MAKARFI & ANOR v. POROYE & ORS

CITATION: (2016) LPELR-41296(CA)

In the Court of Appeal
In the Abuja Judicial Division
Holden at Abuja

ON WEDNESDAY, 23RD NOVEMBER, 2016
Suit No: CA/A/551/M/2016

Before Their Lordships:

IBRAHIM MOHAMMED MUSA SAULAWA	Justice, Court of Appeal
IGNATIUS IGWE AGUBE	Justice, Court of Appeal
ITA GEORGE MBABA	Justice, Court of Appeal

Between

1. SENATOR AHMED MOHAMMED MAKARFI
2. SENATOR BEN OBI

- Appellant(s)

And

1. PRINCE BIYI POROYE
2. ADEMOLA GENTY
(For themselves and on behalf of the Ondo State Executive Committee of the Peoples Democratic Party)
3. HON. OLASOJI ADAGUNODO
4. BOLA AJAO LATEEF
(For themselves and on behalf of the Osun State Executive Committee of the Peoples Democratic Party)
5. HON. TAIWO AKEEM
6. HON. ALABA ADELABU
(For themselves and on behalf of the Oyo State Executive Committee of the Peoples Democratic Party)
7. HON. BAWALE SOLAJA
8. OTUNBA ADEWAIE SEGUN
9. OGUNBIYI ADELEKE OLASUKANMI
10. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
11. PEOPLES DEMOCRATIC PARTY (PDP)

- Respondent(s)

RATIO DECIDENDI

1. **CONSTITUTIONAL LAW - BREACH OF RIGHT TO FAIR HEARING:** Effect of proceedings conducted in breach of a party's right to fair hearing
   "It is so obvious from the records of appeal, as effectively found in the leading judgment that the Appellants' fundamental right to fair hearing has been wantonly and violently trampled upon and breached. That breach and denial of fundamental right to fair hearing as cherishingly enshrined in Section 36 (i) of the 1999 Constitution, as amended completely and irredeemably renders the said judgment perverse a nullity, and liable to be set aside by this Court."Per SAULAWA, J.C.A. (Pp. 22-23, Paras. F-B) - read in context

2. **COURT - JURISDICTION:** Whether proper parties must be identified in a suit before a court can have jurisdiction to adjudicate over a matter

"Section 36(1) of the Constitution forbids a court to make order that affects the interest of a person, without hearing him or giving him opportunity to be heard. The right of fair hearing forms the "soul" of any judicial decision/order of Court, and where one has not been heard or given opportunity to be heard, the decision is a complete nullity and cannot be enforced against the party, having not been heard. Authorities on this are replete.

Egbuchu Vs Continental Merchant Bank Plc & Ors (2016) LPELR - 40053 (SC); Adeleke vs Raji (2002) 13 NWLR (part 783)142, Okadigbo Vs Chidi (No. 1) (2015) 10 NWLR (part 1466) 171 at 197 - 198, Adigun Vs Attorney General of Oyo State & Ors (1987) 1 NWLR (part 53) 674 at 707, Garba Vs UNIMAID (1986) 1 NSCC 255.

In that case of Okadigbo vs Chidi (No. 1) (supra) my Lord, Onnoghen JSC, (now Ag. CJN) said:

"Before concluding this judgment, it is very important to note that this judgment is hinged on the breach of the constitutional provisions of Section 36(1) of the constitution of the Federal Republic of Nigeria, 1999, as amended, particularly, the right to fair hearing. It has nothing to do with the issue as to whether the nomination exercise of the appellant conducted by the Anambra State Executive Committee of the PDP is valid, legal and binding, as against the nomination of the plaintiffs in the suit which was conducted by the National Executive Committee of the said PDP. That issue has been decided in a number of cases by this Court and has thus become trite. The only valid nomination of the party for any election is the one conducted by the National Executive Committee not by the State Executive Committee. However, before the Court can legally come to a conclusion as to which of the two primaries nominations is valid all the parties necessary for the determination must be joined in the suit and heard by the Court.

Where there is a failure to hear all the necessary parties to the dispute before a decision is reached, there is a breach of Section 36(1) of the 1999 Constitution, as amended, which has the effect of automatically rendering the proceedings in the action and the judgment or ruling resulting there from a nullity, and void without any legal effect. It is unfortunate that appellants have taken advantage of the judicial process which they exploited. It is against good conscience but the law must prevail, particularly, where the issue involves the constitutionally guaranteed fundamental right of fair hearing in the determination of the rights and/or obligations of any person".

