IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY, THE 29TH DAY OF JULY, 2013
BEFORE HIS LORDSHIP, THE HON. JUSTICE G.O. KOLAWOLE
JUDGE

SUIT NO. FHC/ABJ/CS/800/2012

BETWEEN:

1. **FRESH DEMOCRATIC PARTY**
2. **REV. CHRISTOPHER OKOTIE**
3. **ADEFELA BINUTU**

PLAINTIFFS

A N D

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**
2. **A.G. OF THE FEDERATION**
3. **THE NATIONAL ASSEMBLY**
4. **INSPECTOR GENERAL OF POLICE**

DEFENDANTS

JUDGMENT

By an Originating Summons dated 10/12/12 and filed on 11/12/12, the Plaintiffs herein commenced the instant action against the Defendants and being an Originating Summons, the Plaintiffs set down five (5) questions/issues for determination by the Court. These are:

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date.....
Fatima Abdulkadir
SEO(GD)

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FEDERAL HIGH COURT
ABUJA
CASHIER
Signature.....
Date.....

(a) *"Whether the purported de-regulation is not wholly violative of the very underlying constitutional philosophy as loudly proclaimed in the preamble to the 1999 Constitution as it relates to good governance, welfare of all persons freedom, equality, justice and above all, the principles of democracy/franchise and social justice as envisaged in Sections 14, 15 (20 & 3 (d) and 17 (10 of the Constitution of the Federal Republic of Nigeria 1999?"*

(b) *"Whether the 1st Defendant, Independent National Electoral Commission (INEC) established under Section 153 of the Constitution of the Federal Republic of Nigeria, 1999 is bound to observe the conditions stipulated under Sections 221-229 of the Constitution of the Federal Republic of Nigeria, 1999 relating to RESTRICTION ON FORMATION OF POLITICAL PARTIES."*

(c) *"Whether the 1st Defendant, Independent National Electoral Commission (INEC) in the exercise of the powers conferred on it under Section 153 of the Constitution of the Federal Republic of Nigeria, 1999 can enlarge, curtail or amend the provisions stipulated under Sections 221-229 of the Constitution of the Federal Republic of Nigeria, 1999."*

(d) *"Whether 1st Defendant, Independent National Electoral Commission (INEC)'s letter dated the 6th of December, 2012, addressed to the Chairman of the 1st Plaintiff, purportedly de-registering the 1st Plaintiff is valid and legitimate in view of the provisions of Sections 221-229 of the Constitution of the Federal Republic of Nigeria, 1999."*

(e) *"Whether the 3rd Defendant, the National Assembly is competent to enact Section 78(7)(ii) of the Electoral Act, 2010 in relation to de-registration of political parties when the Constitutions of the Federal Republic of Nigeria has made provisions covering the field in the area."*

Depending on such answers as the Court may give to each of these questions/issues, the Plaintiffs, in anticipation of a favourable judicial determination thereof, seek nine reliefs. These are as pleaded on the face of the Originating Summons and read thus:

1. *"**A DECLARATION** that the 1st Plaintiff has satisfied all the conditions and requirement of a political party as stipulated under the Constitution of the Federal Republic of Nigeria and under the Electoral Act, 2010 and therefore is an EXTANT POLITICAL PARTY in Nigeria."*

2. *"**A DECLARATION** that the 1st Defendant, Independent National Electoral Commission cannot de-register the Plaintiffs' party except in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999."*

3. *"**A DECLARATION** that Section 78(7)(ii) of the Electoral Act, 2010 is unconstitutional, invalid, null and void to the extent that it offends the provisions of Section 40 and Sections 221-229 of the Constitution of the Federal Republic of Nigeria, 1999."*

4. *"**A DECLARATION** that the purported reliance on Section 78(7)(ii) of the Electoral (Amendment) Act, 2010 by the 1st Defendant in de-registering the 1st Plaintiff without hearing the aforesaid political party is wholly violative of Sections 36, 38 and 40, Sections 221-222 of the Constitution of the Federal Republic of Nigeria 1999 and Paragraph 15 of 3rd Schedule (Part 1) of the Constitution of the Federal Republic of Nigeria, 1999."*

5. *"**AN ORDER** nullifying the so-called re-registration as announced by the 1st Defendant on Thursday, 5th December, 2012 and conveyed in the 1st Defendant's letter dated 6th December, 2012 purportedly de-registering the 1st Plaintiff as*

same is illegal, unconstitutional and wholly violative of democratic tenets and the principle of electoral/political franchise."

6. *"**AN ORDER** directing the 1st Defendant to restore the 1st Plaintiff as a political party in Nigeria as well as directing the 1st Defendant, its agents, officers, assigns and or privies to continue to recognize the 1st Plaintiff as a Political Party in Nigeria."*

7. *"**AN ORDER** of Interlocutory Injunction restraining the Defendants from attempting to implement or implementing and enforcing the so-called de-registration pronouncement of the Defendants against the 1st Plaintiff."*

8. *"**A FURTHER ORDER** restraining the Defendants from taking any steps toward enforcing the purported de-regulation as it relates to the offices, properties and assets of the Plaintiffs."*

9. *"GENERAL DAMAGES in the sum of N10,000,000.00 (Ten million Naira) only.*

The said Originating Summons was supported by a 45 paragraph Affidavit deposed to by one Chizoba Ebele Onu, who in paragraph 1 of the Affidavit describes herself as the "*Vice Chairman, South East of the 1st Plaintiff*". The Plaintiffs have also reproduced

seven (7) Exhibits which were attached to the said Originating Summons. They were marked as Exhibits "FB1" – "FB7" respectively. The exhibits, curiously, are attached to the written address filed in support of the Originating Summons. Is this a proper arrangement of Court's processes? Is it the written address that brought in the exhibits or the Affidavit? I really don't know why most Counsel often attached their exhibits to the written address filed in support of their Originating Summons or applications. When one reads the Affidavit, I am of the view that the natural, perhaps logical thing to do is to read the contents of documentary exhibits as each of them features in the Affidavit evidence. A situation where what follows the Affidavit is a written address and then, the exhibits is in my view, a *clumsy* way of presenting a case to the Court. The address is meant to argue both the issues of facts in the Affidavit as well as or vis-à-vis the contents of the documentary exhibits and it is in this regard that it makes better sense to have the exhibits attached to the Affidavit which is the process by which they are brought into the proceedings. Exhibit "FB1" is the 1st Plaintiff's "*Certificate of Registration*" as a Political Party. It was issued and dated on 22/3/06; Exhibit "FB-2" is a copy of the 1st Defendant's letter dated 6/12/12 addressed to the 1st Plaintiff and titled: "*DE-REGISTRATION OF FRESH DEMCRATIC PARTY (FDP)*" – This appears to be the "*cause of action*" of the Plaintiffs in this proceeding. Exhibit "FB3" is a list or roaster of names of persons the deponent to the Affidavit filed in support of the Originating Summons described as "*the list of some 1st Plaintiff's members in*

some States in Nigeria". Exhibit "FB4" is an original copy of the 1st Plaintiff's Constitution, while Exhibit "FB5" is the 1st Plaintiff's letter dated 30/8/10 addressed to the 1st Defendant. It's titled: "*NOTIFICATION ON NATIONAL CONVENTION OF FRESH DEMOCRATIC PARTY (FDP).*" The next Exhibit was listed as "FB7" instead of "FB6". Exhibit "FB7" is an original copy of the 1st Plaintiff's "*manifesto*".

The Plaintiffs, through the same deponent, one Chizoba Ebele Onu also deposed to a "Further Affidavit in Support of the Originating Summons". This was a 19 paragraphed "Further Affidavit". The said "Further Affidavit" was used to bring in a copy of a newspaper publication, i.e. Punch of 13/12/12 and it was attached as Exhibit "CEO-1" to the said "Further Affidavit". The deponent also attached Exhibit "CEO-2" – being a "*List of National Executive Members of Fresh Democratic Party*".

The Column 2 of Exhibit "CEO-1" states the "*reasons*" why the 1st Plaintiff was de-registered. It states: "*Composition of NEC fails to meet the requirements of Section 223(1) and (2) of the Constitution of Federal Republic of Nigeria, 1999*"; and (ii) "*Has not won a seat in the National or State Assemblies.*" It is instructive to note at this stage, against one of the reliefs being claimed by the Plaintiffs, that the deponent on the said allegations in Column 2 of Exhibit "CEO-1", deposed in paragraph 6 of the "Further Affidavit" that: "*the Plaintiffs deny the allegations contained in the said publication and further say that at no time were they heard before the purported de-registration*". This was

In the event that the objection succeeds, the 3rd Defendant seeks for "*an order dismissing/striking out this suit and the Motion on Notice against the 3rd Defendant*".

The Motion on Notice which the 3rd Defendant refers was a Motion on Notice dated 19/12/12 which the Plaintiffs' Counsel had filed in order to seek certain orders of Interlocutory Injunction against the Defendants. The said Motion on Notice was later put aside in order that the parties can face squarely, the substantive suit.

As is the case with most Counsel, the said "Notice of Preliminary Objection" was curiously supported by a 25 odd paragraph Affidavit of one Charles Yoila. My understanding of the rules of practice and procedure is that when the provisions of Order 26 Rule 3 of the **Federal High Court (Civil Procedure) Rules, 2009** are read, it is only in respect of a Motion on Notice that an Applicant is required to file a supporting Affidavit whereas, by the provision of Order 29 of the same Rules, when a Defendant to a civil suit such as this is "*disputing the Court's jurisdiction*", such "Notice of Preliminary Objection" is required, not to be supported by an Affidavit but to state the grounds of the objection and it is to be argued on the facts of the Plaintiffs' suit as presented, where a Statement of Claim is filed, on the pleaded facts and in a matter commenced by way of "Originating Summons" as in this instance, on the Affidavit filed in its support which serves as the pleading although as Affidavit, it is already a form of evidence that needs no further prove. An Applicant who files a "Notice of Preliminary

Objection" is in law, deemed to have accepted the facts of the Plaintiffs' suit as presented, but insists that the Court nevertheless does not have jurisdiction to entertain same as such "Notice of Preliminary Objection" is required to be argued based on the case of the Plaintiffs as presented in the originating processes. A Defendant whose "Notice of Preliminary Objection" requires to be proved by an Affidavit evidence has clearly made such objection to have lost an essential quality of being a "*Preliminary Objection*". The Supreme Court, per the Hon. Justice Niki Tobi, JSC (Rtd.) said this much in its decision in **A.G. OF THE FEDERATION & ANOR. v. ANPP (2003) 18 NWLR (pt.851) S.C. 182 @ 207B-D** and also, by the Court of Appeal in **AKINBI v. MIL. GOV. OF ONDO STATE (1990) 3 NWLR (pt.140) C.A. 525 @ 531.** But in view of the fact that the Plaintiffs' Counsel may not have adverted his attention to this procedural irregularity, it is deemed to have been waived and the Court is bound to consider the contents of the said Affidavit. The *rationale* for the judicial position on this is informed by the fact that a "Notice of Preliminary Objection" is essentially one that is predicated on pure issues of law and not facts even though, the applicable law may be with reference to the facts as presented by the Plaintiff in his originating processes.

