

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THURSDAY, THE 18TH DAY OF DECEMBER, 2008
BEFORE THE HON. JUSTICE A. BELLO
JUDGE

SUIT NO. FHC/ABJ/CS/370/2007

BETWEEN:

1. HON. OLUWAFOLAJIMI AKEEM BELLO
2. MR. UZOMA ONYEMAECHI
3. DR. EMMANUEL A. DADA
4. MR. SEGUN AJIBULU
5. MR. SURAJUDEEN SERIKI
6. DR. BABA M. ADAM
7. MS. ZAINABU N. SHENI
8. PROF. MOBOLAJI E. ALUKO
9. PROF. ADEOYE AKINSANYA
10. MR. UZOMA C. OBI
11. OLOYE LEKANK AWOJODU
12. PRINCE STEPHEN T. MALU
13. MR. VICTOR O. A. ADEWUSI
14. MR. KOLAWOLE E. SILVA-OPE
15. MR. ALEX IKE OKEKE
16. SIR TONY NAMMOR
17. DR. YEMI OKE
18. PROF. ISA ODIDI
19. MR. OCHI C. OGBUAKU, II
20. DR. (MRS.) OLUREMI AJIBEWA

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PLAINTIFFS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. ATTORNEY-GENERAL OF THE FEDERATION

DEFENDANTS

Parties are absent.

Sola Egbeyinka Esq. with Dapo Otitoju Esq. for all the Plaintiffs.

O. Osaze Uzzi Esq. with N. Ani Esq. for 1st Defendant.

A. U. Efe Esq. for 2nd Defendant.

[Faint handwritten notes and signatures]

JUDGMENT


The Plaintiffs filed the Originating Summons the subject of this judgment on 25th day of May, 2007 in which they submitted the following two question for the determination of the Court:

1. Whether the Plaintiffs are not entitled to be registered for the purpose of voting for their representatives in the Government of Nigeria.
2. Whether the Defendants are not obliged to make provisions to enable the Plaintiffs to register and vote in the Embassies of the Federal Republic of Nigeria in the various countries where they are.

Upon the determination of the questions, the Plaintiffs seek the following reliefs:-

1. A Declaration that the Plaintiffs are entitled to participate in the Government of Nigeria by voting for candidates of their choice pursuant to Article 13 (1) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act) (Cap 10) Laws of the Federation of Nigeria, 1990.
2. A Declaration that the Plaintiffs are qualified for registration as voters by virtue of section 13 (1) © of the Electoral Act 2006 and sections 77 (2), 117 (2), 132 (5) and 178 (5) of the Constitution of the Federal Republic of Nigeria, 1999.
3. An order directing the Defendants to set up registration centers and polling stations in the Federal Republic of Nigeria in all the High Commissions and Embassies of Federal Republic of Nigeria.

The originating Summons is supported by 12 paragraph affidavit sworn to by the 1st Plaintiff in the suit. The Defendants opposed it by filing two separate counter affidavits. That of the 1st Defendant is dated 29th day of June, 2007 but filed on 4th July, 2007 while that of the 2nd Defendant was sworn to on 4th July, 2007 and filed the same date. The Plaintiffs subsequently filed a reply to the counter affidavit of the 1st Defendant and followed it with a 2nd reply to the 1st Defendant's counter affidavit as well as reply to the 2nd Defendant's counter affidavit filed on 7th March, 2008.

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Sequel to the completion of pleadings by the parties which in this case are represented by the affidavit in support of the originating summons and the counter affidavits, the Court on 13th November, 2007 directed the parties to file and exchange written addresses for and against the originating summons which was done and the written addresses were subsequently adopted.

The Plaintiffs in their own written address formulated two issues for the determination of the Court and these are:-

1. Whether as citizens the Plaintiffs are entitled to participate in the Government of Nigeria.
2. whether the Defendants are under an obligation to make provision to enable the Plaintiffs to register and vote from abroad.