With such profound recent decision of the apex Court, on the Issue of fair hearing, which only re-affirms what is already known, and expected to be common knowledge of every counsel/judge, the decision of the learned lower Court on appeal, and the contention of Respondents' Counsel, in defence of same, in my view, are, absolutely, indefensible, and made in bad faith.In Awoniyi Vs Registered Trustees of Amorc (2000) 10 NWLR (part 676) 522 at 533, the Supreme Court per Mohammed JSC held at paragraph G - H, thus:

"Per MBABA, J.C.A. (Pp. 12-17, Paras. C-B) - read in context

3. **COURT - DUTY OF JUDGE:** Duty of a judge to be seen as impartial

"Even on that point alone, it should be re reiterated that, this Court has an onerous duty, constitutionally and inherently, to ensure that such a contraption as fraudulently depicted in the vexed judgment did not see the light of the day. Indeed, to set it aside, we must!

Instructively, implicit in the judicial oath subscribed to by all of us judicial officers, fundamentally requires a total commitment to the rule of law, to the dispensation of justice according to law, without fear and favour, affection of ill-will, honestly, faithfully, and according to the Constitution and the laws made pursuant thereto. Such a judicial oath equally demands that a judicial officer should not allow himself to be influenced by any extraneous or subterranean consideration whatsoever. As aptly postulated by the Hon. Justice M. M. A. Akanbi, (PCA Emeritus):

Let me say that while a Judge with little or no adequate knowledge of law, may be considered a nuisance, and his lack of understanding and appreciation of the law may constitute an obstacle in the path of justice, yet he is still, more tolerable than a CORRUPT JUDGE. For a corrupt judge is not only a dangerous obstacle, he is an anathema and a DISGRACE to the profession or the institution which he does not deserve to belong.

See MMA AKANBI (PCA Emeritus): THE JUDICIARY AND THE CHALLENGES OFJUSTICE, 1996 @ 36."Per SAULAWA, J.C.A. (Pp. 23-25, Paras. F-A) - read in context

4. **JUDGMENT AND ORDER - PERVERSE DECISION:** Instances where the decision of court would be regarded as perverse

"Invariably, a decision is said to be perverse where it's so obvious on the record that -

(1) It runs brazenly contrary to the evidence adduced at the trial; or

(2) it is duly established that the trial Court took into consideration some matters which it ought not to have done so or turns a blind (shuts it's) eyes to obvious facts; or

(3) it has occasioned a miscarriage of justice.

See EBBA VS. OGODO (1984) 1 SCNLR 372; BUNYAN VS. AKINGBOYE (1999) 7 NWLR (pt. 609) 31; ADEGOKE VS. ADIBI (1992) 5 NWLR (pt. 242) 410."Per SAULAWA, J.C.A. (P. 23, Paras. C-E) - read in context

5. **JUDGMENT AND ORDER - ORDER OF COURT:** Whether the court can make an order against or in favour of a person who is not a party to a suit

"See the case of Ayoade V. Spring Bank (2014) 4 NWLR (part 1396) 93 at 132, (2013) LPELR - 30763 where this Court held:

"it is trite that a Court has no power to make orders either in favour of or against persons who are not parties to an action - Biyu v. Ibrahim (2006) 8 NWLR (part 981) 1 and Nnameka V. Chukwuogor Nig. Ltd. (2007) 5 NWLR (part 1026) 60: The learned trial judge did exactly this in his ruling of 14th July, 2005 when he made an order compelling the occupants of a property, and who are not parties to the suit, to vacate the property immediately and failing which they would be forcefully evicted... The trial Court must be reminded that justice is only meaningful where it is done within the parameters of laid down rules and not based on the whims and caprices of individual judges. The Court room is, not like the kings Court in the traditional African society where the king did as he wantedPer MBABA, J.C.A. (Pp. 17-19, Paras. F-D) - read in context

ITA GEORGE MBABA, J.C.A. (Delivering the Leading Judgment): Appellants filed this Appeal against the Judgment of the Federal High Court, Abuja Division, in Suit No. FHC/ABJ/CS/395/2016, delivered on 29/06/2016. The said judgment of the trial Court was a final judgment, made in favour of the 1st to 9th Respondents, herein (who were the plaintiffs in that suit).