When the Plaintiffs were served with the 3rd Defendant's "Notice of Preliminary Objection", they responded by filing a Counter-Affidavit. It was deposed to by the same deponent, i.e. Chizoba Ebele Onu. The Counter-Affidavit runs into 11 paragraphs.

Let me quickly make two remarks by way of *obiter* with regard to the 3rd Defendant's "Preliminary Objection". Firstly, when I read through the written address filed to argue the said objection, I asked myself if all of the issues raised and canvassed in the context of the four (4) grounds of the objection are such that cannot be effectively argued without the need to file an Affidavit. I say this, because a "Preliminary objection" is a process by which the Objector is deemed to have accepted the facts as presented by the Plaintiffs. By this, a "Preliminary Objection" must be argued based solely on the Plaintiffs' facts and it is not within the right of an Objector, to bring in fresh facts with which to support its objection. All the issues which the 3rd Defendant's Counsel has canvassed in the written address filed are such as he could have, by one single sentence in his "Notice of Preliminary Objection", covered, i.e. that the 3rd Defendant shall at the hearing of the "Notice of Preliminary Objection" rely on the "Originating Summons" and other processes filed by the Plaintiffs. Once he has done this, there will be no need to bring in any Affidavit and begin to depose to facts which may, *ex facie* have already become evident from the Plaintiffs' processes. But, conversely where it is argued that the 2nd and 3rd Plaintiffs have no legal authority to institute the action, being an allegation raised by the 3rd Defendant, it is for the 3rd Defendant to prove it. This is elementary principle of evidence and procedure that *he who asserts must prove.* The 2nd and 3rd Plaintiffs cannot be required to prove what they have not alleged.

The second issue is that when I read through the address filed in support of the "Notice of Preliminary Objection, I am not oblivious of the questions which the Plaintiffs have set down for determination in their "Originating Summons" and of the reliefs being sought in the event that the questions are eventually favourably resolved in the way and manner as would make the reliefs claimed by the Plaintiffs grantable. The *fulcrum* of the Plaintiffs' "*cause of action*" is really by my assessment, only in two (2) prongs: Firstly, it is to challenge the constitutionality of the provision of Section 78(7)(ii) of the **Electoral Act, 2010 As Amended** which was the instrument upon which Exhibit "FB2" – i.e. the 1st Defendant's letter dated 6/12/12 addressed to the 1st Plaintiff by which the 1st Defendant conveyed its decision to the 1st Plaintiff that it has been deregistered as a political party in Nigeria. Secondly, is the issue that the 1st Plaintiff was not heard before the said decision was conveyed to it by the 1st Defendant's letter attached as Exhibit "FB2" to the "Originating Summons". When I read through the 3rd Defendant's address filed in support of its "Notice of Preliminary Objection" vis-à-vis the ground that the Plaintiffs' suit has not disclosed any "*cause of action*" against it, I paused to reflect on a legal proposition arising from this ground that where a suit challenges the constitutionality of an Act or some of the provisions of an Act as in this instance, is it necessary that the National Assembly be joined whether as a *necessary, desirable* or *proper* party in the context of the judicial definitions of parties as were well elucidated by the Supreme

Court in its seminal decision in **GREEN v. GREEN (1987) 3 NWLR (pt.61) 480**.

Without taking any position yet, let me venture to express my general understanding of the proper legal position. Whether the Act or any of its provisions in question is or are constitutional, is a duty squarely placed within the *interpretative* jurisdiction of the Court as its primary constitutional role and as the "*guardian of the constitution*". It is to enable it to effectively discharge that duty that the drafters of the **Constitution of the Federal Republic of Nigeria (CFRN), 1999 As Amended** have specifically by Section 4(8) of the Constitution, forbid the National Assembly from making any law that will *oust* the jurisdiction of the Courts to review any of its laws.

The National Assembly being joined as a party to such suit, in my view, has no role to play in terms of defending the constitutionality of its own Act which it has duly passed in the performance of its constitutional duty as provided in Section 4(1)(2), (3) and (4) of the **CFRN, 1999 As Amended**. My view is, and I say this without prejudice even at this stage of the Judgment to the reply of the Plaintiffs to the 3rd Defendant's "Notice of Preliminary Objection" on this ground, that joining the 3rd Defendant as a party with regard to such questions and reliefs being sought by the Plaintiffs may be *absolutely uncalled* for. I have advisedly used the word "*uncalled*" for instead of "*unnecessary*", so that my views are not trapped in the context of the categorization of parties, (i.e. "necessary party") by the apex

Court in its decision in **GREEN v. GREEN** supra. which I had just alluded to. I am of the view that where a suit challenges the constitutionality of an Act of the National Assembly, it suffices to sue the Attorney-General of the Federation who is by virtue of the provision of Section 150(1) of the **CFRN, 1999 As Amended**, is "*the Chief Law Officer of the Federation*" and doubles, if I may say so, as the "*Chief Legal Adviser*" to the Government of the Federation. By reason of the 3rd Defendant's Counsel's misconception of the rules of procedure when he filed an Affidavit in support of a "Notice of Preliminary Objection", he has invariably opened a flank and thereby created a legitimate opportunity for the Plaintiffs to react by filing a Counter-affidavit. The moment a "Notice of Preliminary Objection" is getting *mired* in a *web* or *maze* of Affidavit and Counter-Affidavit, it is gradually loosing the real ingredients of a "Preliminary Objection". See Niki Tobi, JSC (Rtd.) in **A.G. OF FEDERATION v. A.N.P.P.** supra.

When the 3rd Defendant's Counsel was served with the Plaintiffs' Counter-Affidavit, he filed the "3rd Defendant/Applicant's Reply on Points of Law". Its dated 21/1/13. The said address essentially dealt with the Plaintiffs' Counsel's argument on the alleged defect of the "Affidavit and Further Affidavit filed in Support of the Originating Summons". When I read all of these, my view is that it will be sheer waste of precious judicial time and resources for the Court to begin to analyze issues bordering on a defective Affidavit and Further Affidavit and leaving in the side, a more weighty and fundamental issue as to the substance of the Plaintiffs' case on the alleged unconstitutionality of certain

provisions of the **Electoral Act, 2010 (As Amended in 2011)**. While I share the sentiments of the 3rd Defendant's Counsel that it is legitimate for a Defendant in a civil action, to raise and canvass as many issues and as it can in order to defeat the Plaintiffs' suit, my view, in the few years I have spent on the Bench, is that I should remain focused on the substance of the case rather than indulge my time and energy on such issues as to whether or not, an Affidavit or Further Affidavit filed is defective. It may be a material issue, notwithstanding the provision of Section 113 of the **Evidence Act, 2011** (which the Plaintiffs' Counsel has rendered as Sections 84 and 85 which are the applicable provisions in the old **Evidence Act**, Cap.E14, LFN 2004 which has been repealed) where such defect is so fundamental that may have *misled* the Defendant or where to ignore such defect(s) may occasion a *miscarriage of justice*. The Affidavit and Further-Affidavit having been duly sworn before the Federal High Court's Commissioner for Oaths and who signed it notwithstanding that the format prescribed by Section 13 of the **Oaths Act** as sets out in the **First Schedule of the Act** was not followed, is in my view, an issue of mere procedural irregularity which is not substantial and the 3rd Defendant, from all I have read so far, was not *misled* by the said defect. It will be idle for this Court to be *technical* on this issue and therefore strike out the "Affidavit" and "Further-Affidavit" by leaving a more radical issue of the *vires* of the 3rd Defendant to enact the provision of Section 78(7)(ii) of the **Electoral Act, 2010 As Amended** on the strength of which the 1st Defendant

exercised the statutory powers conferred on it by the said provision and issued Exhibit "FB2" to de-register the 1st Plaintiff.

The word "*de-register*" came into Nigeria's electoral lexicon through the **Electoral Act**, supra. I have searched through the Constitution, in particular, in its Sections 222-229 of the **CFRN, 1999 As Amended** as well as in **Part I of its 3rd Schedule** and in particular, Sections 14 and 15 thereof, and I have not been able to lay my eyes on this same word. Perhaps, when I come to consider the arguments of both parties on the merit, I will be able to see how, in the context of the provisions of the Constitution, the word "*de-register*" came to be used in Section 78(7)(ii) of the **Electoral Act.** I have said this because, from a few of the cases, some of which both parties through their Counsel have forwarded to me, what I have seen in relation to the *proviso* to Section 40 of the **CFRN, 1999 As Amended** in this regard is "*with respect to political parties to which the commission does not accord recognition*". I have been tasking my thoughts on whether this phrase is the same as to "*de-registering*". Let me quickly take the liberty of veering into this issue by expressing my view by way of *obiter* that, the 1st Defendant may not accord recognition to a political party where the party, for instance no longer satisfies the basic requirements prescribed by the Constitution for its registration without necessarily "*de-registering*" such a party. By this, I seem to have a feeling that there is a world of difference, applying the literal rule of statutory interpretation by merely construing the grammar with which the phrase is couched between when the 1st Defendant "*does not accord recognition*" to

a political party and when it decides to "*de-register*" the party. A party to whom the 1st Defendant "*does not accord recognition*" or to use the flip side of the same phrase, has *withheld its recognition* from does not *ipso facto*, in my view and in the context of the wordings of Section 40 of the **CFRN, 1999 As Amended**, supra. ceased to be a "political party". The legal effect of a decision by the 1st Defendant "*not to accord recognition*" to a political party is that, the 1st Defendant will no longer reckon with such a political party in terms of its constitutional duties as stipulated in Section 15(a); (b); (c); (d) and (f) of **Part 1 of the 3rd Schedule to the CFRN, 1999 As Amended**. The underlying assumption of the *proviso* to Section 40 of the Constitution is that such political party has already been registered as a political party in accordance with the powers of the 1st Defendant as prescribed in Section 15(b) of **Part 1 of the 3rd Schedule of the Constitution**. So, where the 1st Defendant "*does not accord recognition*" to a political party or has *withheld recognition* to a political party, that party in my view, still retains its *juristic personality* as conferred on it by Section 80 of the **Electoral Act**, supra. upon its registration, but will be unable to participate in the electoral processes organized and supervised by the 1st Defendant. But when a political party is "*de-registered*", it seems that the implication is that its name is struck out of the list of registered political parties. Does this affect its *juristic personality* as a corporate body or not? This is the crux of the issue one argued by the 3rd Defendant to say that the 1st Plaintiff lacks *locus standi* to institute this action. Its' an issue which I will

have to resolve later when I determine the "Notice of Preliminary Objection" filed on behalf of the 3rd Defendant. But as I had earlier observed, I have not found anywhere in the provisions of the Constitution that pertains to the establishment or formation of political parties and of the constitutional powers and duties of the 1st Defendant as the "*mid-wife*" of the country's elected officials, where the word "*de-register*" was used.

Perhaps, when I review the submissions made for and against, I may be able to "*unknot this tie*" as to where and how this *lexicon* crept into the **Electoral Act 2010 As Amended**.