Counsel for the Plaintiffs proceeded from the premise that although section 14 of the Constitution forms part of the fundamental objective and Directive principle of State policy which is not justiciable, Article 13 (3) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria, 1990 has equally guaranteed the fundamental right of every person to participate in the Government of their Country either directly or through freely chosen representatives in accordance with the law. And that in order to guarantee popular participation in Government, every citizen of Nigeria who has attained the age of 18 years and residing in Nigeria at the time of the registration of voters for the purpose of election to a legislative house, shall be entitled to be registered as a voter for that election. Similarly anyone who is so qualified to vote in a legislative election shall be entitled to vote in the Local Government, Governorship and Presidential election pursuant to section 7 (4), 117 (2), 132 (5) and 178 (5) of the Constitution.

And with respect to qualification for election, the Plaintiffs argued further that any person who is a citizen of Nigeria, educated up to Secondary School level, a member

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of a political party and sponsored by that party and who has attained the required age can contest election in Nigeria in view of sections 106, 130 and 176 of the Constitution.

It was therefore submitted on behalf of the Plaintiffs that the right of every citizen to participate in the government of Nigeria which include the right to vote and be voted for is enshrined in the Constitution and the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act (Cap 10) G.F.N. 1990. So issue number one should be resolved in favour of the Plaintiffs.

In respect of the 2nd issue, the Learned Counsel for the Plaintiffs referred to response of the 1st Defendant to the Originating Summons to the effect that the Plaintiffs have not been prevented from registration as voters if they present themselves at the designated registration centers in Nigeria and submitted that, the case of the Plaintiffs is that they are entitled to register as voters and vote from abroad. The Court was urged, in resolving the dispute herein to interpret section 77 (1) and (2) and submitted that pursuant to section 77 (1) supra, the National Assembly has enacted the Electoral Act, 2006 wherein the manner of the registration of voters has been prescribed so as to guarantee direct election and franchise. Specifically, he said, section 13 thereof states that a person shall be qualified for registration as a voter if such a person is a citizen of Nigeria of 18 years and is "Ordinarily resident, works, originates from the Local Government or Area Council or Ward covered by the registration center."

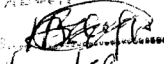
The Learned Counsel for the Plaintiffs submitted on this, that a person who is "Ordinarily resident" in a place does not have to stay in the place on a permanent basis, hence in Nigeria those who stay in the cities travel to their villages to register as voters. He relied on the definition of the words "reside" and "resident" in Black's Law Dictionary (Sixth Edition) and two Law Professors, , Helen Fenwick and Gavin Philipson on the requirement of residence in elections and submitted inter alia, that since

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“residence” does not require “a degree of permanence”, a person who is “residing in Nigeria” does not mean a person who stays in the Country on a permanent basis. And that the evidence before the Court shows that the Plaintiffs have their homes and businesses in Nigeria and they visit the Country on a regular basis and to that extent they are residing in Nigeria and as such they are qualified to be registered to vote and be voted for. The Learned Counsel went further and submitted that the phrase “Originates from the Local Government” would qualify a person to register even if he does not live in a Local Government permanently once he can prove that he originates from the particular Local Government.

It was contended by the Learned Counsel for the Plaintiffs that given the instance of this case where the Plaintiffs have shown that they are Nigerian Citizens who are over 18 years and that they originate from various Local Governments in the Country, they are qualified to be registered as voters by the combined effects of section 77 (2) of the Constitution and section 13 (1) of the Electoral Act, 2006. The Plaintiffs, he argued further have shown in their second reply to the Defendants’ counter affidavit that there are 115 Nations including 28 African Countries which have recognized the rights of their citizens to participate in choosing the Government of their Countries through external voting and as the right of Africans to vote and be voted for is guaranteed by Article 13 (3) of the African Charter on Human and People’s Rights (Ratification and Enforcement) Act (Capt 10) L.F. N. 1990 the Honourable Court is urged to resolve the 2nd issue in favour of the Plaintiffs