Appellants were not joined as parties by the 1st to 9th Respondents, though the decision affected them. Appellants were therefore, granted leave to appeal against the said decision, as interested parties, on 10/11/2016.

Appellants' Notice of Appeal, filed on 02/11/2016, was deemed duty filed and served, pursuant to the order granting them leave to appeal. They filed their brief of arguments on the 11/11/2016 and served same on the Respondents. Because, the application for departure from the Rules and for accelerated hearing by Appellants, were granted, the Respondents were allowed three days, from the service of the Brief of Appellants, to file their Respondents' briefs.

When the appeal came up for hearing on 16/11/2016, the 1st - 9th Respondents filed no brief but asked

for extension of time, orally, to file their brief and they thereafter filed the brief on 17/11/2016, when the appeal was heard. Appellants adopted their brief, filed on 11 /11 /2016 and urged us to allow the appeal.

Appellant distilled four issues for the determination of the appeal, as follows:

1) Whether the judgment of the lower Court delivered on 29th June, 2016 did not breach the Appellants' right to fair hearing warranting the setting aside of same (Ground 1 and 4).

2) Whether the lower Court was not wrong in granting the reliefs in favour of parties who sued on behalf of State Executive Committees of the PDP and also divested of jurisdiction to adjudicate over the suit before it, (Ground 3, 4, 5, 6 and 7).

3) Whether the entire proceedings before the lower Court is not a nullity. (Ground 8).

4) Whether the lower Court was not without jurisdiction when it adjudicated over the originating summons before it (Ground 9)

The 1st to 9th Respondents, Counsel adopted the issues donated by the Appellants for the determination of the Appeal. He also argued that this Court had lost jurisdiction to hear the appeal,

in view of the facts of the pendency of Appeals at the Supreme Court, challenging the decisions of this Court made on 10/11/2016, allowing the Appellants leave to appeal as interested parties. He relied on Order 8 Rule 11 of the Supreme Court Rules and the cases of Denton West Vs Momoh (2008) 6 NWLR (part 1083) 418, Ogunremi Vs Dada (1962) 1 All NLR (part 4) 663, Okafor Vs Attorney General Anambra State (1991) 6 NWLR (part 2000) 659 (among other cases).

Counsel said there was no appeal to hear, since this Court had lost jurisdiction. He also reiterated that notice of stay of all further proceedings and further hearing of the appeal, pending at the Supreme Court had been brought to the attention of this Court, thus we cannot proceed with the appeal, any further. He relied on Mohammed Vs Hosseini (supra); Mohammed Vs Olawani (1993) 4 NWLR (part 287) 254; Agu Vs Anyagolu (2002) 14 NWLR (part 787) 312 Orusu Vs Onimata (2007) 13 NWLR (part 1052) 487.

He asserted that to hear the appeal would amount to exercise in futility and will also amount to judicial rascality and judicial impertinence; that this Court should not conduct parallel proceedings with the

Supreme Court.

In the alternative, Counsel adopted the brief of 1st to 9th Respondents and asked us to dismiss the appeal.

He also argued that Appellants filed 2 briefs, one on 10/11/2016 and the other on 11/11/2016, that that amounted to abuse of the Court process; that the 2nd process of 11/11/2016 constituted the abuse, having been filed, when the earlier one was still in Court. He also argued that, even when the 1st Brief was withdrawn, the 2nd process still constituted an abuse of the process. He added that with the withdrawal of the first brief and the 2nd constituting an abuse, there was no valid brief by Appellants for this Court to consider, and the appeal was deemed abandoned. Thus, whether from the point of view of this Court lacking jurisdiction, because of the appeals in the Supreme Court, or the absence of Appellants brief, the same conclusion applied, that the appeal be struck out or dismissed. He relied on African Re-Insurance Co. Vs JDP Construction Nig. Ltd (2003) 18 NWLR (part 852) 346 at 430 - 431.