The 1st Defendant, when served with the Plaintiffs' Originating processes, reacted by filing its "Counter-Affidavit". It was filed on 24/2/13 and was sworn by one Paave Demenougo and runs into four (4) short paragraph. Paragraph 3 of the Counter-Affidavit is the real substance of the 1st Defendant's defence to the Plaintiffs' suit. It reads thus:

> *3(i) "The 1st Plaintiff did not conduct periodical elections for the purpose of electing its Executive Committee whose memberships are drawn from different States of the Federation."*
>
> *(ii) "The 1st Defendant conducted elections into the offices of the President, Vice-President, Governors of the States of the Federation, Deputy Governors of the State of the Federation, Membership of the Senate and House of Representatives of the*

Federal Republic of Nigeria and Membership of the Houses of Assembly of States, Nigeria in April, 2011";

(iii) "The 1st Plaintiff participated in the elections above referred and failed to win any elective positions";

(iv) "The the of (sic) deregistration of the 1st (sic) is in line with the provisions of Section 78(7) of the Electoral Act, 2010 As Amended"; and

(v) "The 3rd Defendant is vested with the powers to enact the provisions of Section 78(7) of the Electoral Act, 2010 (As Amended).

When I read these depositions, I asked myself whether any of the issues canvassed in paragraph 3(iii), (iv) and (v) of the 1st Defendant's Counter-affidavit can be traced to any of the provisions of the **CFRN, 1999 As Amended** in relation to the establishment of political parties in Nigeria. First, as I had earlier remarked by way of *obiter,* that the phrase "*de registering*" a political party is a new term that crept into our electoral *lexicon* via the **Electoral Act, 2010 As Amended**, I have not yet seen the same phrase in any of the provisions of the Constitution. I am not even certain that the drafters of the Constitution ever contemplated that a registered party can later for the reasons which the 1st Defendant has canvassed in its Counter-Affidavit be "*de-registered*". I say this in the context of my remarks on the *proviso* to Section 40 of the **CFRN**, supra. where the words "*does*

not accord recognition" to a political party were used. There is no where else that the drafters of the Constitution, from all I have read, made specific provision for "*de-registration*" of a political party. By the arguments canvassed by the Defendants, the 1st and 3rd Defendants in particular seem to anchor this exercise of "*de-registration*" on Section 228(d) of the Constitution and Section 15(i) of **Part 1 of the 3rd Schedule to the Constitution**. It is the interpretation that this Court will make of these provisions that will determine whether or not, Section 78(7)(ii) of the **Electoral Act**, supra is or is not constitutional. Ancillary to this is whether even if the said provision is held to be constitutional, arising from the reliefs sought by the Plaintiffs, whether the Plaintiffs are not supposed to be heard before the decision in Exhibit "FB2" was conveyed to them on 6/12/12 by which the 1st Plaintiff was purportedly "*de-registered*". I say this when one reads the depositions in paragraph 3(i) of the 1st Defendant's Counter-Affidavit vis-à-vis paragraph 6 of the Plaintiffs' "Further Affidavit" wherein the deponent states: "*That the Plaintiffs deny the allegations contained in the said publications and further say that at no time were they heard before the purported deregistration.*" This is even an arguable issue with respect to the 1st Defendant's deposition in paragraph 3(iii) of its Counter-Affidavit that: "*The 1st Plaintiff participated in the elections above referred and failed to win any of the elective positions.*" I have no doubt, that the 1st Defendant as the "*conductor*" of April, 2011 general elections which the deponent mentioned in paragraph 3(ii) of the 1st Defendant's Counter-Affidavit, should be aware of

the parties that took part in the elections, which it says the 1st Plaintiff did and knew which of the parties that participated won in the elective positions of the various offices the deponent listed in paragraph 3(ii) of the Counter-Affidavit. Despite this knowledge that can be attributed to the 1st Defendant, the question remains: Was the 1st Plaintiff heard on the allegations that formed the basis of the 1st Defendant's decision as contained in Exhibits "FB2" and "CEO-1" attached to the Further-Affidavit? The 1st Plaintiff was listed as No.9 in Exhibit "CEO-1" and in Column 2 of the Newspaper's publication, the "*reason*" why the 1st Plaintiff was "*de-registered*" was stated as follows: "*Composition of (NEC) fails to meet the requirements of Section 223(1) and (2) of the Constitution of Federal Republic of Nigeria, 1999*" and (ii) "*Has not won a seat in the National or State Assemblies.*" The question remains, having regard to the reliefs being sought by the Plaintiffs, whether the 1st Plaintiff was heard (I am not even concerned about fair hearing) before the decision in Exhibit "FB2" attached to the "Affidavit in Support of the Originating Summons" was taken and conveyed to the Plaintiffs. This second issue is without prejudice to the interpretation which the Court may reach on whether Section 78(7)(ii) of the **Electoral Act, 2010 As Amended** is or is not constitutional. I do hope that both parties appreciate the detailed analysis I have done so far. It is without prejudice to the merit or otherwise of the case which both parties may have canvassed. They are in my view, legal propositions which will undoubtedly serve as judicial compass for the direction

of the Court's consideration of the issues raised and canvassed by both parties through their Counsel.

The 1st Defendant's Counter-Affidavit was argued by a written address dated 18/2/13 and filed on 21/2/13. In the said written address, the 1st Defendant's Counsel set down *"two (2) issues for consideration"*; to wit:

1. *"Whether the National Assembly is competent to enact the provision of Section 78(7) of the Electoral Act, 2010 (As Amended)"; and*

2. *"Whether the 1st Defendant has powers to deregister political parties including the 1st Plaintiff."*

Both issues are in my view, *two (2) sides of the same coin.* This is because, if issue one is resolved in the *affirmative*, it goes without saying that issue 2 will also be so resolved. The only *snag* in relation to issue 2 will be as to whether the 1st Defendant ought not to hear the 1st Plaintiff before it was de-registered even when issue 2 is resolved in the *affirmative.* Of course, where issue one (1) is resolved in the *negative*, issue stands no ghost of a chance to be otherwise than to be resolved in the *negative.* When both issues are resolved in the *negative*, the ancillary issue which I said arises from one of the reliefs being sought by the Plaintiffs as to whether or not the 1st Plaintiff was heard before it was *"de-registered"* as a political party may become unnecessary if not academic.

The Plaintiffs, on 27/2/13 through the same deponent, Chizoba Ebele Onu filed a "Further and Better Affidavit in support of the Plaintiffs' Originating Summons". When I read through its eight (8) paragraphs, I really would not know why it was filed as there was nothing new stated therein. The 1st Defendant's letter dated 6/12/12 attached as Exhibit "A" to the said "Further and Better Affidavit" had previously been reproduced as Exhibit "FB2" attached to the main "Affidavit in Support of the Originating Summons". Counsel should endeavour to avoid filing multiple processes which are not intended to advance the course of justice but that would only make the presentation of their case needless *prolix* and somewhat *unwieldy*.

The Plaintiffs' Counsel has filed "Rely on Points of Law in Opposition to 1st Defendant's Written Address dated 18th February, 2013".

In the said address, the Plaintiffs' learned Counsel set down two (2) issues for determination. These are:

(1) *"Whether Section 78(7) of the Electoral Act 2010 (As Amended) is a law reasonably compatible in a democratic society in view of Section 1(3) of the 1999 Constitution?"*

(2) *"Whether Section 78(7) of the Electoral Act 2010 (As Amended) is not inconsistent with Sections 36, 38, 40, 221-229 of the 1999 Constitution, paragraph 15 of the Third Schedule to the 1999*

Constitution relating to the constitutional functions of the 1st Defendant (which has not been amended) and Article 10 of the African Charter on Human and Peoples Right Act?"

The 2nd and 4th Defendants, as usual, entered the proceedings rather late. The 2nd and 4th Defendants' Counsel, Mrs. R.M. Shittu filed a Motion on Notice dated 12/6/13 wherein she sought for "*an order of Court striking out the name of the 2nd and 4th Defendant (sic) as parties to this suit*". The grounds of the application are:

1. *"There is no cause of action against the 2nd and 4th Defendant/Applicant (sic)"*
2. *"The 2nd and 4th Defendants are not proper parties in the suit."*

When I read through the 2nd and 4th Defendants' Motion on Notice and of the prayer sought and the grounds upon which it is being sought, I am not in any doubt that the said Motion on Notice was a clever way by which the 2nd and 4th Defendants seek to "*dispute*" the jurisdiction of the Court and not having filed their application within 21 days after they were served, but have cleverly adopted the route of a "*Motion on Notice*" rather than a "*Notice of Preliminary Objection*" pursuant to the provision of Order 29 of the **Federal High Court (Civil Procedure) Rules, 2009**. The said Motion on Notice filed on 17/6/13 was not one of the processes in respect of which the 2nd and 4th Defendants were granted extension of time to file on 18/6/13

when their Motion on Notice dated 17/6/13 was heard and granted. The said Motion on Notice only has three (3) prayers and they read as follows:

1. *"AN ORDER of Court for extension of time within which the 2nd and 4th Defendants/Applicants can file their Memorandum of Conditional Appearance Counter-Affidavit and other Court processes";*

2. *"AN ORDER of Court deeming the Memorandum of Conditional Appearance, Counter-Affidavit and other Court processes as properly filed and served; and*

3. *"SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances."*

The question is: Can "*other Court processes*" be interpreted to include the "*Motion on Notice*" by which the 2nd and 4th Defendants have sought to challenge their joinder, hence the jurisdiction of the Court as one of the "*other Court processes*"? I have no doubt that to construe it as such is not only intellectually dishonest, but it will be an application made that had no basis in the Court's Rules. When the provision of Order 26 of the **Federal High Court (Civil Procedure) Rules, 2009** pursuant to which the 2nd and 4th Defendants' Motion on Notice dated 17/6/13 was made, it is obvious that interlocutory applications such as are allowed under the said provisions are intended to be applications made in the proceeding – whether at

the commencement of it or whilst it is still pending. In that regard, except for extension of time to file a defence or a Reply or such other processes, Order 26 of the **Federal High Court Rules** has not specified any period within which interlocutory applications can be made. But Order 29 Rule 4(a) of the **Federal High Court (Civil Procedure) Rules, 2009** – which is a provision under the general title of "*Disputing The Court's Jurisdiction*" has prescribed that an application to dispute the Court's jurisdiction such as the 2nd and 4th Defendants' Motion on Notice dated 17/6/13 shall "*be made within twenty one (21) days after service on the Defendant of the Originating process*". When were the 2nd and 4th Defendants served? When did they bring the said Motion on Notice? These are enquires which this Court ought not to embark upon in order to invalidate the 2nd and 4th Defendants' Motion on Notice, for to do so, will invariably open the Court to needless accusation of bias and of taking up issues which the Plaintiffs' Counsel may not have adverted his attention to. Unless the Plaintiffs' Counsel raised and argued the *competence* of the said Motion on Notice in the context of the period when it was *filed* vis-à-vis when the 2nd and 4th Defendants were *served*, being an issue that border on procedural irregularity, that this Court may consider as having been waived by the Plaintiffs. But I have no doubt in my mind, that when the 2nd and 4th Defendants' Motion on Notice dated and filed on 17/6/13 was argued on 18/6/13 and granted, the fresh Motion on Notice also dated 17/6/13 was never in my view as an application in which extension of time was being granted. It cannot be "*smuggled*" in

under the general umbrella of "*other Court processes*". It's a substantive application having regard to its prayer, i.e. seeking to strike out the Plaintiffs' suit, which can be taken as a merely incidental application. Although, *ex facie*, it appears to have been filed belatedly, I will give consideration to it except if its *competence* as an application that *disputes* the Court's jurisdiction was raised and argued by the Plaintiffs' Counsel.

