**MR. LYON DAVID PEREWORINIMI**

**V.**

**SENATOR HEINEKEN LOKPOBIRI & ORS**

IN THE COURT OF APPEAL OF NIGERIA

ON SATURDAY, THE 11TH DAY OF JANUARY, 2020

CA/PH/575/2019

**LEX (2020) - CA/PH/575/2019**

**OTHER CITATIONS**

3PLR/2020/33 (CA)

(2020) LPELR-49505 (CA)

**BEFORE THEIR LORDSHIPS**

ISAIAH OLUFEMI AKEJU, JCA

CORDELIA IFEOMA JOMBO-OFO, JCA

ABUBAKAR MUAZU LAMIDO, JCA

**BETWEEN**

MR. LYON DAVID PEREWORINIMI - Appellant(s)

AND

1. SENATOR HEINEKEN LOKPOBIRI

2. ALL PROGRESSIVE CONGRESS (APC)

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) - Respondent(s)

**ORIGINATING COURT(S)**

FEDERAL HIGH COURT [Holden at Yenagoa Bayelsa State]

**REPRESENTATION**

Chief Karina Tunyan SAN, with him, M.J. Numa, Esq. and Julius Iyekoroghe, Esq. - For Appellant

AND

F. B. Olorogun, with him, I. E. Onokowhake, Esq., T. Mamofede, Esq. and J.O. Nwakpa, Esq. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

ELECTION LAW - PRE-ELECTION MATTERS:- Constitutionally prescribed period within which to file a pre-election matter – Determination of date of accrual of cause of action - Pre-election matter filed out of time – Validity/Competency of

CONSTITUTIONAL LAW – ELECTIONS:- Section 285 (9) of the Constitution of the Federal Republic or Nigeria 4th Alteration Act, 2017 – Period prescribed for the commencement and conclusion of any election and pre-election petitions - How calculated – Whether the provision of the Interpretation Act which excludes the day of occurrence of the act complained of is not excluded and the computation of the period of 14 days include the actual date of such occurrence

**PRACTICE AND PROCEDURE ISSUES**

ACTION – LIMITATION:- Statute barred action – Meaning of – Basis of statute barred election petitions

APPEAL: – Appellate jurisdiction – Decision of lower court given without jurisdiction - Implication for the jurisdiction of the appellate court

JURISDICTION:- Electoral matter filed out of time prescribed by the Constitution – Legal implication for jurisdiction of Court to adjudicate in the matter – Basis of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

This appeal is against the Judgment of the Federal High Court holden at Yenagoa Bayelsa State delivered on the 14th day of November, 2019 in Suit No FHC/YNG/CS/100/2019 commenced by the 1st Respondent through the originating summons filed on 18/9/19 with the supporting affidavit and documents for declaratory and injunctive reliefs as on pages 163 - 1252 of Vol. 1 of the Record of proceedings. In the judgment now on appeal, the lower Court had nullified the entire primary election of the 2nd Respondent held on 4th September, 2019 in Bayelsa State.

The Appellant and the 1st Respondent are members of the 2nd Respondent a political party, the All Progressive Congress, and it is mutually accepted by parties in this appeal that the appellant and the 1st Respondent contested the Governorship primary election conducted by the 2nd Respondent on 4th September, 2019 to nominate its candidate for the 2019 election to the office of governor of Bayelsa State, and at the end of the primary election the Appellant was announced as the winner thereof. Being dissatisfied with such announcement or declaration, the 1st Respondent commenced the suit No FHC/YNG/CS/100/2019 at the Federal High Court, Yenagoa (hereinafter called the lower Court) challenging the return of the Appellant.

DECISION(S) APPEALED AGAINST

At the lower Court, the Appellant contested by way of applications the jurisdiction of the Court on ground that the action was statute barred among other challenges. The lower Court heard and overruled the applications and nullified the entire primary election of the 2nd Respondent for non-compliance with the relevant laws and Guidelines.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether by virtue of Section 285(9) of the Constitution of the Federal Republic of Nigeria, the 1st Respondent’s Originating Summons filed on 18/9/19 challenging the primary election of the 2nd Respondent held on the 4th day of September, 2019 was not statute barred thereby divesting the Court of jurisdiction.

2. Whether or not the trial Court was right when it held that the voluntary personal undertaking of an aspirant in the primary election of a political party is inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended and the 2nd Respondent is not bound by his voluntary undertaking in the nomination form he filled before he was cleared to participate in the primary of the 2nd Respondent.