Appellants' counsel, Olanipekun SAN, replying on points of law referred us to paragraph one of the Appellants, brief, where they

expressly abandoned the earlier brief, filed on 10/11/2016 and opted to rely on the brief filed on 11/11/2016, to which the Respondents also based their Brief. He added that the process was not an abuse of the process as it is trite that in such circumstance, the later brief prevails. He relied on Gambo Vs Chukwuji (1997) 10 NWLR (part 526) 591 and Tukur Vs Govt of Gongola State (1989) 4 NWLR (part 117) 517.

Counsel added that Respondents were rather those who filed 2 separated brief signed by two separate lawyers on 16/11/2016 and 17/11/2016 respectively and chided Respondents Counsel with the wise words that "he who lives in a glass house should not throw stones".

Counsel for the 11th Respondent adopted the same position as Counsel for the 1st to 9th Respondents, having filed no brief.

Counsel for the 10th Respondent, Nelson Anih Esq said they filed no brief and had nothing to urge the Court on.

RESOLUTION OF ISSUES

It should be noted that this appeal was heard with the consent of Counsel, together with 1st to 9th Respondents' application (whereof they were applicants) and had prayed for us to remove this appeal from the cause list

and hands off, as they had filed interlocutory appeal at the Supreme Court on 11/10/2016. The Ruling on the said 1st to 9th Respondents' motion was delivered on 18/11/2016, adjourning further action in this Appeal, sine die, pending the decision of the Supreme Court on the interlocutory Appeals. On 22/11/2016, the Supreme Court, ordered us to continue with this appeals and dismissed Respondents' applications, with costs.

I shall hear this appeal on the four Issues donated for the determination of the Appeal by the Appellants. However, I shall take the issue 1, first, which talks about breach of fair hearing, while also taking the issues 2, 3 and 4, together, as they all challenge the jurisdiction of the trial Court to entertain the suit and make the orders it made.

A brief facts of the case at the lower Court shows that 1st to 9th Respondents had dragged INEC and the peoples Democratic Party (PDP) as Defendants, to the Court in FHC/ABJ/CS/395/2016, seeking to be recognized by INEC exclusively as the authentic States Executive leaders of the PDP in the South West Zone of the Country, that is Ekiti, Ondo, Ogun, Osun, Oyo and Lagos States; that the

Court should rule that by being so recognized as the authentic leaders, their term of office will expire in 2018 and they had the exclusive right of the States Executive Committees of the party to nominate and present candidates of the party in the said States, at the 2019 General Elections, as against the faction of the party, led by Senator Ahmed M. Makarfi and Senator Ben Obi (Appellants herein). See page 4 of the Records of Appeal, carrying the reliefs sought in the case.

The trial Court granted those reliefs, sought by 1st- 9th Respondents' originating summons, and entered judgment for them on 29/06/2016.

The Respondents had also made reference to the Appellants herein, in the said suit, when they alleged in paragraphs 32 to 43 of their affidavit, as follows:

"32. That I know as a fact that persons that gathered at the meeting tagged as national convention did not constitute a quorum for the holding of a National Convention of the PDP neither was any voting done (as required for the functioning of the National Convention by Articles 33(6) and (11) of the PDP Constitution) for the appointment of the members of Caretaker Committee

constituted by the said meeting tagged as National Convention.

33. That I also know as a fact that there is no provision in the PDP Constitution that empowers any person to remove all the members of the NEC/NWC and appoint a caretaker committee to usurp their functions. A copy of the PDP Constitution is hereto attached and marked Exhibit AS 13.

34. That I therefore verily believe that the so called national convention, convened by some governors elected on the platform of the PDP and the Caretaker Committee constituted therein are illegal and wilt be rejected by the 1st Defendant not withstanding an exparte order of this Honourable Court made on 23rd of May 2016 in Suit No, FHC//PH/CS/524/2016.

35. That the caretaker committee under the chairmanship of Senator Ahmed Markafi was mandated to hold office for a period of 90 days within which a new election would be held to elect the party's officers.

36. That the subsequent actions of the caretaker committee however show that it intends to continue in its illegality and has no intention of conducting any election for the purpose of electing national officers for the party.

37.

That this is shown by the institution at the behest of the caretaker committee of an action in the name of PDP in Suit No. FHC/PH/CS/524/2016 wherein the Port-Harcourt Judicial Division of this honourable Court per Hon. Justice Liman granted interim Orders recognizing the as an authentic organ of the PDP to conduct conferences in 2019...

38. ...