The 2nd and 4th Defendants' Motion on Notice is supported by a six (6) paragraph Affidavit deposed to by one Friday Atta, a Litigation Officer in the Civil Litigation Department of the Ministry of Justice, i.e. the 2nd Defendant.

The said Motion on Notice was argued in a written address filed in its support. The learned Counsel to the 2nd and 4th Defendants, Mrs. R.M. Shittu set down only one issue for determination. It is: "*Whether having regard to the facts of the case, the Plaintiffs/Respondents are right in suing the 2nd and 4th Defendant/Applicant (sic) where no cause of action has been disclosed against them.*" This is somewhat similar, to ground (d) of the 3rd Defendant's "Notice of Preliminary Objection".

The 2nd and 4th Defendants, through the same deponent, Friday Atu also filed the "2nd and 4th Defendants/Respondents' Counter-Affidavit" to oppose the Plaintiffs' "Originating Summons". It's a 7 paragraphed Counter-Affidavit. When I read through the Counter-Affidavit filed on behalf of the 2nd and 4th Defendants, in relation to some of the facts therein, I asked whether it was absolutely necessary for the 2nd and 4th Defendants to have filed a

Counter-Affidavit? Will it not have been better, having regard to their Motion on Notice wherein they seek that their names be struckout of the Plaintiffs' suit because, there was no "*cause of action*" disclosed against them to have quietly allied themselves with the positions taken by the 1st Defendant who is the party in the "*eye of the storm*". For instance, how did the 2nd and 4th Defendants' Counsel or their deponent who was informed and verily believed the facts deposed in paragraph 5(c), (d) and (f) of the Counter-Affidavit. The said paragraphs read:

> *5(c) "The 1st Plaintiff did not conduct periodical elections for the purpose of electing its executive committee whose membership is drain from different States of the Federation";*
>
> *(d) "The Plaintiff did not comply with the extant and mandatory provision of Section 223 to 225 of the Constitution of the Federal Republic of Nigeria, 1999 and the relevant provisions of the Electoral Act (As Amended) 2010"; and*
>
> *(f) "The 1st Plaintiff participated in the elections referred to above and failed to win any of the elective position."*

How did Mrs. Shittu come to know about all of these without the deponent saying that she had discussed the issues in this case with specific officers of the 1st Defendant who gave her the facts which can only be known to the 1st Defendant? Sometime, a

Counsel will do well by avoiding to file processes which he or she really does not need. All of these issues of facts are such that the 2nd and 4th Defendants' Counsel could have allied herself with the submissions of the 1st Defendant's Counsel. I am concerned that the Court's processes' dockets are not needlessly made bulky without in any way being of any use or assistance to the Court. If the proceedings, for instance, descend to the stage where deponents are to be cross-examined in the event that the Court so orders, can the 2nd and 4th Defendants' deponent, Friday Atta or the Counsel, Mrs. Shittu be in a position to prove the assertion in paragraphs 5(c), (d) and (f) of the 2nd and 4th Defendants' Counter-Affidavit? I doubt if they will. This is the reason why certain processes may not necessarily be filed where other modes of effectively reaching a desired goal are available. I had made a similar remark in relation to the 3rd Defendant's "Notice of Preliminary Objection" which was supported by a 25 odd paragraph Affidavit when all the Counsel needs to do is to rely on all the processes filed by the Plaintiffs as "Notice of Preliminary Objection" will either succeed or fail on the basis of the Plaintiffs' facts as presented in their originating processes.

The Counter-Affidavit was argued by a written address filed on behalf of the 2nd and 4th Defendants.

The 2nd and 4th Defendants' Counsel who had earlier argued a Motion on notice that the 2nd and 4th Defendants' names should be struckout of the proceedings however, set down, against the

Counter-Affidavit which I had expressed the view that was needless to file, four (4) elaborate issues for determination.

In paragraph 3.01 of the written address, the second issues are as follows:

1. *"Whether the 1st Defendant (Independent National Electoral Commission) has supervisory role over activities of all the registered political parties in Nigeria?"*

2. *"Whether the 3rd Defendant exceeded the powers conferred on it by Section 228 of the Constitution of the Federal Republic of Nigeria, 1999 when it amended the Electoral Act (As Amended) 2010 to include the provisions of Section 78(7)(2)"*

– where did the 2nd and 4th Defendants' Counsel get this citation. The provision in the **Electoral Act, 2010 (As Amended in 2011)** as Section 78(7)(i) and (ii). Except the edition she is using is different from that of the Court and of the other parties in this case, there is no Section 78(7)(2) in the **Electoral Act As Amended**.

3. *"Whether Section 78(7)(1) and (2) (sic) of the Electoral Act (As Amended) 2010 is an infringement of Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 and whether it is an enlargement of the provision as requirement contained in Section 222 of the*

Constitution of the Federal Republic of Nigeria, 1999?" and

4. *"Whether the 1st Plaintiff complied with the mandatory provisions of Section 223 to 229 of the Constitution of the Federal Republic of Nigeria and the Act made by the National Assembly."*

These are issues which the 2nd and 4th Defendants, who on the one hand, argued that they are not proper parties to the Plaintiffs' suit have set down for determination, and who on the other, appears to take up the "*battle*" on behalf of the 1st and 3rd Defendants. Speaking for myself, in relation to the provisions of Section 150(1) of the **CFRN, 1999 (As Amended)** by which the 2nd Defendant is proclaimed as the "*Chief Law Officer of the Federation*", I would have thought that Mrs. Shittu's arguments should have been focused only on the constitutionality or otherwise of the provisions of Section 78(7)(ii) of the **Electoral Act**, supra. By this, embedded in her submissions would have been whether the 3rd Defendant in enacting the said provision acted within its constitutional boundary. All of these are issues which are purely *interpretative* and which the 2nd and 4th Defendants' Counsel can argue without the need to filing any Counter-Affidavit. They are pure issues of interpretation of the relevant provisions of the Constitution and having regard to the constitutional status of the 2nd Defendant as the "*Chief Law Officer of the Federation*" and, *ipso facto*, the "*Chief Legal Adviser to the Government*", it should be concerned only about the constitutionality of Acts duly passed

by the 3rd Defendant including the **Electoral Act, 2010 (As Amended in 2011).** These issues set down were argued in the written address filed which was unpaged although, divided into paragraphs.

The Plaintiffs' Counsel did not file a Reply on Points of Law to the 2nd and 4th Defendants' written address to argue the Counter-Affidavit filed in Opposition to the Plaintiffs' suit. Rather, the Plaintiffs' Counsel filed a "*List of Additional Authorities in Support of Originating Summons*". It's dated and was filed 18/6/13. It has 7 distinct references one of which is the Judgment of this Court delivered on 21/7/11 in Suit No. FHC/ABJ/CS/399/11: LABOUR PARTY v. INEC & ANOR.

The above is a summary of the case of both parties as presented. Notwithstanding the comments I had expressed on certain processes filed, in particular, by the 3rd Defendant's Counsel and the 2nd and 4th Defendants' Counsel, I must commend the industry which each of the Counsel has put into the preparation of the processes I have just highlighted, and some of which I had reviewed and or expressed views as to the thinking of this Court. For instance, I have more or less discounted on the ground of objection raised by the 3rd Defendant as to the alleged defects in the Plaintiffs' "Affidavit filed in support of their Originating Summons" and the "Further-Affidavit". This is because, having regard to the weighty nature of issues which the Plaintiffs' suit has thrown up, which largely border on the constitutionality of a provision in the **Electoral Act, 2010 (As Amended in 2011,**

i.e. Section 78(7)(ii), I really do not see myself as being prepared to lend my time, energy and scarce judicial resources in the resolution of such issue of *technicality* except where it is shown or established that the 3rd Defendant was *misled* by the fact that the concluding portion of the Affidavit and "Further Affidavit" did not comply with the format prescribed by Section 13 of the **Oaths Act**, Cap.01, LFN 2004 in the same way as depitched in the **First Schedule to the Oaths Act**. I took this position because, although, the Plaintiffs' learned Counsel cited and relied on Sections 84 and 85 of the **Evidence Act**, Cap.E.14, 2004 which was been repealed by the new **Evidence Act No.18 of 2011**, but by virtue of Section 122(2)(a) and (b) of the **Evidence Act**, this Court is empowered to take judicial notice of *"all laws or enactments and any subsidiary legislation made under them having the force of law now or previously in force in any part of Nigeria" (Underline mine for emphasis)* and of *"all public Acts or Laws passed or to be passed by the National Assembly or a State House of Assembly, as the case may be, and all subsidiary legislations made under them and all local and personal Acts or Laws directed by the National Assembly or a State House of Assembly to be judicially noticed".* It is in the exercise of this inherent power, that I took cognizance of Section 113 of the **Evidence Act** which is substantially and textually similar to the provision of Section 84 in the old **Evidence Act**, Cap.E14, LFN 2004.

Section 113 of the **Evidence Act, No.18 of 2011** reads: *"The Court may permit an Affidavit to be used, notwithstanding that*

it is defective in form according to this Act, if the Court is satisfied that it has been sworn before a person duly authorized." The 3rd Defendant's Counsel has not challenged the fact that the said "Affidavit" and "Further-Affidavit" were duly sworn before an authorized officer of the Federal High Court. When I read all the judicial decisions cited for and against, my view, being Court of Appeal's decisions, is to adopt such decision as will enable this Court to do substantial justice instead of *leaning on niggling technicalities*. The issues are too weighty than that they should be sacrificed on the *altar* to accord the 3rd Defendant a *technical victory* without the merit of the issues raised being considered and determined.

On 18/6/13, each of the parties through their respective Counsel were heard on the adoption of the addresses which I have highlighted in the course of this Judgment. Having regard to the issues raised by the 3rd Defendant's Counsel in the "Notice of Preliminary Objection" dated and filed on 7/1/13, and the 2nd and 4th Defendants' Motion on Notice dated 17/6/13, I am of the view that a proper point of determination of this case is to consider these applications which raised issues of jurisdiction. Consequently, after all the parties have been heard through their respective Counsel on 18/6/13, in view of the imminence of the Federal High Court's 2013 Annual recess which was due to begin on 15/7/13, I sought for the consent of all learned Counsel if the Judgment can be delivered during the Court's vacation. All the Counsel expressed their consent that the Judgment be delivered during the Court's vacation as it appears that the Plaintiffs' "*cause*

of action" is such that unless this case is resolved one way or the other, the 1st Plaintiff, as stated by the 1st Defendant in Exhibit "FB2" attached to the Plaintiffs' "Originating Summons", will be "*precluded from participating in any electoral activities including but not limited to canvassing for seats in any electoral process*". This was the main reason why I bend over backward to sacrifice part of my vacation to have the Judgment prepared and read during vacation with the consent of all learned Counsel involved in the matter. Judgment was consequently reserved till today.

