

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY THE 14TH DAY OF FEBRUARY, 2007
BEFORE HONOURABLE JUSTICE A. I. CHIKERE
JUDGE

SUIT NO. FHC/ABJ/CS/28/07

BETWEEN

1. PROF. ISA ODIDI |
2. HON. OLUWAFOLAJIMI AKEEM BELLO |
3. NEW DEMOCRATS PARTY |....PLAINTIFFS

AND

1. INDEPENDENT NATIONAL ELECTROL |
COMMISSION (INEC) |
2. PROPESSOR MAURICE IWU |
(CHAIRMAN INDEPENDENT NATIONAL |
ELECTORAL COMMISSION) |..DEFENDANTS

JUDGEMENT

By an Originating Summons filed on 26/1/07 the Plaintiffs formulated 2 questions for determination by this Court as follows:-

1. Whether by virtue of combined provisions of Sections 25, 28 and 137 of the Constitution of the Federal Republic of Nigerian, 1999 the Plaintiffs who are Nigeria citizens by birth but have dual nationalities are qualified to contest the position of President and Vice President respectively of the Federal Republic of Nigeria on the Platform of New Democrats Political Party in the 2007 General Election.
2. Whether disqualification of the Plaintiffs by the Defendants from contesting the position of President and Vice President of the Federal Republic of Nigeria respectively is constitutional, lawful and legal

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having regard to the provisions of Section 25, 28 and 137 of the Constitution of Federal Republic of Nigeria, 1999.

And claimed 5 reliefs thus:-

1. A declaration that the Plaintiffs are qualified to contest for the positions of President and Vice President of the Federal Republic of Nigeria.
2. A declaration that the decision of the Defendants disqualifying the Plaintiffs from contesting the aforesaid position is unconstitutional, illegal, null and void.
3. An Order setting aside the decision of the Defendants disqualifying the Plaintiffs on the ground that same is unconstitutional, null and void.
4. An Order of perpetual injunction restraining the Defendants from disqualifying or further disqualifying the Plaintiffs from contesting the 2007 Presidential Election.
5. An Order mandating the Defendants to clear the Plaintiffs and make them eligible to contest.

The application is supported by a 20 paragraphs affidavit sworn to by one of the Plaintiffs, Professor Isa Odidi and 2 documents annexed as Exhibit A and B respectively, 10 paragraphs affidavit of urgency also sworn by same deponent.

The Defendants entered appearance on 2/2/07, but did not file any counter-affidavit nor filed a response to the written address of Plaintiffs' counsel served on them on 7/2/06 through one Jerry T. Akaazua of legal Department INEC Headquarters. Kabir Bala Esq. represented the Defendants on 5/2/07 when Court Ordered parties to file written arguments.

The written address of the Plaintiffs as filed by Chude Ike Franklin Esq. of counsel is dated 5/2/07 but filed on 6/2/07. Arguing counsel referred Court to Section 25, 28 and 137 of the 1999 Constitution and urged on Court to interpret same as it relates to the eligibility of the 1st and 2nd Plaintiffs' to contest the 2007 elections.

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Counsel argued that 1st and 2nd Plaintiffs' are Nigerians by birth from Katsina and Lagos State respectively who have acquired the citizenship of Canada, USA respectively. That the 1st and 2nd Plaintiffs' belong to the New Democrats Party and were duly cleared to run as President and Vice Presidential aspirants respectively. Counsel stated that 1st and 2nd Plaintiffs appeared on 23rd and 24th January, 2007 for screening by INEC whereby they were purportedly disqualified based on their dual citizenship.

Counsel contended that a Nigerian by birth does not stand disqualified from contesting election on ground that he has dual citizenship and in support cited the case of Dr. Willie Ogbeide vs Mr. E. Arigbe Osula & 3 ors [2004] 12 NWLR part 886 page 86 at 138.

Counsel contended that the words of Sections 25, 28 and 137 (1) (a) are clear and unambiguous and urged Court to give them their ordinary natural and grammatical construction and that the present case is in all fours with the cited case of Honourable Dr. Willie Ogbeide vs Osula. Counsel finally urged Court to grant Plaintiff's application.

In paragraphs 5, 6, 7, 9, 10, 11, 12, 14, and 15 of affidavit deponent averred thus:-

5. That the 2nd Plaintiff and myself are members of the 3rd Plaintiff a duly Registered Political Party in Nigeria.
6. That in furtherance of the above the 2nd Plaintiff and myself were nominated as the Vice president and President respectively of the 3rd Plaintiff.
7. That further to the above we obtained verification clearance forms from the 1st Defendant for the purpose to the said election. The photocopy of the clearance form CF001 of the 2nd plaintiff is annexed and marked as Exhibit A.
9. That as part of its role, the 1st Defendant directed all aspirants for the offices of President and Vice President of the Federal Republic of Nigeria to appear before it for a verification exercise between Monday 22/1/07 and Wednesday 24/1/07. A photocopy of public notice of the 1st Defendant dated 22/1/07 is hereby annexed and marked as Exhibit B.