39. That the caretaker committee in continuation of their illegality is now attempting to disrupt some of the legitimate structures of the party across the country especially in the South West in order to satisfy some Governors elected on the platform of the party who were instrumental to their emergence as caretaker committee.

40. That the caretaker committee have thus concluded plans to recognize the parallel executive officers set up by persons who did not participate in the State congresses conducted on the 10th of May, 2016 in Ekiti, Ondo, Ogun, Osun, Oyo and Lagos States, notwithstanding the aforesaid orders of this court and the express recognition of the authentic state Excos by the National Working Committee of the Party as aforesaid.

41. That the caretaker committee has also

resolved to accept and recognize the illegal South West zonal Exco ... and completely ignored ... The legitimate South West zonal Exco which has been duty recognized by the party.

42. That the above is in line with what the caretaker committee did in Adamawa State where they initially recognized an illegal Executive Committee before being prevailed upon to reverse that decision. A copy of the letters dated 31st of May, 2016 issued under the hand of Senators Mohammed Makarfi and Ben Obi, the chairman secretary respectively of the caretaker committee is attached and marked as Exhibit AS 16.

43. That I verily believe that the caretaker committee has no right to disrupt the legitimate structures of the party or to nullity actions which have been taken by the National working Committee of the Party"....

See pages 12 - 13 of the Records

Of course, Appellants say they were not joined in the above case and they were not aware of it, until 20/09/2016. The Appellants say they are the leaders of the Party (PDP), led by Senator Ahmed M. Makarfi, as the National care taker committee Chairman of the part; thus, when the lower Court ruled on

29/06/2016 in the suit, their interest were affected, whereas they were not heard.

It is interesting to note that throughout the suit that resulted in the judgment of the lower Court on 29/06/2016, the trial Court did not advert its mind to Appellants, while also pronouncing against them

Was the Appellants' right of fair hearing breached and compromised when the lower Court entertained the originating summons by the 1st to 9th Respondents to give exclusive recognition to recognize the 1st - 9th Respondents, as against the Appellants and those they represented (who were not joined in the suit), though clearly mentioned and targeted in the suit?

Appellants' counsel had argued that that was done in gross violation of Appellants' Constitutional rights, as stipulated in Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, and I, completely, agree with him. The lower Court had no vires to entertain the Respondents' case and to grant the reliefs sought, when it was so glaring that the person(s) they (1st to 9th Respondents) named or referred in their claims and affidavit, and had wanted the lower Court to rule

against, were not joined in the Suit. See again paragraphs 32 to 43 of the affidavit in support of the originating summons.

I think a little carefulness and reflection, on the part of the lower Court, would have suggested to it the need for it to order the 1st - 9th Respondents (Plaintiffs in the suit) to put the said person(s) who had claimed rival right to the leadership of the party, as National caretaker committee of the party, so that the Court could also hear them, before making the offensive orders on 29/06/2016.

Section 36(1) of the Constitution forbids a court to make order that affects the interest of a person, without hearing him or giving him opportunity to be heard. The right of fair hearing forms the "soul" of any judicial decision/order of Court, and where one has not been heard or given opportunity to be heard, the decision is a complete nullity and cannot be enforced against the party, having not been heard. Authorities on this are replete.

Egbuchu Vs Continental Merchant Bank Plc & Ors (2016) LPELR - 40053 (SC); Adeleke vs Raji (2002) 13 NWLR (part 783)142, Okadigbo Vs Chidi (No. 1) (2015) 10 NWLR (part 1466) 171 at 197 -

198, Adigun Vs Attorney General of Oyo State & Ors (1987) 1 NWLR (part 53) 674 at 707, Garba Vs UNIMAID (1986) 1 NSCC 255.

In that case of Okadigbo vs Chidi (No. 1) (supra) my Lord, Onnoghen JSC, (now Ag. CJN) said:

"Before concluding this judgment, it is very important to note that this judgment is hinged on the breach of the constitutional provisions of Section 36(1) of the constitution of the Federal Republic of Nigeria, 1999, as amended, particularly, the right to fair hearing. It has nothing to do with the issue as to whether the nomination exercise of the appellant conducted by the Anambra State Executive Committee of the PDP is valid, legal and binding, as against the nomination of the plaintiffs in the suit which was conducted by the National Executive Committee of the said PDP. That issue has been decided in a number of cases by this Court and has thus become trite. The only valid nomination of the party for any election is the one conducted by the National Executive Committee not by the State Executive Committee. However, before the Court can legally come to a conclusion as to which of the two primaries nominations is valid all the

parties necessary for the determination must be joined in the suit and heard by the Court.

