**ABUBAKAR SADIQ MOHAMMED**

**v.**

**HON. ABDULLAHI MOHAMMED WAMMAKO & ORS.**

IN THE SUPREME COURT OF NIGERIA

ON WEDNESDAY, THE 12TH DAY OF JULY, 2017

SC. 788/2016

**LEX (2017) - SC. 788/2016**

**OTHER CITATIONS**

3PLR/2017/10 (SC)

(2017) LPELR-42667(SC)

**BEFORE THEIR LORDSHIPS**

WALTER SAMUEL NKANU ONNOGHEN, J.S.C

CLARA BATA OGUNBIYI, J.S.C

KUMAI BAYANG AKA'AHS, J.S.C

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN , J.S.C

CHIMA CENTUS NWEZE, J.S.C

**BETWEEN**

ABUBAKAR SADIQ MOHAMMED Appellant(s)

**AND**

1. HON. ABDULLAHI MOHAMMED WAMMAKO

2. ALL PROGRESSIVE CONGRESS (APC)

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

**ORIGINATING COURT**

COURT OF APPEAL SOKOTTO JUDICIAL DIVISION(?)

FEDERAL HIGH HIGH COURT, SOKOTO

**REPRESENTATION/LAWYERS**

A.U. Mustapha, Esq. SAN with him, Mustapha B. Tafarki, Esq., Ossy Ehikio, Esq., C. E. Igbokwe, Esq., M. Mohammed, Esq., M.I. Ezeani, Esq., Sulaman Saleh, Esq. and J. A. Atanawhenera - For Appellant

AND

J. S. Okutepa, Esq. SAN with him, Elizabeth O. Ifedayo, Esq. and Ojonimi S. Apeh, Esq., Mrs. Joy E. Ameloko, Khadijah Danfulani (Miss), Miss Helen John Apeh, Miss Abodia, O. Okutepa, Enejo Godwin Awlu, Esq., Christiana E. Sagay and O.S Achem, Esq. -for 1st & 2nd Respondents.  
  
Alex Ejesieme, Esq. -for the 3rd Respondent - For Respondent

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

ELECTION PETITION:- Standard of proof required in an action with respect to Section 31(5) of the Electoral Act, 2010, as amended - Burden of proof - On whom lie the burden of proving that information given by a candidate in the affidavit or any document submitted by the candidate is false

**PRACTICE AND PROCEDURE ISSUES**

ACTION:- Declaratory relief(s) - Whether declaratory reliefs can be granted on mere admission or default of defence.

APPEAL:- Concurrent finding(s) of fact(s): Instances where an appellate Court will not interfere with concurrent findings of fact(s) made by Lower Courts.

EVIDENCE:- Affidavit evidence - Instances where a counter affidavit is not required.

EVIDENCE - Burden of proof - On whom lies the burden of proof in civil cases

EVIDENCE - Burden of proof – Principle a party seeking declaratory reliefs must establish his entitlement to the reliefs sought upon the strength of his own case – Legal effect

EVIDENCE - standard of proof - Required standard of proof where there are where the commission of crime is in issue in any proceedings – Forgery – What must be proved to establish same

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant and the first Respondent, were members of the second respondent, APC in the same Kware/Wammako Federal Constituency, Sokoto. The first Respondent contested and was declared winner of the election to represent the said Constituency at the House of Representatives, between 2011 - 2015.

At the trial court, the Appellant sought for declaratory and injunctive reliefs on the ground of alleged false declaration as to the acquisition of certificates on the part of the 2nd Respondent. Upon the moving of a preliminary objection on jurisdiction, the trial Court struck out the suit on the ground o non-disclosure of a reasonable cause of action and for the action an abuse of the process of the Court. The Appellant’s appeal to the Court of Appeal was dismissed hence the further appeal.