In conclusion, the Learned Counsel for the Plaintiffs submitted that, from the foregoing the parties are ad idem that every Nigerian Citizen who has attained the age of 18 years is qualified to register as a voter, but the departing point is the Defendants’ insistence that the Plaintiffs have to come home in Nigeria from Overseas to register at


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the designated centers while the Plaintiffs' case is that they can do so in Nigerian Embassies and High Commissions Overseas where they are located. Using the averments of the 1st Defendant that the 1st and 18th Plaintiffs were Vice President/and Presidential candidates respectively in the 2007 - general elections, the Learned Counsel for the Plaintiffs' submitted that if the 1st and 18th Plaintiffs could be voted for while they were abroad there can be no legal basis why they can not take part in external registration and voting, moreso when the Defendants in their defence can not adduce any reason why arrangements cannot be made for Nigerians abroad to register and vote in Nigerian Embassies and High Commissions as it is done by the citizens of 115 nations which include 28 African Countries.

Now the Learned Counsel for the 1st Defendant adopted the two issues formulated by the Plaintiffs for the purpose of his own arguments.

He submitted inter-alia that section 14 (2) (b) part 2 of the Constitution of Nigeria, 1999 recognizes the right of citizens to participate in the governance of this Country, but the exercise of this right shall be in accordance with the provisions of the Constitution. He referred to section 117 (2) of the Constitution which provides that "every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of registration of voters for purposes of election to any legislative house shall be entitled to be registered as a voter for that election" and submitted further that the registration of voters and conduct of elections is subject to the direction and supervision of the 1st Defendant under section 118 of the Constitution.

He contended that, in line with the general provisions of the 1999 Constitution particularly paragraph 15 (j) of same, the National Assembly enacted the Electoral Act 2006 and by section 13 (i) © thereof "a person shall be qualified for registration as a voter if such a person is ordinarily resident, works in or originates from the Local

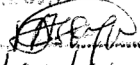
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Government or Area Council or Ward covered by the registration center” and section 13 (I) (d) “presents himself to the registration officers of the Commission for registration as a voter.” Then section 58 of the Electoral Act 2006 further provides that “No voter shall record his vote otherwise than personally attending at the polling station and recording his vote in the manner prescribed by the Commission.”

The Learned Counsel for the 1st Defendant submitted on these, that a community reading of the above provisions of the Constitution shows the following:-

1. That every Nigerian is entitled to participate in the government of the Federation in accordance with the provisions of the Constitution;
2. That every Nigerian who has attained the age of eighteen years residing in Nigeria at the time for registration shall be entitled to be registered as a voter;
3. That the registration of voters and the conduct of elections shall be supervised by the Independent National Electoral Commission;
4. That a person shall be qualified to register as a voter if he is resident, works in or originates from the Local Government Area etc;
5. The person present himself to the registration officers of the Commission for registration by the Commission;
6. That the voters shall personally attend the poling station and record their votes in a manner prescribed by the Commission.

He contended therefore, taking the above into consideration, that in Nigeria, no law permits registration or voting in absentia and that Article 13 (1) of the African Charter on Human and Peoples Rights stipulates that, “Every citizen shall have the right to participate freely in the government of his country either directly or through freely chosen representatives in accordance with previsions of the law” and as such participation in this wise is subject to the municipal law. The Court was urged to give effect to the ordinary meaning of the words used in the relevant statutes. I was referred to the case of Obi v. INEC (2007) 7 SC 268 Per Chukwuma Eneh, JSC at PP 98 – 99. The effect of all these submissions, is that the Constitution and the Electoral Act recognize the

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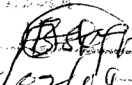
right of citizens to participate in governance in line with and subject to the laws of Nigeria and that none of the statutory provisions cited above support the Plaintiffs' case in any way. As a final point, the Learned Counsel submitted that what the Plaintiffs are seeking is tantamount to requesting this Honourable Court to make laws whereas the legislative powers are vested somewhere else by the Constitution.