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10. That on the 23rd day of January, 2007 the 2nd Plaintiff and myself met with a panel constituted by the 1st Defendant for that purpose.
11. That we were informed by the members of the panel that we would not be able to contest for the office of the President and Vice President because of our dual citizenship.
12. That on the 24/1/07, the 2nd Plaintiff and myself with the officials of the legal department of the 1st Defendant who further informed us that the provisions of Section 28 and 137 of the Constitution of the Federal Republic of Nigeria disqualified us.
14. That I am a Nigerian citizen by birth and was born in Kastina, Kastina State while the 2nd Plaintiff is also a Nigeria from Lagos in Lagos State of Nigeria.
15. That we both acquired the citizenship of Canada and United States of America respectively.

Section 25, 28 and 137 of the 1999 Constitution of the Federal Republic of Nigeria provides thus:-

Section 25 (1) The following persons are citizens of Nigeria by birth, namely-

- (a) Every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria.

Provided that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents nor any of his grandparents was born in Nigeria;

- (b) Every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and
- (c) Every person born outside Nigeria either of whose parents is a citizen of Nigeria.

(2) In this Section, "the date of independence" means the 1st day of October, 1960.

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Section 28

28- (1) Subject to the other provisions of this Section, a person shall forfeit forthwith his Nigerian Citizenship if, not being a citizen of Nigeria by birth, he acquires or retains the citizenship or nationality of a Country, other than Nigerian, of which he is not a citizen by birth.

(2) Any registration of a person as a citizen of Nigeria or the grant of a certificate of naturalization to a person who is a citizen of a country other than Nigeria at the time of such registration or grant shall, if he is not a citizen by birth of that other country, be conditional upon effective renunciation of the citizenship or nationality of that other country within a period of not more than twelve months from the date of such registration.

Section 137

137-(1) A person shall not be qualified for election to the office of President if-

(a) subject to the provisions of Section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or

(b) He has been elected to such office at any two previous elections; or

(c) Under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or

(d) He is under a sentence of death imposed by any competent Court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any Court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a Court or tribunal; or

(e) within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or

(f) he is an undercharged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other country; or

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(g) being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election; or

(h) he is a member of any secret society; or

(i) he has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel or Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunals of Inquiry Law or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Government, respectively; or

(j) he has presented a forged certificate to the Independent National Electoral Commission.

(2) Whether in respect of any person who has been -

(a) adjudged to be a lunatic;

(b) declared to be of unsound mind;

(c) sentenced to death or imprisonment; or

(d) adjudged or declared bankrupt,

any appeal against the decision is pending in any Court of law in accordance with any law in force in Nigeria, subsection (1) of this Section shall not apply during a period beginning from the date when such appeal is lodged and ending on the date when the appeal is finally determined or, as the case may be, the appeal lapses or is abandoned, whichever is earlier.

In the case of Ogbeide vs Osula [2004] 12 NWLR part 886 page 86 at 138 Adeniji (JCA) Justice Court of Appeal delivering lead Judge held as follows at page 127.

B Section 29 deals with the issue of renunciation of a persons Nigerian citizenship while Section 25 deals with categories of Nigerian citizens. In other words, a person who is a citizen of Nigeria by birth cannot have such citizenship forfeited or become ineligible to

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- C contest such elections under any circumstances even where Section 65(1) is read with Section 137, a person who is not a citizen of Nigeria can be so registered, but where he is not a citizen of that other country by birth, his registration will be conditioned on the renunciation of his citizenship of that other country. In other words, renunciation of
- D citizenship does not apply to a citizen of this country by birth. The tribunal however held on page 121 paragraph 2 of the record that a Nigerian citizenship by his acquisition as the citizenship of another country, he would stand disqualified from being a member of the
- E National Assembly if he holds such dual citizenship or has subscribed to an oath of allegiance to any other country. That I must say with due respect, is not contained in the Section under scrutiny. What one can make of that Section read with Sections 25, 26 and 27, of the 1999 Constitution is that a citizen of this country by birth never loses his citizenship even where he holds dual citizenship of another country and cannot be disqualified from contesting election into the House of Representative for reasons only that he holds such dual citizenship.

Section 137 provides for instance of disqualification while section 28 deals principally with the question of dual citizenship. By the decision of His Lordship Adeniji (JCA) Justice Court of Appeal page 127, "a person who is a citizen of Nigeria by birth cannot have such citizenship forfeited or become ineligible to contest election under any circumstance even where Section 65(1) in the present case Section 28 is read together with section 137 of 1999 Constitution.

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The above case is in all fours with the present suit and by the doctrine of stare decises I am bound by the decision of the appellate Court. I adopt same as mine and hold that the 1999 Constitution of Federal Republic of Nigeria recognizes dual citizenship and same cannot be a bare for Plaintiffs to contest election especially when they are Nigerians by birth. I so hold.

Accordingly reliefs 1, 2, 3 and 5 are granted, while relief 4 is refused.



A. I. CHIKERE

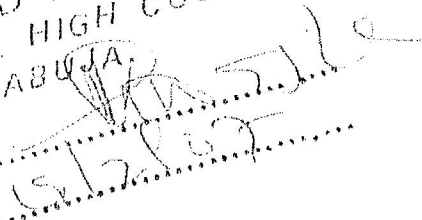
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