**DECISION(S) APPEALED AGAINST**

The trial Court upheld the Respondent’s preliminary objection challenging the jurisdiction of the court to hear and determine the issues and struck out the suit for the non-disclosure of reasonable cause of action and for being an abuse of Court process. The appellant further appeal to the Court of Appeal was dismissed with the ruling of the trial Court affirmed, hence this further appeal by the Appellant.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

“(1) Whether the learned Justices of the Court of Appeal were right and justified in law in striking out issue number three as framed by the appellant along with ground three of the Notice of Appeal on the premise that the said issue did not flow from the said ground of appeal?

(2) Whether the learned Justices of the Court of Appeal were right and correct in their judgment that the trial Court's decision to the effect that the appellant's action did not disclose reasonable cause of action subsists since there is no ground of appeal attacking same?

(3) Whether the learned Justices of the Court of Appeal were right and correct in their findings and conclusions that the appellant failed to prove beyond reasonable doubt the allegations of false information and certificate forgery levied against the first respondent which conclusion among other reasons led to dismissal of the appellant's case?”

*BY RESPONDENTS*

1st and 2nd respondents

(1) Whether the Court below was right in striking out ground three of the Notice of Appeal and issue three distilled therefrom and was the Court below right to hold as it did that the decision of the trial Court that the appellant's case discloses no reasonable cause of action subsides since there was no ground of appeal attacking it?

(2) Whether the Court below was right when it came to the conclusion that the appellant failed in law to prove the allegation of false information and dismissed the appellant's appeal?

***AS ADOPTED BY COURT***

[The Court adopted the Issues presented by the parties]

DECISION OF SUPREME COURT

1. The appellant failed to prove the allegation that the judgment fo the lower Court was perverse.

2. Since the appellant sought for declaratory reliefs, he had an obligation to advance evidence in proof thereof to warrant the Court’s exercise of its discretion to grant the declaratory reliefs sought. The success of a claim for declaratory reliefs depends on the strength of the plaintiff's case and not on the defendant's defence.

**MAIN JUDGMENT**

**CHIMA CENTUS NWEZE, J.S.C. (Delivering the Leading Judgment):**

The appellant and the first respondent, members of the second respondent, APC, are of the same Kware/Wammako Federal Constituency, Sokoto. The first respondent contested and won election to represent the said Constituency at the House of Representatives, between 2011 - 2015.

At the Court of trial, the appellant entreated it by Originating Summons for declaratory and injunctive reliefs. In sum, his complaint was woven around false declaration as to the acquisition of certificates. Upon a preliminary objection on jurisdiction, the trial Court upheld the objection and struck out the suit for the non-disclosure of reasonable cause of action and for being an abuse of the process of the Court.

The appellant appealed to the Court of Appeal. He, however, did not challenge the *rationes decidendi* on the question of the absence of reasonable cause of action and the issue of the abuse of the process of the Court. In its judgment, the lower Court upheld the ruling of the trial Court, hence this further appeal to this Court.

**ISSUES FOR DETERMINATION**

In this Court, the appellant formulated three issues for the determination of his appeal. They were framed thus:

(1) Whether the learned Justices of the Court of Appeal were right and justified in law in striking out issue number three as framed by the appellant along with ground three of the Notice of Appeal on the premise that the said issue did not flow from the said ground of appeal?

(2) Whether the learned Justices of the Court of Appeal were right and correct in their judgment that the trial Court's decision to the effect that the appellant's action did not disclose reasonable cause of action subsists since there is no ground of appeal attacking same?

(3) Whether the learned Justices of the Court of Appeal were right and correct in their findings and conclusions that the appellant failed to prove beyond reasonable doubt the allegations of false information and certificate forgery levied against the first respondent which conclusion among other reasons led to dismissal of the appellant's case?

The first and second respondents, in their reply, filed two issues which were framed thus:

(1) Whether the Court below was right in striking out ground three of the Notice of Appeal and issue three distilled therefrom and was the Court below right to hold as it did that the decision of the trial Court that the appellant's case discloses no reasonable cause of action subsides since there was no ground of appeal attacking it?