3. Whether or not the trial Court erred in law when it failed to order for pleadings despite the existence of hearsay deposition, highly contentious facts and conflicting depositions in the affidavits exchanged by the parties before the trial Court.

4. Whether or not the trial Court was right to have raised issues suo motu and resolved same without affording the parties the opportunity to address the Court on them.

*BY RESPONDENTS*

1ST RESPONDENT

1. Whether the lower Court was not right in holding that the suit of the 1st Respondent was not statute barred.

2. Whether the lower Court was not right when it held that the undertaking signed by the 1st Respondent in his nomination form does not prevent the 1st Respondent from exercising his statutory right to seek redress in Court as provided in Section 87(9) of the Electoral Act 2010 (as amended).

3. Whether having regards to the facts and circumstances of this case, the lower Court was not right when it declined to order pleadings in the case.

2ND – 3RD RESPONDENT

[Did not file any brief]

*AS ADOPTED BY COURT*

[Adopted issues as framed by Appellant and 1st Defendant]

DECISION OF COURT OF APPEAL

1. For the reason of lack of jurisdiction, issue 1 is resolved in favour of the Appellant. Therefore, no valid proceedings was conducted at the lower Court, leaving the appeal nothing to stand upon.

2. Having found in favour of the Appellant on the issue of jurisdiction, the remaining issues and application have become academic, irrelevant, and unnecessary to be considered.

**MAIN JUDGMENT**

ISAIAH OLUFEMI AKEJU, J.C.A. (Delivering the Leading Judgment):

This appeal is against the Judgment of the Federal High Court holden at Yenagoa Bayelsa State delivered on the 14th day of November, 2019 in Suit No FHC/YNG/CS/100/2019 commenced by the 1st Respondent through the originating summons filed on 18/9/19 with the supporting affidavit and documents for declaratory and injunctive reliefs as on pages 163 - 1252 of Vol. 1 of the Record of proceedings. In the judgment now on appeal, the lower Court had nullified the entire primary election of the 2nd Respondent held on 4th September, 2019 in Bayelsa State.

The Appellant and the 1st Respondent are members of the 2nd Respondent a political party, the All Progressive Congress, and it is mutually accepted by parties in this appeal that the appellant and the 1st Respondent contested the Governorship primary election conducted by the 2nd Respondent on 4th September, 2019 to nominate its candidate for the 2019 election to the office of governor of Bayelsa State, and at the end of the primary election the Appellant was announced as the winner thereof. Being dissatisfied with such announcement or declaration, the 1st Respondent commenced the suit No FHC/YNG/CS/100/2019 at the Federal High Court, Yenagoa (hereinafter called the lower Court) challenging the return of the Appellant.

At the lower Court, the Appellant contested by way of applications the jurisdiction of the Court on ground that the action was statute barred among other challenges. The lower Court heard and overruled the applications and nullified the entire primary election of the 2nd Respondent for non-compliance with the relevant laws and Guidelines.

Being dissatisfied with the decision of the lower Court, the Appellant commenced this appeal and in the Appellants’ Brief of Argument filed on 27/11/19 and endorsed by M. J. Nduma Esq., who also adopted same at the hearing of the appeal, the Appellant raised issues for determination as follows:

1. Whether by virtue of Section 285(9) of the Constitution of the Federal Republic of Nigeria, the 1st Respondent’s Originating Summons filed on 18/9/19 challenging the primary election of the 2nd Respondent held on the 4th day of September, 2019 was not statute barred thereby divesting the Court of jurisdiction.

2. Whether or not the trial Court was right when it held that the voluntary personal undertaking of an aspirant in the primary election of a political party is inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended and the 2nd Respondent is not bound by his voluntary undertaking in the nomination form he filled before he was cleared to participate in the primary of the 2nd Respondent.

3. Whether or not the trial Court erred in law when it failed to order for pleadings despite the existence of hearsay deposition, highly contentious facts and conflicting depositions in the affidavits exchanged by the parties before the trial Court.

4. Whether or not the trial Court was right to have raised issues suo motu and resolved same without affording the parties the opportunity to address the Court on them.

In the Brief of the 1st Respondent settled by F.O. Olorogun and filed on 3/12/1, the three issues for determination are;

1. Whether the lower Court was not right in holding that the suit of the 1st Respondent was not statute barred.

2. Whether the lower Court was not right when it held that the undertaking signed by the 1st Respondent in his nomination form does not prevent the 1st Respondent from exercising his statutory right to seek redress in Court as provided in Section 87(9) of the Electoral Act 2010 (as amended).