Where there is a failure to hear all the necessary parties to the dispute before a decision is reached, there is a breach of Section 36(1) of the 1999 Constitution, as amended, which has the effect of automatically rendering the proceedings in the action and the judgment or ruling resulting there from a nullity, and void without any legal effect. It is unfortunate that appellants have taken advantage of the judicial process which they exploited. It is against good conscience but the law must prevail, particularly, where the issue involves the constitutionally guaranteed fundamental right of fair hearing in the determination of the rights and/or obligations of any person".

With such profound recent decision of the apex Court, on the Issue of fair hearing, which only re-affirms what is already known, and expected to be common knowledge of every counsel/judge, the decision of the learned lower Court on appeal, and the contention of Respondents' Counsel, in defence of same, in my view, are, absolutely, indefensible, and made in bad faith.In Awoniyi Vs

Registered Trustees of Amorc (2000) 10 NWLR (part 676) 522 at 533, the Supreme Court per Mohammed JSC held at paragraph G - H, thus:

"... The first error is the failure of the applicant to make both the Registrar general of the Corporate Affairs commission and the Inspector General of Police parties to the applicant's motion. It is trite that parties against whom complaints are made in an action must be made parties to such action. See Uzor v. Nigerian Store workers union (1973) 9 - 10 SC 35. It is an elementary procedure in prosecuting civil claims that all necessary parties for the invocation of the judicial powers of the Court must come before it so as to invoke the Court jurisdiction to grant the reliefs sought". (Emphasis ours).

See also Okonta V. Philips (2010) 18 NWLR (part 1225) 320 at 320 where it was decided that.

"A Court has no jurisdiction to make an order which affects the interest of a person who has not been joined as a party"

In making the above point with force, the Supreme Court, per Mukhtar JSC in the case of G & T. Invest, Ltd. Vs Witt & Bush Ltd. (2011) 8 NWLR (part 1250) 500 at 531 - 532 H - B

held thus:

"I take solace in the above principle of law and hold that the learned trial judge was incompetent to decide on the suit, and in consequence the Court of Appeal did not err when it found thus: 'The consequence is that the action is not properly constituted for want of proper parties. In the situation as found there, there is no way the trial Court could have competently dealt with the matter in controversy, that is, as regards the rights and interests of parties when the proper parties are even before the Court".

In the same G. & T's case, the Supreme Court per Adekeye JSC went further to hold at 538 F -A that:

"It is trite law that for a Court to be competent and have jurisdiction over a matter, proper parties must be identified. Before an action can succeed, the parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction to hear the suit. Best Vision Centre Limited V. U. A. C. N. P. D. C Plc (2003) 13 NWLR (part 838) page 594; Ideme V. Anakwe (2000) 8 NWLR (part 669) page

484; Peenok Limited Vs Hotel Presidential (1983) 4 NCLR page 122; Ehidimhen Vs Musa (2000) 8 NWLR (part 669) page 540. Moreover, where a Court purports to exercise jurisdiction which it does not have, the proceedings before it and its judgment will amount to a nullity no matter how well decided. Araka V. Ejeagwu (2000) 12 SC (part 1) page 99 (2000) 15 NWLR (part 692) 684; Madukolu V. Nkemdilim (1962) 2 SCNLR page 341.

I therefore resolve the issue 1, in favour of the appellants.

On whether the learned trial Court had jurisdiction to grant the reliefs sought by the 1st to 9th Respondents (as plaintiffs) when the Appellants were not joined as parties to the suit, and the claims were beyond the Respondents, as alleged States Executives, of the party in the States Appellants answered in the negative. And on whether the entire proceedings were not a nullity and the Court was not without jurisdiction to hear the suit, Appellants answered in the affirmative.