On justiciability of section 14 of the Constitution, it was the contention of the 1st Defendant, that, as conceded by the Plaintiffs in their address, section 14 comes under the fundamental objective and Directive principle of state policy (Chapter 2) which is not justiciable and is not therefore a fundamental right that can be enforced no matter how serious it may have been infringed. Counsel cited the case of Uzoukwu v. Ezeonu 11 (1991) 6 NWLR (part 200) 708, 761 – 762.

He submitted further that there is no such thing as absolute equality of rights, freedoms and privileges amongst citizens of the Country and even of one group. He relied again on the case of Uzochukwu v. Ezeonu (supra) PP. 775 – 776 ratio 38. He submitted therefore in the instant case, that Nigerians who are not ordinarily resident in Nigeria, can not claim the same rights and privileges, such as registering for elections, voting and being voted for, if they do not present themselves at the specified time and places for so doing and they would be deemed to have waived their rights, which they are entitled to do.

On the import of the African Charter, the Learned Counsel for the 1st Defendant submitted firstly, that the Plaintiffs reliance on the African Charter and Exhibit A, (the international IDEA Hand book) is misconceived for the following reasons:-

1. That International convention and practices protocols or charters do not acquire the force of law and are not binding in Nigeria until they are incorporated into our municipal law by being passed into law by the National Assembly (cited) the case of ACB Ltd v. Eagle Super Pack Ltd. (2007) 1 CMLR 79 at 703 (2006) 12 SC. And section 12 (1) of the 1999 Constitution. As well as the case of Abacha v.

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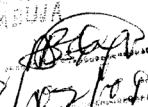
Fawehinmi (2006) 6 NWLR (Part 660) 228 – 289 and 356 – 357, wherein he said, the Supreme Court held inter alia, that the validity of any other domestic statute can not be affected by the African Charter or any other treaty even where they conflict and that the Charter is inferior to and cannot override the Constitution in view of the superiority of the Constitution under its section 1 (1) and (3).

He submitted therefore that in view of the supremacy and binding effect of the Constitution on all persons and authorities, the 1st Defendant can not establish registration/voting centers outside Nigeria or the territories specified in section 3 and 1st schedule of the Constitution regardless of what other Countries do. I was urged to discountenance exhibit 'A' being a photocopy and therefore not a primary evidence.

In the final analysis, the Court was urged not to grant any of the declarations sought by the Plaintiffs. This is because nowhere in their affidavit in support of the Originating Summons did they demonstrate that they were or have been or are being deprived of their right to register as voters or to vote. He relied on the case of Inakoju v. Adeleke (2007) ICCLR 240 Per Tobi JSC at P. 341, on what a party who seeks declaration must show.

The Court was urged not to be misled into taking up a legislative function and that the desire of the Plaintiffs to have registration centers in Nigerian Embassies abroad can only be met by legislative intervention and a Constitutional amendment. I was urged to dismiss the action with substantial cost against the Plaintiffs.

In a similar vein the Learned Counsel for the 2nd Defendant adopted the two issues formulated by the plaintiffs for determination, for the purpose of his own arguments. He too referred to the Constitutional provisions of section 14 (2) (b), 117 (2) and 118 of the 1999 Constitution as well as sections 13 (1) (c) and (d) and 18 of the Electoral Act 2006 and adopted the position of the 1st Defendant as to what a community reading of these provisions shows. He submitted that no provision has been made for Nigerians resident and working outside Nigeria concerning registration of voters or voting and that Article

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13 (1) of the African Charter on Human and Peoples' Rights does not entitle the Plaintiffs to their claim. He also relied on the case of *Obi v. INEC* (2007) ICCLR 1 on the interpretative powers of the Court while interpreting the provisions of statutes, He specifically relied on the statement of Chukwuma Eneh, JSC and Aderami, JSC at PP. 98 – 99 and 48 – 50 respectively.

Looking at the addresses of the 1st and 2nd Defendants, the submissions therein for all intents and purposes are the same and having reproduced the detailed submissions of the Learned Counsel for the 1st Defendant, I do not see the need to repeat those submissions as contained in the 2nd Defendant's address.