3. Whether having regards to the facts and circumstances of this case, the lower Court was not right when it declined to order pleadings in the case.

Thus both the Appellant and the 1st Respondent argued the issue of jurisdiction as their first issue, and being a threshold issue, the issue will be taken and determined first in this appeal. The other parties did not file briefs while the Appellant filed a Reply Brief on 5/12/19.

The contention of the appellant on this issue is that by virtue of Section 285(9) of the Constitution (4th Alteration Act No. 21) 2017 the Respondent’s Originating Summons filed at the lower Court on 18th November to challenge the outcome of the primary election held by the 2nd Respondent on 4/9/19 which declared the Appellant winner of the election was incompetent having been filed outside the constitutionally prescribed period of 14 days from the date the cause of action arose.

It was contended that by the decision in F.R.I.N. V. GOLD (2007) ALL FWLR (PT.380) 1444, the document to examine to ascertain the date of occurrence of a cause of action is the Originating process and when it was filed. It was contended that the case of the 1st Respondent arose by virtue of the outcome of the primary election of 2nd Respondent held on 4/11/19 and the declaration of the appellant as the winner thereof, therefore the cause of the 1st Respondents action occurred on 4th day of September, 2019 and not on 7th day of September, 2019 while the 1st Respondent would have filed his suit within 14 days from the date of occurrence.

It was contended that the Originating Summons in this case was filed on 18th September, 2019 as admitted by the Respondent, but the Court, without calling for address by the parties tended to find differently which finding rendered the whole decision a nullity. It was contended that the trial Court erred in law when it agreed with the 1st Respondent that the cause of action arose of the 7th of November, 2019 when the name of the Appellant was submitted to the 3rd Respondent as the doctrine of continuous injury does not apply to election matters in which time begins to run once the cause of action accrues; INEC V. OGBADIBO LOCAL GOVERNMENT & ORS (2015) LPELR 4839 (SC).

The learned counsel submitted that the decision in BELLO V. YUSUFF & ORS (2019) 5 NWLR (PT.1695) 250 is quite illuminating on the consideration of when cause of action arises and when time begins to run for the filing of election matters.

It was submitted that in the computation of time election matters, the Interpretation Act excluding the day of the act does not apply; OKECHUKWU V. INEC (2014) 17 NWLR (PT.14366) 255; PDP V. INEC (2014) LPELR 23808 (SC).

In the argument of this point under its own issue number one, the 1st Respondent’s Brief, the learned counsel for 1st Respondent submitted that the lower Court was endowed with jurisdiction to entertain the action because it was not statute barred. According to the learned counsel, in the determination of whether a suit is caught by limitation law and thus statute barred, the date of the accrual of the cause of action and the date the action was commenced in Court are crucial as found on the Originating Summons while the date the action was filed is as stated on the processes filed in Court; AMUSAN V. OBIDEYI (2005) 14 NWLR (PT.945) 322.

As submitted by the learned counsel, cause of action is defined as denoting every fact which is necessary for a plaintiff to prove if traversed to support his right to the judgment of the Court; IYEKE V. PETROLEUM TRAINING INSTITUTE (2019) 2 NWLR (PT. 1656) 217. It was submitted that the totality of the plaintiff’s claim, in an action commenced by Originating summons the affidavit of the parties take the place of the pleadings; NNPC V. FAMFA OIL LTD (2012)17 NWLR (PT.1328) 144; AGBAKOBA V. INEC (2008) 18 NWLR (PT. 1119) 489. It was submitted that the paragraphs of the affidavit or pleadings must be read together to discover the cause of action; NGIGE V. OBI (2006)18 NWLR (PT. 999)1; GUKAS V. JOS INTERNATIONAL BREWERIES LTD (1991)6 NWLR (PT. 199)614; ADEGBOYEGA V. AWE (1993) 3 NWLR (PT. 280)224.

The learned counsel urged that paragraphs 30, 36 and 37 of the Affidavit in support of the Originating Summons and Paragraph 38(1) of the Further and Better Affidavit in support of the originating summons must be read together so as to discover the cause of action in the instant case, which are that the primary election was held on 4th September, 2019 and the Appellant was wrongly returned as the winner thereof against the 1st Respondent whereof the 1st Respondent protested the conduct of the election and return of the appellant as the winner thereof to the Election Appeal Committee of the 2nd Respondent whose finding was not favourable to the 1st Respondent as the 2nd Respondent went ahead to submit the name of the Appellant to the 3rd Respondent on the 7th September, 2019, and from the foregoing, the cause of action in this case crystallized on the 7th September, 2019, a fact that was rightly affirmed by the lower Court in its judgment at pages 2949-2950 of Vol. 3 of the Record of Appeal.