(2) Whether the Court below was right when it came to the conclusion that the appellant failed in law to prove the allegation of false information and dismissed the appellant's appeal?

Before dealing with the above issues, it would only be neater if the preliminary objection of the first and second respondents is disposed of.

**PRELIMINARY OBJECTION**

J. S. Okutepa, SAN, for the first and second respondents, filed a Notice of preliminary objection under Order 2 Rule 9 of the Rules of this Court, (see, pages 1 -16 of the brief filed on April 3, 2017): arguments that elicited the responses of the appellant in his Reply brief, filed on April 11, 2017, see, pages 2- 9 of the said Reply brief.

My Lords, upon my intimate reading of the arguments in the Preliminary Objection, I take the view they ought to be overruled for the submissions on the academic nature of the appeal are not sustainable. I thus overrule the objection and proceed to the main arguments in the main appeal, starting with the first issue.

**ISSUE ONE**

APPELLANT'S SUBMISSION

Whether the learned Justices of the Court of Appeal were right and justified in law in striking out issue number three as framed by the appellant along with ground three of the Notice of Appeal on the premise that the said issue did not flow from the said ground of appeal?

Learned senior counsel for the appellant, A. U. Mustapha, SAN, first, drew attention to Ground three of the Notice of Appeal and issue three. He contended that the lower Court misinterpreted issue three, citing page 379 of the record. He submitted that the correct position was settled by Ajayi v. Total (Nigeria) Plc (2013) 15 NWLR (pt. 1378) 423, 436-437. He, therefore, urged the Court to resolve the issue in his favour.

**FIRST AND SECOND RESPONDENT'S RESPONSE**

Learned senior counsel for the first and second respondents adopted the brief filed on April 3, 2017 wherein he concreted two issues for the determination of the appeal.

On the first issue, he contended that the lower Court, rightly, struck out ground three and issue three, citing page 246 of the record to the effect that the suit did not challenge the finding that the appellant's case failed to challenge the finding of the trial Court on the appellant's failure to disclose a reasonable cause of action. He referred to ground three.

He contended that the trial Court's finding that the appellant's case failed to disclose a reasonable cause of action was not appealed against. In his submission, no issue was distilled from the said ground, Purification Technique (Nig) Ltd v. Jubril (2012) 18 NWLR (pt. 1331) 109, 128; Agbakoba v. INEC (supra); NBC Plc v. Ubani (2014) 4 NWLR (pt. 1398) 421, 467; Shettima v. Goni [2011] 18 NWLR (pt. 1279) 413, 440.

He, further, submitted that the lower Court was right in its conclusion that the appellant's case did not disclose a reasonable cause of action; hence, its decision was still subsisting, Okwaraononi v. Mbadugha (2014) All FWLR (pt. 728) 914, 932.

**ISSUE TWO**

Whether the learned Justices of the Court of Appeal were right and correct in their judgment that the trial Court's decision to the effect that the appellant's action did not disclose reasonable cause of action subsists since there is no ground of appeal attacking same?

Counsel pointed out that the lower Court was wrong to have concluded that issue three did not flow from ground three. He disagreed with the findings of the trial Court on page 239-240 of the record on territorial jurisdiction. He faulted the approach of the trial Court on pages 241 -242 of the record.

He drew attention to the fact that the trial Court decided the two grounds of the preliminary objection, pages 122-123 of the record without entertaining arguments in respect of the Originating Summons. He averred that the lower Court erred in its conclusion that there was no attack on the trial Court's decision to the effect that the appellant's case did not disclose any cause of action or at least any reasonable cause of action.

**RESPONDENTS' RESPONSE**

On this issue, learned counsel for the first and second respondents submitted that the lower Court, rightly, held that the appellant failed to prove the allegation of false information and forgery made against the first respondent and for dismissing the appeal.