As I had earlier remarked, it is proper to begin this Judgment by determining the 3rd Defendant's "Notice of Preliminary Objection" dated 7/1/13 and the 2nd and 4th Defendants' Motion on Notice dated 17/6/13 which are applications that raised issues of jurisdiction. Although, as I had earlier remarked, that the 2nd and 4th Defendants' Motion on Notice dated 17/6/13 when assessed against the provision of Order 29 Rule 4(a) of the **Federal High Court Rules, 2009** ought to have been filed within 21 days of the Plaintiffs' processes served on the 2nd and 4th Defendants. But since the Plaintiffs' Counsel has not filed any process to challenge its competence, the only legitimate role of this Court is to treat the alleged irregularity as having been waived by the Plaintiff.

In the 3rd Defendant's "Notice of Preliminary Objection", the first ground of objection is that the Plaintiffs lack *locus standi* to bring this action. I had in the course of reviewing the submissions of the 3rd Defendant's Counsel, expressed the view that where the 3rd

Defendant alleged that the 2nd and 3rd Plaintiffs lacked legal authority to bring this action, it is the 3rd Defendant who has alleged it that must prove such lack of legal authority. The Plaintiffs' Counsel made a similar submission in his written address filed in support of the Plaintiffs' Counter-Affidavit to oppose the 3rd Defendant's "Notice of Preliminary Objection" on this ground. When I read the address filed by Edwin T. Atta, Esq. on ground (a) of the objection, it seems that learned Counsel argued this issue from the stand point that the 1st Plaintiff who is no longer in existent cannot give any authority to bring an action since the 1st Plaintiff has been "*de-registered*" by the 1st Defendant. The 3rd Defendant's Counsel's submissions ignored the elementary fact that the *juristic personality* of the 1st Plaintiff, is jurisprudentially speaking, a *legal fiction* as the 1st Plaintiff only exists in law with the assemblage of those who formed it as a political association and then, upon its registration (See Exhibit "FB1") as a political party and the 2nd and 3rd Plaintiffs are some of its principal national officers – In paragraphs 2 and 3 of the Affidavit in support of the "Originating Summons", the 2nd Plaintiff was described as "*the Chairman and Presidential Candidate of the 1st Plaintiff at the 2007 and 2011 general elections*". While in paragraph 3, the 3rd Plaintiff was described as "*the National General Secretary of the Plaintiff*". If the submissions of the 3rd Defendant's Counsel is to be accepted as legally sound, it follows that once a registered political party is "*de-registered*", it will be unable to challenge the decision of the 1st Defendant as the event of its "*de-registration*" will have denied

it the *competence* to give any authority to its principal national officers to challenge the decision of the 1st Defendant. Let me expatiate further on this about the jurisprudence involved so that the 3rd Defendant's Counsel does not continue to canvass legal propositions that will create an impossible condition.

My view, as a student of Administrative Law is that the 1st Defendant's *decision* to "*de-register*" the 1st Plaintiff, although in law, was an exercise of a "*quasi-judicial*" powers but that the *act* of the 1st Defendant on the strength of the provisions, remains for all intents and purposes, a *ministerial action* of one of the "*Federal Executive Bodies*" established by Section 153(1)(f) of the **CFRN 1999 As Amended**. The act and perhaps, the decision reached thereby will remain, for all intents and purposes, effective and valid as a decision *unless* and *until* it is challenged in an appropriate proceeding in Court by an aggrieved party such as the 1st Plaintiff. The act itself is not *ex facie*, "*void*" but the decision made thereat is "*voidable*" only at the instance of the Plaintiffs who are aggrieved and who have sued. Ref. **Prof. H.W.R. Wade & C.E. Forsyth on Administrative Law, 8th Ed. Chapter 10 pages 287-312**. But, when a proceeding is taken out such as in this case, it is a wild and unarguable proposition in law, to state that the 1st Defendant's ministerial act, *albeit,* carried out in the *ostensible* exercise of its statutory powers by "*de-registering*" the 1st Plaintiff has *pro tanto,* brought about the end to the 1st Plaintiff's legal existence and one that is incapable to institute a legal action to challenge its own "*de-registration*" by the 1st Defendant who is not a Court of law but an "*executive*

body". Let me draw a parallel analysis in this regard by saying that the "*de-registration*" of a political party is quite unlike the *liquidation* of an incorporated company under the **Company and Allied Matters Act (CAMA), Cap.C20, LFN 2004.** In that case, a liquidated Company cannot sue or be sued in its own name, but can take out legal action or defend legal proceedings through its *Liquidator*. See Section 425(1)(a) of **CAMA,** supra. There is no similar legal regime or arrangement in the **Electoral Act, 2010 (As Amended)** and neither did the drafters of the **CFRN** in my view, contemplated a *scenario* such that a "*de-registered*" party may have to challenge its "*de-registration*" in a Court of law! I had earlier remarked that the word "*de-register*", was as far as the **CFRN, 1999 As Amended** is concerned, a new *lexicon* in the Constitution in terms of electoral process in Nigeria and the nearest to it, perhaps, is the *proviso* to Section 40 of the Constitution which merely states that the 1st Defendant may *"not accord recognition"* to a political party. It is in this regard that I was not persuaded by the ingenious submissions of the 3rd Defendant that because, the 1st Plaintiff has been "*de-registered*", it ceases to have legal existence and as such, cannot authorize the 2nd and 3rd Plaintiffs to institute the instant action in order to challenge the 1st Defendant's decision conveyed to it by Exhibit "FB2". I am not oblivious of the provision of Section 80 of the **Electoral Act**, supra, but until the "*de-registration*" of the 1st Plaintiff has been judicially affirmed by a Court of law established by the Constitution, it is idle, perhaps an *anaemic* legal proposition to say that the 1st Plaintiff who had sued in the

company of two (2) of its principal national officers lacks *locus standi* and cannot authorize the legal action filed to challenge the decision of the 1st Defendant to "*de-register*" it as a political party. To subscribe to such legal proposition, and seek to use the provision of Section 80 of the **Electoral Act** as a legal justification to argue the incapacity or otherwise of the 1st Plaintiff to authorize this legal action, is to judicially affirm the 1st Defendant's ministerial action which it was required to exercise as a "*quasi-judicial*" power in relation to Section 78(1)(ii) of the **Electoral Act**, supra. and as one which cannot be *judicially reviewed*! This in my view, was never the intendment of the drafters of the **CFRN, 1999 As Amended** by the clear provisions of Section 6(6)(a) and (b) and 36(1) of the Constitution and of its spirit by which anyone whose "*civil rights*" and obligation have been breached, has uninhibited access to the Court. In the light of all that I have said, ground (a) of the "Notice of Preliminary Objection" ought to fail and its accordingly dismissed. To uphold that ground will create an unusual perhaps, strange legal situation where a political party who has been "*de-registered*" will be unable to institute legal action in its own name and will be held to also be incapable to authorize its human agents who are its principal national officers to do so on its behalf. My understanding of the basic principle of law and jurisprudence is that where there is a wrong, there ought to be a remedy. Its a concept clearly ingrained and well embedded in the principles of *constitutional democracy* in all civilized climes.

Ground (b) of the objection is about the alleged defects in the Affidavit and "Further-Affidavit" filed by the Plaintiffs. I had dealt in some details with this ground which I regard as utterly unmeritorious. It too is dismissed.

The objection on ground (c) of the "Preliminary Objection" relates to the viability of the reliefs sought against the 3rd Defendant. My view is that such a ground is ill suited as a "Preliminary Objection" as it seeks a judicial determination of a suit as per the reliefs claimed to be resolved in *limine* without hearing the whole case on its merit. The said ground would have been arguable if the 3rd Defendant's argument is that the Plaintiffs have no substantive claims against it *except* interlocutory injunction which is and can only be ancillary to a substantive relief claimed. I have never been in doubt, that injunction can hardly be claimed as a *substantive relief* against a party and where there is no *substantive relief* on which the *legal right* of a Plaintiff is anchored against a Defendant as an effective "*contradictor*" to such declared legal rights. Injunction alone cannot constitute a legally cognizable "*cause of action*" against a Defendant. See the old English decision in **NORTH RLY CO. v. GREAT NORTHERN RLY CO. (1883) 11 QBD 30 @ 39**; the Court of Appeal in England's decision in **SISIKINA (OWNERS OF CARGO LATELY LADEN ON BOARD) v. PISTOS COMPANIA NAVIERA S.A. [1979] A.C. 210 @ 233** and the Supreme Court of Nigeria's decision in **OKOYA v. SANTILI (1991) 7 NWLR (pt.206) 753 @ 765**. The said ground (c) in the "Notice of Preliminary Objection" is that "*the reliefs sought by*

the Plaintiffs in the originating summons against the 3rd Defendant are frivolous and an abuse of Court process". This is not the same as saying that the only relief against the 3rd Defendant is an order of interlocutory injunction which alone cannot constitute or sustain a "*cause of action*" against the 3rd Defendant. The Court cannot grant that which was not claimed or proved even though, I had earlier expressed the view as to whether the Plaintiffs ought to have joined the 3rd Defendant as a party – whether as a "*necessary*", "*desirable*" or "*proper*" party. I extend the proposition a little further, even as a "*nominal*" party. I am of the view that ground (c) is only proper for determination at the end of the Judgment by which time, it will be revealed whether the reliefs sought against the 3rd Defendant are *frivolous and abuse of process.*

On ground (d), I had also expressed the view, that Exhibit "FB2" constitutes the *fulcrum* of the Plaintiffs' but when one reads the reliefs claimed and of the facts in the Affidavit, the only role ascribed to the 3rd Defendant is that it passed the **Electoral Act, 2010 (As Amended in 2011)** in the exercise of its constitutional legislative duties. The question remains whether this alone is sufficient as a "*cause of action*" against the 3rd Defendant. I do not think so. As I had observed earlier, the 3rd Defendant needs not be made a party in any legal proceeding where the constitutional validity of Acts it has enacted is being challenged. This is because, the proceedings in Court is not an occasion where the 3rd Defendant can be or will be required to be heard on the issue of unconstitutionality of its Acts. Its primary

duty, by virtue of Section 4(1), (2), (3) and (4) of the **CFRN, 1999 As Amended** is "*to make laws for the peace, order and good government of the federation*". In relation to ground (d) of the objection, I am of the view that the Plaintiffs' "Originating Summons", although, by its question (e) has raised issue that concerns the legislative competence of the 3rd Defendant to enact the provision in Section 78(7)(ii) of the **Electoral Act, 2010 (As Amended in 2011)** but its Affidavit and "Further-Affidavit" have not disclosed any cognizable "*cause of action*" by way of wrong doing against the 3rd Defendant. The said ground (d) of the "Notice of Preliminary Objection" dated 7/1/13 succeeds. The effect of its success is to strike out the 3rd Defendant as a party to the instant suit. Its name is accordingly struckout. I am now left with only the 1st, 2nd and 4th Defendants. It is expedient at this stage, to consider the 2nd and 4th Defendants' Motion on Notice dated 17/6/13.