Let me also state at this juncture that the Plaintiffs filed a ten page and twelve page addresses in form of reply on points of law to the Defendants' addresses which addresses are more than the initial Plaintiffs' address in respect of the Originating Summons. Having gone through these reply addresses I believe they have gone beyond reply on points of law. They amount to attempts to reargue the originating summons. I am not therefore going to reproduce them as I did the initial address but would only refer to salient points made therein in the course of the judgment.

I have carefully considered all the arguments and submissions made in respect of the originating summons and also against it as contained in the addresses of the parties, part of which have been reproduced above. Although the questions for determination have not specifically contain the statutory provisions that are sought to be interpreted by the Court, at least the reliefs sought have referred to specific provisions of the Constitution and the Electoral Act that call for interpretation in this case. At the risk of repetition I reproduce these reliefs again as follows:

1. A declaration that the Plaintiffs are entitled to participate in the government of Nigeria by voting for candidates of their choice pursuant to Article 13 (1) of

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the African Charter on Human and People's Rights (Ratification and Enforcement) Act (cap 10) Laws of the Federation of Nigeria 1990.

2. A Declaration that the Plaintiffs are qualified for registration as voters by virtue of section 13 (1) © of the Electoral Act 2006 and section 77 (2), 117 (2), 132 (5) and 178 (5) of the Constitution of the Federal Republic of Nigeria, 1999.
3. An Order directing the Defendants to set up registration centres and polling stations in the Federal Republic of Nigeria in all the High Commissions and Embassies of Federal republic of Nigeria.

I have also spelt out the two issues formulated by the Plaintiffs for the determination of the Court. Again at the risk of repetition I will reproduce them again as follows:-

1. Whether as citizens the Plaintiffs are entitled to participate in the Government of Nigeria.
2. Whether the Defendant are under an obligation to make provision to enable the Plaintiffs to register and vote from abroad.

The Plaintiffs arguments and submissions in respect of these issues are anchored on the interpretation of section 14, of the Constitution of the Federal Republic of Nigeria 1999, Article 13 (3) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation 1990 as well as sections 7 (4), 117 (2), 132 (5), 178 (5) and section 106, 130 and 176 of the said Constitution.

I may not need to consider section 14 of the Constitution because the Learned Counsel to the Plaintiffs in his arguments, has conceded that the said section forms part of the fundamental objective and Directive principle of state policy which is not justiciable except where the Constitution provides otherwise. I will however consider Article 13 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap 10) L.F.N. 1990 and the other sections of the Constitution aforementioned. It is for this reason that I now reproduce the relevant provisions of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and the Constitution of the Federal Republic of Nigeria 1999 which all the parties have made

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reference to. These are Article 13 of the African Charter, Sections 7 (4), 177 (2), 132 (5), 178 (5), 106, 130 and 176 of the Constitution

Article 13 of the African Charter contained in Cap, A9 L.G.N., 2004 provides:

1. Every citizen shall have the right to participate freely in the Government of his country, either directly or through freely chosen representatives in accordance with provisions of the law.
2. Every citizen shall have the right of equal access to the public services of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Now looking at the above provisions, Article 13 (1) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act cap. A9 Laws of the Federation of Nigeria 2004, is intended to or has the effect of giving legal teeth to the fundamental objective and directive principle of state policy under section 14 (1) © of the 1999 Constitution which provides that:-

“the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.”

The Constitution of the Federal Republic of Nigeria at its sections 7 (4), 117 (2), 132 (5) and 178 (5) provide:

- 7(4). The Government of a state shall ensure that every person who is entitled to vote or be voted for at an election to a House of Assembly shall have the right to vote or be voted at an election to a Local Government Council.
- 117 (2) Every citizen of Nigeria who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to any legislative House, shall be entitled to be registered as a voter for that election.
- 132 (5) Every person who is registered to vote at an election of a member of a Legislative House shall be entitled to vote at an election to the Office of President.
- 178 (5) Every person who is registered to vote at an election of a member of a Legislative House shall be entitled to vote at an election to the Office of Governor of a State.