He contended that it is not in all circumstances that failure to file a Counter Affidavit would amount to an admission of the facts. He cited Ogoejeofo v. Ogoejeofo (2006) All FWLR (pt. 301) 1792 1803 - 1804 as authority for the view that where evidence is not cogent and strong enough to prove the case, a Counter Affidavit would be unnecessary. He pointed out that, since the appellant’s case was woven around criminal allegations, he had an obligation to prove his case beyond reasonable doubt. He, equally, drew attention to the fact that declaratory reliefs are not awarded even on admission, citing decisions of this Court.

Learned senior counsel, further, contended that the appellant failed to show that a cause of action had accrued, Onuekwusi v. RTCMZC [2001] All FWLR (pt 573) 1927, 1938 - 1941; Ajakaiye v. Idehai [1994] 8 NWLR (pt 364) 504. He drew attention to the findings of the trial Court on the plaintiff's failure to prove his case and the lower Court's endorsement of those findings, Akande v. Adisa [2012] 15 NWLR (pt 1324) 538, 572 - 573. He, finally, disagreed with the appellant's invitation to the Court to make the declarations sought in the Originating Summons. He urged the Court to dismiss the appeal.

**ISSUE THREE**

On this issue, the learned senior counsel for the appellant drew attention to page 388 of the record and urged the Court to juxtapose the above views with the conclusion at pages 390 - 391 of the record. In response to his question whether the case on the Originating Summons was made out, he cited exhibits in the supporting affidavit, paragraphs 8.6 (i) - (viii). He further submitted that the allegations against the first respondent in paragraphs 11 -19 of the affidavit in support, pages 22 - 24 of the record, pages 12 - 14 of the brief.

He narrowed the case down to the absence of Counter Affidavits, citing Inakoju v. Adeleke (2007) 4 NWLR (pt 1025) 427, 684-685; Agbakoba v. INEC (2009) All FWLR (pt. 462) 1037, 1082. He invited the Court to hold that the above paragraphs were admitted, citing Paragraphs 18 and 19 and Section 123 of the Evidence Act.

He further submitted that with the admissions of the allegations in the affidavit, the appellant proved the allegations, citing Ezenduka v. Nigerian Spanish Engineering Co. (2003) FWLR (pt. 150) 1666, 1678. He, equally, cited Ekeagbara v. Ikpeazu (2016) All FWLR (pt. 844) 1973, 1997.

In his contention, the lower Court was wrong to have concluded that the appellant did not prove the criminal allegations beyond reasonable doubt. He invited attention to Agbakoba v. INEC (supra) and Military Administrator of Lagos State v. Adeyida (2012) 5 NWLR (pt 1293) 291, 331 -332. He invited the Court to invoke its Section 22 powers and grant all the reliefs, paragraphs 8.27 (i) - (viii).

APPELLANT'S REPLY BRIEF

As indicated earlier, the appellant's learned senior counsel also adopted his reply brief filed on May 23, 2017. He devoted pages 2 - 9 to the issues which the respondents canvassed in their Objection. Arguments on pages 10 - 11 were directed at responses to the issues in the respondents' brief.

RESOLUTION OF THE ISSUES

My Lords, it is evident that the lower Courts, rightly, concluded that the appellant failed to prove his case. In the main, his contention was that the respondents were deemed to have admitted his averments having not debunked them in a Counter Affidavit.

With respect, I, entirely, endorse the submission of the learned senior counsel for the first and second respondents that, since the appellant sought for declaratory reliefs, he had an obligation to advance evidence in proof thereof. The reason is not far-fetched. Courts have the discretion either to grant or refuse declaratory reliefs.

Indeed, their success, largely, depends on the strength of the plaintiff's case. It does not depend on the defendant's defence, Maja v. Samouris (2002) 7 NWLR (pt 765) 78; CPC v. INEC (2012) 1 NWLR (pt. 1280) 106, 131. This must be so for the burden on the plaintiff in establishing declaratory reliefs is, often, quite heavy, Bello v. Eweka (1981) 1 SC 101; Okedare v. Adebara [1994] 6 NWLR (pt. 349) 157; Dumez Nig Ltd v. Nwakhoba [2008] 18 NWLR (pt 1119) 361, 374.