When I read through the file and the adoption of addresses made by all the learned Counsel on 18/6/13, the Plaintiffs' Counsel did not file any process to oppose the 2nd and 4th Defendants' Motion on Notice dated 17/6/13. However, when the addresses were being adopted, the Plaintiffs' Counsel, Fred Agbaje, Esq. indicated that he would reply to the said Motion on Notice on points of law. All the Plaintiffs' Counsel argued thereafter was that the 2nd and 4th Defendants are *necessary* parties to the suit and drew the Court's attention to paragraphs 6 and 8 of the Affidavit in support.

In paragraph 6, the deponent to the Plaintiffs' Affidavit in support states thus: "*That the 2nd Defendant is the Chief Legal Officer in Nigeria and is responsible for giving legal advice to organs of government including the 1st Defendant.*" The provision of Section 150(1) of the Constitution describes the 2nd Defendant as "*the Chief Law Officer*" of the Federation and not "*Chief Legal Officer*" as stated in the said paragraph 6. It has by virtue of this provision, been judicially also recognized as the "*Chief Legal Adviser*" to the government of the federation. My only worry on the deposition is that the 1st Defendant was described as one of the organs of the government. I will rather see it as one of the "*Executive Bodies*" created pursuant to Section 153(1)(f) of the Constitution and this merely makes it, an "*Agency*" of the Federal Government of Nigeria. See Court of Appeal's decision in **UNIV. OF ABUJA v. OLOGE (1997) 4 NWLR (pt.445) C.A. 706**. Its not an "*organ*" of government. It is only as a commission, one of the "*agencies*" of the Executive arm or organ of the Government of the Federation.

Paragraph 8 of the Plaintiffs' Affidavit concern the 4th Defendant. In paragraph 8, the deponent states that: "*the 4th Defendant is the Chief Law Enforcer in Nigeria and is empowered to give effect to decisions made by organs of the government including the 1st Defendant.*" The question is: Do all of these make the 2nd and 4th Defendants *necessary* parties? Who is a *necessary* party in a civil action? The definition that may be adopted is as was given by the Supreme Court in its seminal decision in **GREEN v. GREEN (1987) 3 NWLR (pt.61) 480** where it was defined as "*those*

who are not only interested in the subject matter of the proceedings, but also who in their absence, the proceedings would not be fairly dealt with". In other words, *the questions to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the Plaintiff.* I refer to the provisions of Order 9 Rules 14 of the **Federal High Court (Civil Procedure) Rules, 2009**.

When Mrs. R.M. Shittu was replying on points of law to the Plaintiffs' Counsel's submissions, she argued that "*it is not in all situations that the 2nd Defendant is joined in a suit, but only when a damage will be occasioned in terms of monetary costs*". I am glad that the 2nd and 4th Defendants' Counsel did not or was not able to cite any judicial or legal authority to support this legal proposition. I have no doubt that as a "*law officer*" in the Chambers of the 2nd Defendant, if she had paid due professional attention to civil cases in which the 2nd Defendant is compulsorily made a party, she would have realized that when issue of "*damage will be occasioned in terms of monetary costs*" has never been a consideration. Rather, any suit in which there is a *bonafide* need for the Courts to construe and interpret the Constitution and occasionally, some Acts of the National Assembly vis-à-vis provisions of the Constitution, the 2nd Defendant is invariably joined as a "*proper party*" in view of its peculiar constitutional status as the "*Chief Law Officer of the Federation*" by virtue of Section 150(1) of the **CFRN, 1999 As Amended**. The 2nd and 4th Defendants' Counsel, I want to suggest, may take time to read

a few of such decisions like **A.G. OF ONDO STATE v. A.G. OF FEDERATION (2002) 9 NWLR (pt.772) 222; A.G. OF ABIA STATE v. A.G. OF FEDERATION (2002) 6 NWLR (pt.763) 264** and **A.G. OF ABIA STATE v. A.G. OF FEDERATION (2003) 4 NWLR (pt.809) 124** which were some of the authorities cited by the parties in this matter. In all of these, there are substantial issues of interpretation of the Constitution vis-à-vis certain Acts or provisions of certain Acts of the National Assembly which were called upon to be judicially resolved.

When I read the elaborate written address which the 2nd and 4th Defendants filed in Opposition to the Plaintiffs' suit, the only issue which she argued outside the interpretation of the relevant provisions of the **CFRN, 1999 As Amended** vis-à-vis the **Electoral Act, 2010 (As Amended in 2011)** was that there was no legal obligation on the part of the 1st Defendant to accord the Plaintiffs any hearing before the decision in Exhibit "FB2" attached to the "Plaintiffs' Affidavit in support of the Originating Summons" was taken. When I read her submissions, I have no doubt that the 2nd Defendant ought to be *joined*, and where it is already *sued*, to be *retained* as a Defendant to the Plaintiffs' suit because, the questions set down by the Plaintiffs call for the interpretation of several provisions of the Constitution vis-à-vis the **Electoral Act, 2010 (As Amended in 2011)** and in particular, in relation to its Section 78(7)(ii). The 2nd Defendant is a *proper* party to this action by his constitutional status as the "*Chief Law Officer of the Federation*".

On the 4th Defendant, just like the case of the 3rd Defendant, there is no *substantive relief* sought against it and the only relief which concerns the 4th Defendant is an *injunctive relief*. As I had earlier held, an order of injunction, whether interlocutory or perpetual, cannot alone constitute a "*cause of action*" against a Defendant. This is one aspect of the matter. The other aspect is that reading through the entire *gamut* of the Affidavit and "Further Affidavit" filed in support of the "Originating Summons", the Plaintiffs have not alleged any "*cause of action*" against the 4th Defendant. By the 4th Defendant being described in paragraph 8 of the Affidavit in support as the "*Chief Law Enforcer*" is not sufficient. The Plaintiffs, in order to have the 4th Defendant retained as a party must by clear and specific facts in their Affidavit alleged steps taken by the 1st Defendant to enforce the decision conveyed in Exhibit "FB2" and in which the *coercive instruments* of the 4th Defendant may have been mobilized. When I read Exhibit "FB2", my view is that the capacity to "enforce" the decision of the 1st Defendant against the 1st Plaintiff lay squarely in the hands of the 1st Defendant itself. I say this because, in paragraph 2 of the said exhibit, the 1st Defendant states thus: "*The Fresh Democratic Party (FDP) is by this de-registration precluded from participating in any electoral activities including but not limited to canvassing for seats in any electoral process.*" The question is: How can or is the 4th Defendant to be involved in all of these? I raised this question because, the 1st Defendant is statutorily empowered to receive nomination of candidates for elective offices from the registered political parties. Secondly, it alone has

the statutory power to print the ballot papers which are required to bear the *acronyms* and *logos* of the political parties that will participate in elections. None of these functions are placed in the hands of the 4th Defendant whose only limited role during elections is to assist in the maintenance of law and order within the precincts of voting and collating stations. In the light of all that I have said, the Motion on Notice of the 2nd and 4th Defendants dated 17/6/13, partially succeed only in respect of the 4th Defendant whose name is hereby struckout of this action. By this result, the Plaintiffs' suit is left to contend with the 1st and 2nd Defendants only.

Having cleared the applications which are in the nature of preliminary objections, I can now consider the Plaintiffs' suit on its merit against the 1st and 2nd Defendants alone.

In the written address filed by the Plaintiffs' Counsel in support of the "Originating Summons", the Plaintiffs set down four (4) issues for determination. These are:

1. *"Is the purported reliance by the 1st Respondent (INEC) on Section 78(7) of the Electoral (Amendment) Act of 2010 to de-register the claimant as a political party with massive followership not a derogation of the very principles of Democracy which encompasses*

   (a) Freedom to freely associate;

(b) *Freedom to belong to a political party of ones choice and*

(c) *Freedom to exercise one voting rights to a party of one choice?"*

2. *"Is Section 78(7) of the Electoral (Amendment) Act available to the 1st Respondent having regards to the irrefutable facts of this case and the facts that the Claimants is not guilty of any of the alleged breach of that law?"*

3. *"Is Section 78(7) of the Electoral (Amendment) Act a law reasonably justifiable in a Democratic society? No"*

4. *"Even if the 1st Respondent can de-register a political party (which assertion is categorically denied), is such power not supposed to be exercised with due regards to the Claimant's right to fair hearing and freedom of thoughts/ conscience and the need for the citizens to freely associate?"*

When I read these issues vis-à-vis the facts deposed in the "Affidavit in support of the Plaintiffs' Originating Summons" as well as the "Further-Affidavit" filed and the exhibits attached, I seem to have the feeling that issue one as couched appears rather academic, perhaps high sounding without really condescending on the real facts as alleged by the Plaintiffs in relation to the

questions set down for determination and the reliefs being sought. All of issues 1, 2 and 3 which the Plaintiffs' Counsel had himself collapsed to argue together are issues which can be argued as one. It is whether Section 78(7)(ii) of the **Electoral Act, 2010 (As Amended in 2011)** is or is not constitutionally valid upon which the 1st Defendant purportedly acted to "*de-register*" the 1st Plaintiff. The only other subsidiary, perhaps, a collateral issue is issue No.4 which can be argued as issue two (2) to the broad issue I have just couched as issue one which basically is to seek the interpretation of Section 78(7)(ii) of the **Electoral Act**, supra. vis-à-vis the relevant and applicable provisions of the **CFRN, 1999 As Amended**. The view I have expressed in this regard is to the effect that at the end of the day, it is the determination of these two (2) issues that will assist in resolving the five (5) questions set down in the "Originating Summons" and will enable the Court to ascertain whether the reliefs being sought by the Plaintiffs are grantable as couched or to be modified in order to meet such answers as the Court in the exercise of its interpretative jurisdiction may give to the questions.

I have advisedly described issue 2 as a subsidiary, perhaps a collateral issue, not because, it is less important, but in the event that Section 78(7)(ii) of the **Electoral Act**, supra. is held to be unconstitutional, resolving the said issue may become unnecessary. However, in the event that Section 78(7)(ii) of the **Electoral Act** is held to be constitutional, then, issue 2 will become an issue that is necessary to be considered and determined because, the legality of the decision of the 1st

Defendant's decision in Exhibit "FB2" attached to the "Originating Summons" would have been affirmed by a decision that may affirm the constitutionality of Section 78(7)(ii) of the Act. So, both issues are somewhat independent and to some extent, in the context of the analysis I have done, intertwined where the validity of the provision of Section 78(7)(ii) of the **Electoral Act** is affirmed as constitutional.

Before I wade into these two (2) issues, let me just do a recap of issues of facts which are not in dispute between both parties. This is because, a proceeding begun by "Originating Summons" is intended by the provisions of Order 3 Rules 6 and 7 of the **Federal High Court (Civil Procedure) Rules, 2009**, to be one in which the judicial power of the Court is invoked to construe and interpret a *written deed, will, enactment* or other written instrument, and it is a suit in which the Court is asked to determine any legal or equitable rights of a person such as the Plaintiffs herein, "*where the determination of the question whether such a person is entitled to the right depends upon a question of construction of such enactment or written instruments*". See: Adekeye, JCA (as she then was now JSC Rtd.) in **NYA v. EDEM (2000) 8 NWLR (pt.669) 349.** In this case, what is called to be construed in order to establish the *vires* or otherwise of the 1st Defendant's administrative act by the decision it conveyed to the 1st Plaintiff in Exhibit "FB2" attached to the main "Affidavit in support of the Originating Summons" is the provision of Section 78(7)(ii) of the **Electoral Act, 2010 As**

Amended vis-à-vis the provisions of the Constitution which relate to political parties in Nigeria.