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A side from the above provisions, by the combined effect of the provisions of sections 106, 131 and 177 of the 1999 Constitution of the Federal Republic of Nigeria, a person who is a citizen of Nigeria, educated up to Secondary School Level, is a member of a political party and is sponsored by the party and who has attained the required age can contest election in Nigeria.

Now the Plaintiffs have averred in paragraph 8 of their affidavit in support of the Originating Summons that:-

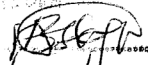
“8. The 2nd – 20th Plaintiffs are citizen of Nigeria, aged 46, 51,52,52,49,42,51,62,37,51,51,47,39,48,36,34,50,33 and 44 years respectively and originate from Imo, Ekiti, Ogun, Borno, Plateau, Ekiti, Ogun, Imo, Osun, Benue, Ekiti, Lagos, Anambra, Delta, Ogun, Kano, Abia and Ondo States respectively.”

In the preceding paragraph 3 of the same affidavit the 1st Plaintiff has averred.

“3. I am a 44 years old citizen of Nigeria and originate from Oyo State, Nigeria.”

So clearly by these averments which have not been controverted or denied by the Defendants the Plaintiffs have established the fact that they are also citizens of Nigeria to Whom the enumerated section of the Constitution and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004 especially Article 13 (1) thereof, apply.

So the question raised by the Plaintiffs regarding issue number 1 as contained in the Originating Summons, whether as citizens, the Plaintiffs are entitled to participate in the government of Nigeria, becomes a rhetorical one whose answer is known in view of the combined effect of the sections of the Constitution and the African Charter aforementioned, which is that the Plaintiffs as citizens of Nigeria are entitled to participate in the government of Nigeria and to vote and be voted for into any elective office in Nigeria. I have no difficulty therefore in resolving issue Number 1 in favour of the Plaintiffs.

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There remains the 2nd and last issue as to whether the Defendants are under an obligation to make provision to enable the Plaintiffs to register and vote from abroad.

In other words, the Plaintiffs' case is hinged on the premise that, they are entitled to register and vote from abroad. The Plaintiffs have urged the Court in their address at paragraph 4.02, that in resolving issue Number 2, to interpret section 77 (1) and (2) of the constitution which provides:-

“Subject to the provisions of this Constitution every senatorial district or Federal Constituency established in accordance with the provisions of this part of this chapter shall return one member who shall be directly elected to the senate or the House of Representatives in such manner as may be prescribed by an Act of the National Assembly.

- (2) Every citizen of Nigeria who has attained the age of eighteen years, residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election.

After reproducing the above provisions, the Leaned Counsel for the Plaintiffs referred to section 13 of the Electoral Act 2006 which was enacted by the National Assembly pursuant to section 77 (1) (supra). Section 13 of the Electoral Act provides that a person shall be qualified for registration as a voter if such person is a citizen of Nigeria of 18 years and is “ordinarily resident, works, originates from the Local Government or Area Council or Ward covered by the registration center.”

Looking at the provisions of section 77 (2) of the Constitution read in conjunction with section 13 (1) of the Electoral Act 2006, it seems to me that section 13 (1) of the Electoral Act has widened the scope of section 77 (2) of the Constitution by including a person “who works” “originates” from the Local Government or Area Council or Ward covered by the registration, in addition to a person who is “ordinarily resident”, or residing in Nigeria as the case may be.