See the case of Ayoade V. Spring Bank (2014) 4 NWLR (part 1396) 93 at 132, (2013) LPELR - 30763 where this Court held:

"it is trite that a Court has no power to make orders either in favour of

or against persons who are not parties to an action - Biyu v. Ibrahim (2006) 8 NWLR (part 981) 1 and Nnameka V. Chukwuogor Nig. Ltd. (2007) 5 NWLR (part 1026) 60: The learned trial judge did exactly this in his ruling of 14th July, 2005 when he made an order compelling the occupants of a property, and who are not parties to the suit, to vacate the property immediately and failing which they would be forcefully evicted... The trial Court must be reminded that justice is only meaningful where it is done within the parameters of laid down rules and not based on the whims and caprices of individual judges. The Court room is, not like the kings Court in the traditional African society where the king did as he wanted".

It was further held in that case of Ayoade Vs Spring Bank (supra) that:

"A Court decision must be founded on law and evidence before the Court an in keeping with sound legal principles and tradition. It is not at the whims and caprices of the judge, as per the waves of his brain and feeling. See Ogolo v. Ogolo (2003) LPELR - 2309 (SC)".

The same principle also applies, to vitiate an order of Court made to operate against a

person not joined as a party to a suit and who is not privy to an action. See again Ayoade V. Spring Bank (supra), where we held:

"One of the cardinal requirements of law, to imbue a court with jurisdiction to hear a case, is that the parties/persons to be affected by its decision must be duly summoned/served with the process of court and given opportunities to be heard/defend themselves. That is an inalienable constitutional right of every person. See Section 36(1) (3) (6) of the 1999 Constitution as amended. See the case of SLB Consortium Ltd v. NNPC (2011) 9 NWLR (part 1252) 317; British American Tobacco Nig. Ltd Vs Int'l Tobacco Co. Plc (2012) 39 WRN 60, (2013) 2 NWLR (part 1339) 3493". See also IBWA V. Kenedy Trans. Nig Ltd (supra) Green Vs Green (1987) 13 NWLR (part 61) 481.

To that extent, the entire process, filed by 1st to 9th Respondents on 07/06/2016, which resulted in the decision of 29/06/2016 was, in my view, a fraud, and as was intended to defraud the Appellants and those they represented, as it appeared to have been arranged by the same parties, who merely divided themselves into plaintiffs and defendants, but pursuing the same goal.

See our earlier Ruling of 10/11/2016 in the application: CA/A/551/M/2016 on what constitutes abuse of the process. Saraki V. Kotoye (1992) NWLR (part 264) 369; Salihu & Ors V. RTEAN & Ors (2013) LPELR - 21820 (CA) and Ojoejeofor V. Ojoejeofor (2006) 3 NWLR (part 966) 205.

The 1st to 9th Respondents (in the suit) therefore did not have proper cause of action as there was no dispute between the parties to the suit who were in league to achieve the same result and the trial Court appeared to be a willing partner to attain the ignoble goal. See Okelue V. Medukam (2011) 2 NWLR (part 1230) 176, Ude Vs Nwangwu (1995) 8 NWLR (part 416) 644 at 653; Okeahialam V. Nwamara (2003) 12 NWLR (part 835) 597 at 614 and Ellis Vs Kerr (1910 1 Ch. 529.

We have also stated that the reliefs sought, to be exclusive officers to nominate candidate for election was beyond the plaintiffs. See the case of Okadigbo V. Chidi (supra).

I think the trial Court fell into grave error, both by entertaining the originating summons, which resulted in the judgment of 29/06/2016, when the proponents had targeted, by that suit, Appellants and those expressly stated to be led by

Senator Ahmed Mohammed Makarfi as Chairman of PDP National Caretaker Committee, but were not Joined as parties to the suit.

In that suit (originating processes) above, 1st to 9th Respondents had set out to stop their rival faction of the Peoples Democratic Party (PDP) led by Senator Ahmed Makarfi and Senator Ben Obi (of the National Caretaker Committee) from asserting influence over the Executive Committee members of the Party in the South West States or nominating and fielding Governorship candidate for the PDP in the States Governorship Election in 2019. Common sense and the dictates of justice required that such persons should have been joined to defend the Suit, before any order could be made to bind them.

I therefore resolve the issues 2, 3 and 4 for the Appellants too.

I see merit in this Appeal and, accordingly, allow it. I set aside the judgment of the lower Court in FHC/ABJ/CS/395/2016 delivered on 29/06/2016, having been reached in the absence of Appellants, in gross violation of Appellants right of fair hearing and without jurisdiction.

