their affidavit in support of their originating

summons that they are parties to suit No. FHC/ABJ/CS/408/2011 and that same suit is still pending as at the time of filing this suit which makes this suit an abuse of Court process.

The Plaintiffs in their written address in opposition to the 2<sup>nd</sup> Defendant's notice of preliminary objection in paragraphs 4.01, 4.02 and 4.03 particular paragraphs 4.02 and 4.03 deny the claim of the 2<sup>nd</sup> Defendant. The Plaintiffs averred in paragraph 4.02 that there are fifty-three Plaintiffs inclusive of the Plaintiffs and three Defendants in suit No. FHC/ABJ/CS/408/2011 is totally different from the claims of the Plaintiffs in this suit.

In paragraph 4.03 the Plaintiffs submit that it is pertinent to note that the Plaintiffs in suit No. FHC/ABJ/CS/408/2011 were challenging the Constitutionality of the enactment of the Electoral Act 2010 (as amended) while the present suit is questioning the Constitutionality of their de-registration.

This Court holds that he who alleges must prove. See S.137 of the Evidence Act. The 1<sup>st</sup> Defendant did not attach

any process to prove that suits FHC/ABJ/CS/408/2011 and FHC/ABJ/CS/806/2014 are the same. The writ further holds that since suit No. FHC/ABJ/CS/408/2011 has fifty-three Plaintiffs and 3 Defendants suit FHC/ABJ/CS/806/2014 has 3 Plaintiffs and 2 Defendants. If suit FHC/ABJ/CS/806/2014 succeeds, it will not benefit the Plaintiffs in suit FHC/ABJ/CS/408/2011.

The Court therefore holds that the 2<sup>nd</sup> leg of the 2<sup>nd</sup> Defendant's preliminary objection fails.

The 1<sup>st</sup> Defendant's motion on notice praying the Court to dismiss the Plaintiffs suit in its entirety for incompetence and lack of jurisdiction to entertain same and any further order or other orders as the Court may deem fit to make in the circumstances of this case.

The Court holds that the 1<sup>st</sup> Defendant relies heavily on ground one i.e. that the Court lacks jurisdiction to hear the matter on the strength of his argument on section 2(a) Public Officers Protection Act.

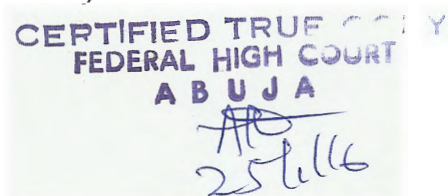
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*AD*  
25/1/16

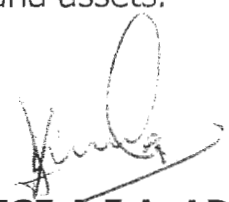
Like I had said earlier, Section 2(a) Public Officers Protection Act cannot override Sections 1(3), 36, 40 and 221-229 of the Constitution of the FRN (as amended) see INEC v. MUSA (supra) and National Conscience Party (NCP) & Anor vs. National Assembly of the Federal Republic of Nigeria & 2 Others (unreported) Appeal No. CA/L/4141/2013.

Accordingly, there is merit in the case of the Plaintiffs. The Court upholds the arguments of the Plaintiffs and enters judgment in their favour and makes the following orders:

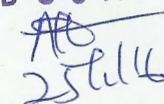
1. A declaration that Section 78(7) (ii) of the Electoral Act, 2010 (as amended) is unconstitutional, invalid, null and void to the extent of its inconsistency and a violation of the provisions of Sections 1 (3), 40 and 221-229 of the Constitution of the FRN, 1999 (as amended).
2. A declaration that the 1<sup>st</sup> Defendant, the Independent National Electoral Commission (INEC) cannot de-register the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs, being political parties, except in accordance with the provisions of the Constitution of the FRN, 1999 (as amended).
3. A declaration that the purported de-registration of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs by the 1<sup>st</sup> Defendant on the basis of Section 78(7) (i) and (ii) of the Electoral Act, 2010 (as amended) without affording the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs the opportunities of being HEARD AMOUNTED TO GROSS VIOLATION OF Sections 36 and 40 and Sections 221-222 of the Constitution of the FRN, 1999 (as amended).



4. An order of the Honourable Court nullifying and or setting aside the purported de-registration of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs as announced by the 1<sup>st</sup> Defendant on Thursday, 5<sup>th</sup> December, 2012 and published in the Daily Sun Newspapers of Friday, December, 7, 2012 and Thursday, December 13, 2012 as same is illegal unconstitutional and null and void.
5. An order directing and or mandating the 1<sup>st</sup> Defendant to restore the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs as political parties in Nigeria and as well as directing the 1<sup>st</sup> Defendant, her officers and or agents to continue to recognize and deal with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs as political parties in Nigeria.
6. An order of perpetual injunction restraining the 1<sup>st</sup> Defendant from further attempting to implement and or implementing and enforcing the said de-registration policy of the 1<sup>st</sup> Defendant against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs, their offices, properties and assets.

  
**HON. JUSTICE A.F.A. ADEMOLA**  
**JUDGE**  
**17/12/2015**

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**ABUJA**

  
25/11/16  
Fatima Abdullahi  
Sec (GD)



**PARTIES :**

Dr. Ogbonna, Nkham for the Plaintiff, Prof. Nngi for 2<sup>nd</sup> Plaintiff, Celling Balarabe Musa for 3<sup>rd</sup> Plaintiff. Defendant absent.

**APPEARANCE:**

C.C. Ezuke for Plaintiffs, I. S. Mohammed for 1<sup>st</sup> Defendant, E. Ochum for 2<sup>nd</sup> Defendant.

**COURT:** - Judgment delivered arising 3 questions in favour of Plaintiffs as well as granting reliefs 1 – 6 in the Originating Summons dated 29/10/2014.

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