It is against this backdrop that I agree with the submission of the Learned Counsel for the Plaintiffs that, the Plaintiffs as Nigerian Citizens, though residing abroad, who are

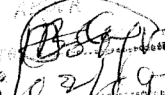
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over 18 years old and having originated from various Local Government in Nigeria are qualified to be registered as voters and have the right to vote or be voted for in any election in Nigeria by the combined effect of section 77 (2) of the Constitution and section 13 (1) of the Electoral Act, 2006. I used the words to be registered as voters in Nigeria to emphasize the point that the sections referred to can not be the authority for the proposition that the Plaintiffs are entitled to register and vote from abroad or that the Defendants are under an obligation to make provision to enable the Plaintiffs to register and vote from abroad. All the relevant provisions of the Constitution and the Electoral Act talk about the right of the citizens of Nigeria to be registered as voters in Nigeria at the various designated registration centers scattered throughout Nigeria. There are no express provisions in the Constitution or the Electoral Act for Nigerians living abroad, like the Plaintiffs in this case to register and vote from abroad as their counterparts in the various countries referred to by the Plaintiffs in 2nd reply to the 1st Defendant's counter affidavit as well as in exhibit "A" attached to the said reply to the 1st Defendant's counter affidavit. In other words, the right of Nigerian citizens to register and vote or be voted for at any election in Nigeria are only exerciseable within the Territorial boundaries of the Nigerian State. In this connection I am in total agreement with the stand point of the Defendants that for the 1st Defendant i.e. Independent National Electoral Commission (INEC) to open registration centers abroad for Nigerians living there to register and vote, at any election in Nigeria, from abroad, it requires an enabling enactment from the National Assembly to that effect. The power of the National Assembly under item 11 on the concurrent legislative list, to make laws for the Federation with respect to the registration of voters has been well stated by the Supreme Court in the case of A. G. Abia State & 35 Ors. V. A. G. Federation (2002) 3 SC 106 at 237 cited by the Learned Counsel for the Plaintiffs in his reply to the 2nd Defendants' address. Having made the point that

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there are no express provisions both under the Constitution and the Electoral Act for registration of voters abroad, the Contention of the Plaintiffs in their reply to the 1st Defendants' address that the Plaintiffs having fulfilled all the constitutional provisions with regard to the eligibility to participate in any election in Nigeria as well as the provision of section 13 (1) of the Federation Act, 2006, it is the Constitutional responsibility of the 1st Defendant to put in place the relevant machinery in order to assist the Plaintiffs to vote from abroad, is untenable. As the laws stand today, the Plaintiffs having fulfilled all the Constitutional provisions with regard to the eligibility to participate in any election in Nigeria will have to put up with the inconvenience of having to travel home in Nigeria to register as voters and to participate in the election like any other Nigerian citizen, until such a time when the National Assembly enacts a law that empowers INEC to register Nigerians living abroad like the Plaintiffs in this case, as voters so as to enable them vote from the respective countries in which they live.

Now the Plaintiffs in their efforts to persuade the Court to accede to their prayers attached exhibits A, and C which show the various countries where external voting by citizens of those countries has been allowed. Since these documents form part of the record of the Court, I intend to make use of them for whatever they are worth notwithstanding the attack on exhibit A by the Learned counsel for the 1st Defendant. Firstly the mere fact that other countries of the world have granted their citizens the opportunity to register and vote from abroad does not ipso facto translate into a binding precedent for Nigeria to follow. Let me hasten to say that I should not be understood to mean that it is not desirable for Nigeria to join other Nations that adopt the external voting. I believe strongly that the Plaintiffs have made a good case and the time is ripe for Nigeria to give its citizens living abroad the opportunity to register and vote from abroad in any election in Nigeria without having to travel to Nigeria for that purpose.

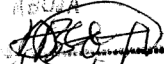
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The Plaintiffs are not under any obligation to sponsor a Bill to the National Assembly to enact the enabling legislation to realize their goal, however, the 1st Defendant can approach the National Assembly by sponsoring such a Bill for the sake of Nigerians in the Diaspora and in doing so, it can borrow a leaf from the countries that have already adopted the external voting.