I award N100,000.00 cost to the Appellants against the 1st to 9th Respondents.

IBRAHIM MOHAMMED MUSA SAULAWA, J.C.A.: The instant appeal is a sister to appeal No. CA/A/551^{c}/2016, the leading judgment of which was prepared and delivered by me this afternoon allowing the appeal.

Having read, before now the judgment just delivered by my learned brother, ITA GEORGE MBABA, JCA, I am in complete concurrence with the reasoning and conclusion reached therein, to the effect that the instant appeal is meritorious, thus ought to be allowed. I adopt the reasoning and conclusion in question as mine, and accordingly allow the appeal and set aside the judgment of the Federal High Court, Abuja Judicial Division, delivered by Abang, J in Suit No: FHC/ABJ/CS/395/2016 on 29th June, 2016. I abide by the order of costs of N100,000.00 granted in favour of the Appellants, against the 1st – 9th Respondents.

Most undoubtedly, as aptly found by my learned brother, **ITA GEORGE MBABA, JCA** at page 16 lines 9 - 16 of the leading Judgment, the judgment of the Federal High Court, Abuja Judicial Division, coram Abang, J; on 29th June 2016 (which unfortunately happened to be my birthday) was a fraud, diabolical contraption and perverse. It is so obvious from

the records of appeal, as effectively found in the leading judgment that the Appellants' fundamental right to fair hearing has been wantonly and violently trampled upon and breached. That breach and denial of fundamental right to fair hearing as cherishingly enshrined in Section 36 (i) of the 1999 Constitution, as amended completely and irredeemably renders the said judgment perverse a nullity, and liable to be set aside by this Court.

Invariably, a decision is said to be perverse where it's so obvious on the record that -

(1) It runs brazenly contrary to the evidence adduced at the trial; or

(2) it is duly established that the trial Court took into consideration some matters which it ought not to have done so or turns a blind (shuts it's) eyes to obvious facts; or

(3) it has occasioned a miscarriage of justice.

See EBBA VS. OGODO (1984) 1 SCNLR 372; BUNYAN VS. AKINGBOYE (1999) 7 NWLR (pt. 609) 31; ADEGOKE VS. ADIBI (1992) 5 NWLR (pt. 242) 410.

Even on that point alone, it should be re reiterated that, this Court has an onerous duty, constitutionally and inherently, to ensure that such a contraption as fraudulently depicted in

the vexed judgment did not see the light of the day. Indeed, to set it aside, we must!

Instructively, implicit in the judicial oath subscribed to by all of us judicial officers, fundamentally requires a total commitment to the rule of law, to the dispensation of justice according to law, without fear and favour, affection of ill-will, honestly, faithfully, and according to the Constitution and the laws made pursuant thereto. Such a judicial oath equally demands that a judicial officer should not allow himself to be influenced by any extraneous or subterranean consideration whatsoever. As aptly postulated by the Hon. Justice M. M. A. Akanbi, (PCA Emeritus):

Let me say that while a Judge with little or no adequate knowledge of law, may be considered a nuisance, and his lack of understanding and appreciation of the law may constitute an obstacle in the path of justice, yet he is still, more tolerable than a CORRUPT JUDGE. For a corrupt judge is not only a dangerous obstacle, he is an anathema and a DISGRACE to the profession or the institution which he does not deserve to belong.

See MMA AKANBI (PCA Emeritus): THE JUDICIARY AND THE CHALLENGES OF

JUSTICE, 1996 @ 36.

Hence, without any further hesitation, I hereby whole heartedly join my learned brother, ITA GEORGE MBABA, JCA, in upholding this appeal, and setting aside the judgment of the Court below delivered on 29/06/2016 by Abang, J. in suit No: FHC/ABJ/CS/395/2016.

IGNATIUS IGWE AGUBE, J.C.A.: I had the privilege of reading the Lead Judgment of my Learned Brother, I. G. MBABA, JCA, and I am in total agreement with his reasoning and conclusions on all the issues formulated and determined. I have nothing more to add than to accept that judgment as mine. I also agree with my Lord that there is ample merit in the Appeal which I hereby allow and set aside the decision of the Learned Trial Judge for all the reasons advanced in the Lead Judgment. I also abide by the Order as to cost.