The facts which are not in dispute between the parties are:

Firstly, until 6/12/12 when the 1st Defendant wrote Exhibit "FB2" to the 1st Plaintiff, the 1st Plaintiff was one of the registered political parties in Nigeria. This is borne out of Exhibit "FB1" being the "*Certificate of Registration*" issued to the 1st Plaintiff in 2006 upon its being registered as a political party. The implication of being *registered as a political party* is that it enables the 1st Plaintiff *to participate in the electoral processes* which are organized to elect public office holders into elective positions created by the Constitution because, by virtue of Section 221 of the **CFRN, 1999 As Amended**, "*No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the lection expenses of any candidate at an election*". The Nigerian Constitution has not yet made provision to enable "*independent candidates*", i.e. those who do not belong to any of the registered political parties to stand for election and canvass for votes.

Secondly, there was a general election held sometime in April, 2011 in which the 1st Plaintiff participated as one of the registered political parties in Nigeria.

Thirdly, the 1st Plaintiff at the said April, 2011 general elections did not win any seat in any of the elective positions that were contested for by the registered political parties.

Fourthly, the 1st Plaintiff, by the decision of the 1st Defendant conveyed to it by Exhibit "FB2" dated 6/12/12, was purportedly "*de-registered*" as a political party about 20 months after the said April, 2011 general elections, and

Fifthly, the 1st Plaintiff was not heard before the said decision in Exhibit "FB2" was taken by the 1st Defendant to "*de-register*" the 1st Plaintiff and which was conveyed to it by the said Exhibit "FB2".

Having earmarked issues which are of facts and which are not in dispute between both parties, the stage has now been reached to examine the various provisions of the Constitution relied upon as having been breached by the provision of Section 78(7)(ii) of the **Electoral Act**, supra. which was the enabling law that empowers the 1st Defendant to take the decision it conveyed on 6/12/12 to the 1st Plaintiff as depitched in Exhibit "FB2" attached to the "Originating Summons".

Let me begin my judicial enquiry in this regard by going to the foundation of the 1st Defendant's legal existence. The 1st Defendant is one of the "*Federal Executive Bodies*" created pursuant to section 153(1)(f) of the **CFRN, 1999 As Amended**. The details of its "*composition*" and "*functions*" are pushed out of the main body of the Constitution and are stated in the **Third**

Schedule, Part 1 of the Constitution, 1999. The 1st Defendant, having been established pursuant to Section 153(1)(f) of the Constitution, has its "*composition*" and "*functions*" defined under paragraph "F" of the **Third Schedule, Part 1 of the CFRN, 1999 As Amended**. The case of the Plaintiffs has got nothing to do with Section 14 under paragraph "F" of **Third Schedule, Part 1 of the Constitution** which deals with the composition of the 1st Defendant as a "*Federal Executive Body*". The Plaintiffs' case is concerned with Section 15 of paragraph "F" in the **Third Schedule, Part 1 of the Constitution**. In view of the real issue in dispute as to whether the provision of Section 78(7)(ii) of the **Electoral Act** passed by the 3rd Defendant (who has been struckout, the joinder of the said 3rd Defendant against whom no relief is sought and in whose absence this Court can *effectually* and *effectively* settle all questions in dispute as to the Constitutional validity of the said provision) was constitutional or not, it is imperative that I reproduce the whole of Section 15(a) – (i) in paragraph "F" of **Third Schedule, Part 1 of the CFRN, 1999 As Amended**.

The said Section 15 provides: "*The commission shall have power to –*

> *(a) "organize, undertake and supervise all elections to the offices of the President and Vice President, the Governor and Deputy Governor of a State, and to the Membership of the Senate, the House of*

representatives and the House of Assembly of each State of the Federation";

(b) *"register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly"; (Underline mine)*

(c) *"monitor the organizations and operation of the political parties, including their finances; conventions; congresses and party primaries";*

(d) *"arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information";*

(e) *"arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution";*

(f) *"monitor political campaigns and provide rules and regulations which shall govern the political parties";*

(g) *"ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law";*

(h) *"delegate any of its powers to any Resident Electoral Commissioner"; and*

(i) *"carry out such other functions as may be conferred upon it by an Act of the National Assembly." (Underline is mine).*

In relation to the provision in Section 15(a) of the **Third Schedule Part 1 of the Constitution**, it is clear that the 1st Defendant is not constitutionally saddled with elections to local government council even though, by Section 7(1) of the Constitution, local government is required to be "*democratically*" constituted by elections. This is an area left entirely in the hands of the States who have individually set up their own Electoral Commissions.

The 1st Plaintiff, by virtue of Exhibit "FB1" attached to the "Originating Summons", was until 6/12/12 when it was purportedly "*de-registered*", one of the registered political parties in Nigeria. By this, the 1st Defendant, in the exercise of its powers pursuant to Section 15(b) in **Part 1 of the Third Schedule to the Constitution** registered the 1st Plaintiff on 22/3/2006.

The next question one may ask is: what are the conditions which a "*political association*" needs to fulfill to be registered as a "*political party*"? The answer to this, again lies in the Constitution, because Section 221 of the Constitution only permits political parties to participate in the electoral process. The provision of Section 222(a) – (f) of the **CFRN, 1999 As Amended**, has laid down what a political association wanting to be registered by the 1st Defendant in the exercise of its powers pursuant to Section 15(b) of **Part 1, Third Schedule of the**

Constitution has prescribed needs to do. Let me reproduce the said Section. It reads thus:

222. *"No association by whatever name called shall function as a political party, unless" –*

(a) *"the names and addresses of its national officers are registered with the Independent National Electoral Commission";*

(b) *"the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping";*

(c) *"a copy of its constitution is registered in the principal office of the Independent national Electoral Commission in such form as may be prescribed by the Independent National Electoral commission";*

(d) *"any alteration in its registered Constitution is also registered in the principal office of the Independent National Electoral Commission within 30 days of the making of such alteration";*

(e) *"the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria"; and*

(f) *"the headquarters of the association is situated in the Federal Capital Territory, Abuja."*

Reading these provisions, it appears that once a *"political association"* meets all of these prescribed conditions, its registration by the 1st Defendant is virtually *automatic.* This in my view, is part of the larger issues and implication of the Supreme Court's decision in **INEC v. MUSA (2003) 3 NWLR (pt.806) S.C. 72** cited by virtually all the Counsel, each trying to hold on to such parts as he or she considers favourable to the issues being canvassed. It would seem that the power of the 1st Defendant in this regard, is purely *ministerial* and *does not involve the exercise of any discretion.*

When I read the contents of Exhibit "FB2" attached to the "Originating Summons" and Exhibit "CEO-1" being a copy of Punch Newspaper of 13/12/12 which is an advertorial at the instance of the 1st Defendant, and titled: *"REASONS FOR DE-REGISTRATION OF 28 POLITICAL PARTIES"*, the reason ascribed by the 1st Defendant in both exhibits I have mentioned are: *(i) "Composition of NEC fails to meet the requirements of Section 223(1) and (2) of the Constitution of Federal Republic of Nigeria, 1999"; and (ii) "Has not won a seat in the National or State Assemblies."* This latter condition is not part of the conditions in Section 222 of the Constitution which I have just reproduced but was made a provision in Section 78(7)(ii) of the **Electoral Act**, supra. Reading through the entire gamut of Sections 222 – 229 of the Constitution, the drafters of the **CFRN,**

1999 As Amended did not in any way, whether *specifically* or *impliedly* provide for an occasion when a registered political party that has met the conditions in Section 222(a) – (f) of the Constitution to be registered can later be "*de-registered*". This was why I had earlier remarked, that "*de-registration*" of a political party is a concept that never reared its head in the entire Constitution. Perhaps, the nearest to it is the *proviso* to Section 40 of the Constitution which provides:

> *"Every person shall be entitled to assemble 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 interest:*
>
> *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 accord recognition." (Underline mine for emphasis)*

The key words here are "*with respect to political parties to which that commission does not accord recognition*". The implication of this, is that a registered political party may for certain reasons, be no longer recognized by the 1st Defendant. The main "*nut*" I was unable to crack, is whether this phrase as couched in the *proviso* to Section 40 of the **CFRN, 1999 As Amended** is intended to bear the same meaning and have the same legal effect

as an express act of "*de-registration*". I have expressed this view, because, the 1st Defendant may "*not accord recognition*" to a registered political party without the said party being "*de-registered*". In taking any decision not to accord recognition to a registered political party, my view is that the 1st Defendant is not left at large at its own *whims* and *caprices* as a matter of unbridled discretion. It's decision not to accord recognition to a registered political party must be situated within the pre-conditions stipulated in Sections 222(a) – (f) and 223(1) and (2) of the Constitution. I have no doubt in my mind, that the National Assembly when it enacted the controversial Section 78(7)(ii) of the **Electoral Act,** supra, bore this fact in mind. Let me reproduce Section 78(7)(i) and (ii) of the Act for a full understanding of the analysis I am making. It provides: "*The commission shall have power to deregister political parties on the following grounds*" –

(i) "*breach of any of the requirements for registration*"; *and*

(ii) "*for failure to win a seat in the National or State Assembly election*".

When I read this provision and reflected on it, the first question that agitated my thought was, why limit "*failure to win a seat to the National or State Assembly election*" as one of the grounds upon which a registered party may be deregistered when Section 15(a) in **Part 1 of the Third Schedule to the Constitution**, empowers the 1st Defendant to organize elections into the Offices

of President, Vice President, Governor, Deputy Governor, Senate, the House of Representatives and State House of Assembly excluding, Local Government Councils.

In view of the fact that the 1st Plaintiff was purportedly "de-registered" by the 1st Defendant on account of its "*failure to meet the requirements*" of Section 223(1) and (2) of the **Constitution of the Federal Republic of Nigeria, 1999 (As Amended)**, it is judicially expedient that I reproduce the said provisions. It reads:

223(1). "The Constitution and rules of a political party shall –

(a) provide for the periodical election on a democratic basis of the principal officers and members of the executive committee or other governing body of the political party; and

(b) ensure that the members of the executive committee or other governing body of the political party reflect the federal character of Nigeria;

Section 223(2) of the Constitution provides:

"For the purposes of this section" –

(a) "the election of the officers or members of the executive committee of a political party shall be

deemed to be periodical only if it is made at regular intervals not exceeding four year"; and

(b) *"the members of the executive committee or other governing body of the political party shall be deemed to reflect the federal character of Nigeria only if the members thereof belong to different States not being less in number than two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja."*

The decision of the 1st Defendant conveyed to the 1st Plaintiff in Exhibit "FB2" attached to the "Originating Summons" was made pursuant to this provision and Section 78(7)(ii) of the **Electoral Act**, supra. I have raised a query as to how or why the National Assembly delimits "*the failure to win seats*" to the National and State Assembly elections" when the 1st Defendant has power to conduct elections into other offices mentioned in Section 15(a) of **Part 1 of Third Schedule, CFRN, 1999 As Amended**. It seems that when Section 78(7)(ii) of the Act is construed against the provisions of Section 222(a) – (f) of the Constitution, the legislative decision of the National Assembly to so delimit the failure of a political party to win a seat in the National or State Assembly was nothing but an arbitrary "*rule of the thumb*". I have no doubt, that the intention of the drafters of the **CFRN, 1999 As Amended**, when it provided the conditions for registration of political associations as political parties in Section 222(a) – (f) of the Constitution and in Section 223(1) and (2) of

the Constitution for modalities of how registered political parties are to constitute their executive committees, have impliedly created *conditions* for the continued recognition of registered political parties. To the extent that Section 78(7)(i) of the Act stipulates a "*breach of any of the requirements for registration*" as a ground to "*de-register*" a political party, it is to that extent, in my view, that the National Assembly followed the dictates and the spirit of the Constitution which do not provide, expressly for the conditions under which a registered political party may no longer, to use the exact phrase in the *proviso* to Section 40 of the Constitution which I have earlier reproduced, "*be accorded recognition*" by the 1st Defendant.