Secondly, to illustrate the point that an enactment is needed for external voting, I refer to exhibit A attached to the 2nd reply to the 1st Defendant's counter affidavit especially annexure A. If you look at Bolivia, No. 24 country on the annexure. It is recorded in the comments column thus "Not yet implemented. A law including external provisions was passed by the Lower Chambers of the Parliament on 6th December, 2005. It is now being discussed in the Upper Chambers." Also Chile No. 40 country on exhibit A, where there is no external voting, it is said in the commentary column as follows: "A Legislative proposal is being discussed and was approved by one of the commissions of the Low Chambers on 4th October, 2006 (the Commission on Human Rights,

Nationality and citizenship) it has been suggested that external voting be applied for Presidential elections and plebiscites at the next Presidential election in 2010.

Also Country No. 47, Costa Rica where there is no external voting. The comments Column says: "An Electoral Code Draft handed to the Congress outlines the possibilities for introducing external voting. A Draft Chapter on external voting was handed to the Lower Chambers in May, 2006 to be added to the Electoral Code. It suggests that citizens abroad can vote for Presidential and Legislative Elections at diplomatic offices/personal voting. If external voting is approved it may be implemented for the 2010 national election."

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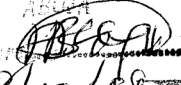
Country No. 57 – Dominican Republic. The commentary states that “Legislated in 1997. Discussions ongoing about how the Dominican voters abroad can obtain their ID/voting card. In Eritrea Country No. 62, external voting allowed in 1993 by Eritrean Referendum Proclamation (No.22 of 1992). In Panama, Country No. 149, external voting was allowed by the Panamanian Congress in 2006 followed by the decision of an Electoral Tribunal in 2007.

The above are enough illustrations using the Plaintiffs’ document to show that in Nigeria too, we need to at least amend our Electoral Act of 2006 to make provision for external voting for the benefit of Nigerian citizens abroad.


Thirdly, by exhibit C attached to the Plaintiffs’ reply to the 2nd Defendants address, external voting requires more than legislation, there are logistical problems and other ground works that need to be addressed. For example on page 158 of exhibit C, under the heading, “The Legal and Administrative Frame work”, it is stated thus:

“The franchise for the 2004 Presidential election was regulated by the constitution of Afghanistan; by the election Law (Chapter IV), by decision of the Afghan Joint Electoral Management Body (JEMB) in consultation with the U. N. Assistance Mission in Afghanistan (UNAMA) and the government of Afghanistan; and by individual memoranda of understanding on the conduct of the out-of-country elections signed by the government of Afghanistan with the governments of Pakistan and Iran. The decision to offer the franchise outside Afghanistan was taken by the JEMB following an assessment undertaken jointly with UNAMA and the United High Commissioner for Refugees (UNHCR), in consultation with the United Nations Development Programme (UNDP).

In view of all the reasons adduced above and having come to the conclusion that there are no express provisions in the constitution of the Federal Republic of Nigeria 1999 and under the Electoral Act of 2006 which provide for external voting for Nigerians living abroad, I resolve issue No. 2 in favour of the Defendants. Consequently having resolved issue No. 1 in favour of the Plaintiffs, I grant reliefs 1 and 2 subject to my earlier statement that the rights to participate in the Government of Nigeria and to register as voters is exerciseable within the Territorial boundaries of Nigeria.

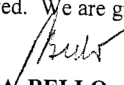
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Having resolved the 2nd issue in favour of the Defendants, relief 3 can not be and is not granted.



A. BELLO
JUDGE
18/12/2008

Sola Egbeyinka: We are grateful My Lord with the way and manner you dealt with all the issues in the case.

O. Osage Uzzi: We associate ourselves with the comments of Learned Counsel for the Plaintiffs especially the manner in which you dealt with the issues involved. We are grateful.


A. BELLO
JUDGE
18/12/2008

A. U. Efe: We are also grateful for the very well considered judgment and painstaking manner in which all the issues were dealt with by the Court. We are grateful especially the Court's reference to the importance of the need to deal with the Constitutional issue raised by the Plaintiff regarding external voting.


A. BELLO
JUDGE
18/12/2008

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Signature: 

18/12/08

B.C. Osoyva
Cm. Asst. Reg.