What is, even, worse in the instant case is the fact that the plaintiff made a host of criminal allegations against the first respondent. He, thus, had a duty to prove these allegations beyond reasonable doubt, Noma-Egba v. ACB Plc (2005) 7 SC (pt 111) 27; APC v. PDP (2015) 15 NWLR (pt 1481) 1, 66 - 67.

Even then, the appellant failed to prove the perversity of the concurrent judgments of the lower Courts. As such, he cannot, rightly, entreat this Court to interfere with them, Ometa v. Numa (1935) 11 NLR 18; Okonkwo v. Okagbue [1994] 9 NWLR (pt 368) 301; Princent v. The State (2002) 12 SC (pt. 1) 137; Ojo v. Anibire (2004) All FWLR (pt. 214) 178; Nasamu v. State (1979) 6-9 SC 153; Sobakin v. State (1981) 3 -4 SC 31; Enang v. Adu (1981) 11-12 SC 25; Akande v. Adisa (2012) 15 NWLR (pt. 1324) 538, 572-573.

Indeed, the appellant just took so much for granted in his case. Regrettably, such matters are not provable as a matter of routine, Akaninwo and ors. V. Nsirim and ors (2008) 2 SCNJ 100, 113-114; Metzgei v. Department of Health and Social Security (1977) 3 All E.R. 444, 451; Wallensteiner v. Moir (1974) 3 All E. R. 217; Bello v. Eweka (1981) 1 S.C. 101; Motunwase v. Sorungbe (1988) 4 NWLR (pt. 92) 90; Okedare v. Adebara [1994] 6 NWLR (pt. 349) 157, 185; Quo Vadis Hotels and Restaurants Limited v. Commissioner of Lands Midwestern State and Others (1973) 6 SC 71, 96; Agbaje v. Agboluaje (1970) 1 All NLR 21, 26; Fabunmi v. Agbe (1985) 1 NWLR (pt. 2) 299, 318; Akande v. Adisa and anor (2012) 8 SCM 56, 80 C-D; Congress for Progressive Change (CPC) v. INEC and ors (2011) 12 (pt. 2) SCM 149, 174; G-H.

Against this background, I entirely agree with the learned senior counsel for the first and second respondents that this appeal, being unmeritorious, should be dismissed. Accordingly, I hereby enter an order dismissing the appeal.

Appeal dismissed. The appellant is damnified in costs which I assess and fix at N800,000.

**WALTER SAMUEL NKANU ONNOGHEN, J.S.C.:**

I have had the benefit of reading in draft, the lead Judgment of my learned brother NWEZE JSC just delivered. I agree with his reasoning and conclusion that the preliminary objection lacks merit and ought to be overruled and the appeal dismissed for lacking in merit.

The facts relevant for the determination of the appeal have been stated in detail in the lead Judgment making it unnecessary for me to repeat them herein except as may be needed to emphasize the point being made.

It is not in dispute that on the 20th day of February, 2015 appellant, as plaintiff, caused an Originating Summons to be issued against the respondents, as defendants in which he claimed the following reliefs:

"(i) A DECLARATION that the 1st defendant having submitted a false information to the 3rd defendant in the INEC FORM CF001 is disqualified from standing as the candidate of the All Progressive Congress for the 2015 General Elections for Kware/Wammako Federal Constituency.

(ii) A DECLARATION that the 2nd defendant cannot lawfully present and sponsor the 1st defendant as its candidate for the 2015 General Elections for Kware/Wammako Federal Constituency of Sokoto State the 1st defendant having submitted false information and documents to the Independent National Electoral Commission (INEC).