The learned counsel contended that the contention of the Appellant that the cause of action arose on 4th September, 2019 when the primary election was conducted and not on 7th September, 2019 and therefore the action is statute barred is not correct.

Thus from the arguments of the Appellants and the 1st Respondent on this issue, it is mutually agreed that the primary election which is the crux of the case at the lower Court was held on 4th September, 2019 and the result of the election was announced on the same date while the 1st Respondent was also declared the winner thereof. The Appellant had at the lower Court sought inter alia, the relief of a “Declaration that the Plaintiff having scored the highest number of the valid votes cast at the primary election held by the 1st Defendant and monitored by the 3rd Defendant on 4th September, 2019 is accordingly the validly elected candidate of the 1st Defendant and therefore stands nominated to the 3rd Defendant as the gubernatorial candidate of the 1st Defendant in the 2019 Bayelsa State Governorship Election slated for November, 16, 2019 or any other date subsists.”

The actual issues herein border on what the cause of action is in this case and when it accrued; when does time start to run and what period did the Plaintiff at the lower Court have to file his action; and whether it was not statute barred.

The position of the law as emphasized through the decisions of the Apex Court as well as this Court is that election matters are sui generis and that unlike the other Civil matters time is of essence therein. See HASSAN V. ALIYU 2010) 17 NWLR (PT. 1223) 547. An action is statute barred where such is not commenced within the time stipulated by the law or statute for such commencement. An election or pre-election matter is, by the provisions of Section 285 (9) of the Constitution of the Federal Republic or Nigeria 4th Alteration Act, 2017 required to be filed or commenced within 14 days of the occurrence of the event leading to the action. This provision creates a limitation on the filing of election and pre-election matters as any such action not filed within 14 days is statute barred and the Court will not have the jurisdiction to entertain it.

It has been made clear through decision of the Apex Court that in the computation of time for the commencement of an action guided by Section 285(9) of the 4th Alteration Act, the provision of the Interpretation Act which excludes the day of occurrence of the act complained of is not excluded and the computation of the period of 14 days include the actual date of such occurrence. See OKECHUKWU V. INEC (2014) 17 NWLR (PT. 1436)255.

In the case that led to this appeal, the complaint of the plaintiff now the 1st Respondent was about the primary election conducted on 4th September, 2019 whereby the computation of time must start from that date, and not on any date thereafter, and by this computation, the claim or action of the 1st Respondent ought to have been filed not later than 17th September, 2019 when the 14 days ended. It therefore becomes clear that the 1st Respondent’s action that was commenced on 18th September, 2019 was filed in violation of the Constitutional provision and therefore statute barred.

Thus undoubtedly, this touches on the jurisdiction of the lower Court to adjudicate in the matter and by implication the jurisdiction of this Court with respect to this appeal. In the case of NNPC V. CLIFCO NIG. LTD(2011)4 MJSC 142, it was held that jurisdiction is very fundamental and a threshold matter of law and when a Court has no jurisdiction to entertain an action or to determine same whatever proceedings conducted therein or decision rendered by that Court becomes an exercise in futility. See also BRONIK MOTORS LTD V. WEMA BANK (1983) 1 SCNLR 296.

For the reason of this lack of jurisdiction, this issue must be resolved in favour of the Appellant as no valid proceedings was conducted at the lower Court, and therefore this appeal has nothing to stand upon. It is certain that no one can put something upon nothing and expect it to stand. It must surely collapse.

Having found in favour of the Appellant on this issue of jurisdiction, the remaining issues have become academic and irrelevant to this appeal and I find it unnecessary to consider them. By the same taken, the application argued by the 1st Respondent for the striking out of some grounds of appeal has become otiose and it is discountenanced.

The appeal succeeds and it is allowed consequent upon which the case No. FHC/YNG/CS/100/2019 at the lower Court as well as this appeal are struck out.

Parties are to bear their own costs of the appeal.

**CORDELIA IFEOMA JOMBO-OFO, J.C.A.:**

I read in draft the judgment delivered by my learned brother ISAIAH OLUFEMI AKEJU, JCA.

I agree with his reasoning and conclusion that this appeal has merit and same is allowed by me. The judgment of the Federal High Court sitting in the Yenagoa Judicial Division in suit No.FHC/YNG/CS/100/2019 is thus set aside by me also.

I make no order as to costs.

**ABUBAKAR MUAZU LAMIDO, J.C.A.:**

I agree.