Reading the provisions of Sections 224 – 227 of the Constitution, they relate to what political parties are required to do and what they should abstain from doing and it generally gives the 1st Defendant, in accordance with Section 15(c) of **Part 1, Third Schedule, CFRN, 1999 As Amended**, general powers to exercise and a role to play in terms of "*monitoring the organizations and operation of the political parties, including their finances, conventions, congresses and party primaries*". All of these functions are as specifically defined in Sections 85, 86 and 87 of the **Electoral Act**, supra. All of these provisions, I dare say were the "*bye-products*" of Section 15(c) of **Part 1 of the Third Schedule of the Constitution**.

The argument and disputation by both parties on the constitutional validity of Section 78(7)(ii) of the Act was, as it

were, laid on Section 228(d) of the **CFRN, 1999 As Amended**. I will reproduce the whole of Section 228(a) – (d) of the Constitution, but will concentrate my attention on its paragraph (d).

Section 228 provides: "*The National Assembly may be Law provide –*

(a) *"guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of the party primaries, party congresses and party convention and";*

(b) *"the conferment on the Independent National Electoral Commission of powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the commission more effectively to ensure that political parties observe the practices of Internal Democracy, including the fair and transparent conduct of party primaries, party congresses and party conventions";*

(c) *"for an annual grant to the Independent National Electoral Commission for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions"; and*

(d) *"for the conferment on the commission of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the provisions of this Part of this Chapter."* *(Underline mine for emphasis)*

It was on the strength of this provision and of the larger legislative powers conferred on the National Assembly by Section 4(1); (2); (3) and (4) of the Constitution, that Acts such as the **Electoral Act 2010 (As Amended in 2011)** were passed by the National Assembly. The key words in Section 228(d) of the Constitution are: "*may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the provisions of the part of this Chapter*." The provisions are in my view, Sections 223(1) and (2); 224; 225(1), (2), (3), (4), (5) and 96); 226(1); (2) and (3) of the Constitution. By these provisions, the details of the functions which Section 15(a) of **Part 1 of the Third Schedule of the CFRN, 1999 As Amended** were laid out as what the 1st Defendant is required to do in order to "*monitor the organizations and operation of the political parties, including their finances, conventions, congresses and party primaries*".

As I had earlier remarked, the concept of "*de-registering*" a political party was a strange concept to the provisions of the

Constitution but the *proviso* to Section 40 of the Constitution appears to conceptualize a situation where the 1st Defendant "*may not accord recognition to a political party*". Is this the same thing as "*de-registration*"? But my view is that, the intention of the drafters of the Constitution is that a political party may get to a situation (which can only be ascertained from the conditions for registration and continued existence as a political party) when the 1st Defendant may not accord it recognition as a registered political party and it is this gap which the Constitution has left on this issue without specifically saying so, that the National Assembly in my view, has endeavoured to fill by the provisions of Section 78(7)(i) and (ii) of the Act. I am of the view, when all these provisions are real communally, i.e. Sections 40; 222(a) – (f); Sections 223 – 227 of the Constitution as well as Section 15(a) – (i) in **Part 1 of the Third Schedule to the CFRN, 1999 As Amended**, that the National Assembly is empowered to provide as it has done in Section 78(7)(i) and (ii) of the **Electoral Act**, supra. for "*de-registration*" of political parties. This is so, when Section 15(i) of **Part 1 of the Third Schedule** is read conjunctively with Section 228(d) of the Constitution and against the backdrop of the *proviso* to Section 40 of the Constitution. But as I have earlier stated, the criteria by which the National Assembly, whilst promulgating Section 78(7)(ii) of the **Electoral Act**, supra. to delimit "*the failure to win a seat to "the National or State Assemblies*" appear to be the result of *legislative arbitrariness*, perhaps, a *rule of the thumb* because, Section 15(a) of **Part 1 of the Third Schedule to the CFRN, 1999 As**

Amended, empowered the 1st Defendant to conduct elections into all offices spelt out in the said provision with the exclusion of local government elections. Section 78(7)(i) of the **Electoral Act** supra. seems to capture the unexpressed intention of the drafters of the Constitution in relation to the *proviso* to Section 40 of the Constitution which I do not see as inconsistent with any of the provisions of the Constitution. A registered political party that has fallen short of the conditions prescribed in Section 222(a) – (f) of the Constitution or which has not been able to hold its conventions and have its national officers elected in the mode conceived in Section 223(1) and (2) of the Constitution can have the recognition accorded to it by 1st Defendant withdrawn. In order to give effect to the rather amorphous phrase in the *proviso* to Section 40 of the Constitution, to wit: "*with respect to political parties to which the commission does not accord recognition*", the National Assembly had by Section 78(7)(i) and (ii) of the **Electoral Act**, and in recognition of its enabling powers pursuant to Section 228(d) of the Constitution; Section 15(i) of **Part 1 of the Third Schedule to the Constitution** and items 56; 67 and 68 of **Part 1 of the Second Schedule to the Constitution**, has specifically made clear and express provisions as to when a political party may be "de-registered". I am only worried that Section 78(7)(ii) of the Act does not appear, by my understanding of the various provisions of the **CFRN 1999, As Amended** which I have considered to have any *constitutional pedigree.* As I had said, it was a "*product*" of *legislative arbitrariness.* It suffices that when a party that has breached the

conditions for registration and has not been able to meet the constitutional requirements as to its obligations under Sections 223(1) and (2); 224-227 of the Constitution, it can no longer claim a right to be retained as a registered political party and to whom the annual grants which the 1st Defendant, by virtue of Section 228(c) of the Constitution is empowered to disburse to registered political parties should be paid such annual grants. To allow that will amount to a "*constitutional fraud*" on the tax payers of the country. Whilst I deprecate the provision of Section 78(7)(ii) of the Act as one which may encourage political parties to become overtly desperate in winning elections at all costs, *I will not subscribe to the retention of political party that may be in breach of the conditions for its registration and which has not been able to meet and discharge the obligations imposed upon it by the relevant provisions of the Constitution which I have highlighted.* Such a political party will become a *burden* and a *liability* on the electoral and political process in Nigeria.

In conclusion, my decision is that the National Assembly has the constitutional powers to pass the **Electoral Act, 2010 (As Amended in 2011)** and its Section 78(7)(i) alone is *valid* and *constitutional.* Its Section 78(7)(ii) is the product of *legislative arbitrariness* and has no foundation in any of the provisions that relate to the formation of political parties and of their continued existence as such. The said Section 78(7)(ii) of the **Electoral Act, 2010 (As Amended in 2011)** is for all intents and purposes, inconsistent with the general provisions of the Constitution in relation to the formation and continued operation

of political parties as I have analyzed in the context of Sections 222(a) – (f); 223(1) and (2) and Section 224-227 of the **CFRN, 1999 As Amended**. It is to that extent of its inconsistency, pursuant to Section 1(3) of the **CFRN, 1999 As Amended**, declared invalid and unconstitutional. It is hereby *mauled down* and shall cease forthwith to be part of the extant provisions in the **Electoral Act, 2010 (As Amended in 2011)**.

By this decision, it seems that the 1st Plaintiff has succeeded in terms of having one of the grounds for its "*de-registration*" annulled on the ground that Section 78(7)(ii) of the **Electoral Act** is unconstitutional. The second arm of the grounds for its "*de-registration*" as shown in Exhibit "FB2" attached to the "Originating Summons" and Exhibit "CEO-1" attached to the Plaintiffs' "Further-Affidavit" is its "*failure to meet the requirements of Section 223(1) and (2) of* ***the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)***". It is the consideration of this issue that readily leads to my consideration and determination of the second subsidiary or collateral issue which I have set down for determination.

In paragraph 6 of the Plaintiffs' "Further-Affidavit", the deponent avers thus: "*That the Plaintiffs deny the allegations contained in the said publication*" and further say that "*at no time were they heard before the purported "de-registration"*. The issue of whether or not the Plaintiffs ought to be heard forms the kernel of relief 4 in the "Originating Summons". Let me quickly reproduce it again. It states:

4. *"**A DECLARATION** that the purported reliance on Section 78(7)(ii) of the Electoral (Amendment) Act, 2010 by the 1st Defendant in de-registering the 1st Plaintiff without hearing the aforesaid political party is wholly violative of Sections 36, 38 and 40, Sections 221-222 of the Constitution of the Federal Republic of Nigeria 1999 and Paragraph 15 of 3rd Schedule (Part 1) of the Constitution of the Federal Republic of Nigeria, 1999."*

One of the issues not in dispute is that the 1st Plaintiff was duly recognized as a registered political party and it participated in April, 2011 general elections. The decision of the 1st Defendant to "*de-register*" it as conveyed in its letter dated 6/12/12 (Exhibit "FB2" attached to the "Originating Summons") appears to have been taken about 20 months after the said elections.

When I read the Plaintiffs' depositions in paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 35 of the Affidavit in support as well as the documentary exhibits attached to the said Affidavit, the question that agitated my thoughts is: what was the 1st Defendant's responses to all these issues of facts? But before I find the answers to them, it is expedient that these paragraphs are reproduced in this Judgment in order that they will aid a clear understanding of the decision that will be reached. The paragraphs read:

16. *"That contrary to the content of the above-mentioned letter the 1st Plaintiff complied with all statutory provisions contained in Sections 222-229 of the Constitution of the Federal Republic of Nigeria, 1999 and relevant provisions in the Electoral Act, 2010."*

17. *"That the 1st Plaintiff has the names and addresses of its national officers registered with the 1st Defendant and it has never been queried by the 1st Defendant on this."*

18. *"That the 1st Plaintiff has over 2 million Nigerians registered as members from all the States of the Nigerian Federation. Attached herewith and marked Exhibit FB3 is the list of some 1st Plaintiff's members from some States in Nigeria."*

19. *"That the 1st Plaintiff's membership cuts across age, sex, religion or ethnic groupings in Nigeria."*

20. *"That a copy of the 1st Plaintiff's Constitution is registered in the principal office of the 1st Defendant and the 1st Defendant never raised and issue over the composition of the 1st Plaintiff's Constitution. Attached herewith and marked Exhibit FB4 is a copy of the 1st Plaintiff's Constitution."*