(iii) A DECLARATION that the 1st defendant having submitted a false information and documents to the 3rd defendant, the 3rd defendant is not bound to treat, recognize, deal with or continue to recognize the 1st defendant as the candidate of the All Progressives Congress for the Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Election.

(iv) A DECLARATION that in the event that the February, 2015 General Election has been held and concluded before the determination of this suit, the 1st defendant having submitted a false information and documents to the 3rd defendant, stand as the candidate of the All Progressives Congress for the Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Election.

(v) AN ORDER OF PERPETUAL INJUCTION restraining the 1st defendant from parading himself as the candidate of the All Progressives Congress (APC) for Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Elections.

(vi) AN ORDER OF PERPETUAL INJUNCTION restraining the 3rd defendant from recognizing or treating the 1st defendant as the duly and properly nominated candidate of the 2nd defendant for Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Elections.

(vii) AN ORDER OF THE HONOURABLE COURT compelling the 2nd defendant to forward with immediate effect the plaintiff's name to the 3rd defendant as its nominated candidate for Kware/Wammako Federal Constituency of Sokoto State for the 2015 General Elections the plaintiff being the only valid aspirant of the 2nd defendant for the Kware/Wammako Federal Constituency of Sokoto State.

(viii) AN ORDER that in the event that the 2015 General Elections has been held before the determination of this suit, the 1st defendant is also initio disqualified from contesting the 2015 General Elections as the candidate of the 2nd defendant for Kware/Wammako Federal Constituency of Sokoto State having submitted forged document and false information on oath to the 3rd defendant."

The Originating Summons was supported by an affidavit of 23 paragraphs to which the respondents filed no counter affidavit.

It has been charged that the failure of 1st respondent to file a counter affidavit disputing the facts deposed to in some of the paragraphs of the affidavit in support of the originating summons which directly laid allegations against him, constitutes admission of the truth of the said allegations which the Court ought to rely on in holding that the said allegations have been proved as required by law, for which submission learned senior counsel cited and relied on the case of Inakoju V. Adeleke (2007) 4 NWLR (Pt. 1025) 427 at 684: Agbakoba V. INEC (2009) FWLR (Pt.462) 1037 at 1082 etc.

I must say that though the decision in the above cited cases remain good law, they do not apply to the facts of this case, particularly having regard to the declaratory reliefs claimed in the originating summons earlier reproduced in this Judgment. It has to be pointed out that the action was grounded on the provisions of Section 31(5) of the Electoral Act, 2010, as amended, which provides that a person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false, may approach the High Court for redress. An action commenced under that Section places the burden of proving the falsification of the information or document on the plaintiff or the law remains that he who alleges must prove. It was, therefore, the duty of appellant to prove that the 1st respondent gave false information or submitted any false document to the 3rd respondent, which the lower Courts have, rightly in my view, concurrently found not to have been proved.

It should also be pointed out that the standard of proof required in an action on Section 31(5) of the Electoral Act, 2010, as amended, is proof beyond reasonable doubt. In the circumstances of this case, it is my considered view that the non filing of a counter affidavit by 1st respondent without more cannot ground a grant of the declaratory reliefs without more.

Secondly, the allegations being criminal in nature, the standard of proof is that required under Section 135(1) and (2) of the Evidence Act, 2011 and as decided by this Court in a long live of cases including Nwobodo V. Onoh (1984) 1 SCNLRI. Kakaih v. PDP (2014) 15 NWLR (Pt. 1430) 374.

It is for the above reasons and those given in the said lead Judgment of my learned brother that I too find no merit in this appeal and consequently dismiss same.

I abide by the consequential orders made in the lead Judgment including the order as to costs.

Appeal dismissed.

**CLARA BATA OGUNBIYI, J.S.C.:**

I read in draft the lead judgment of my learned brother Chima Centus Nweze, JSC just delivered. I endorse same completely that while the preliminary objection raised by the respondents should be overruled and discountenanced, the appeal as it were is devoid of any merit and should be dismissed.

My learned brother has done justice to this appeal and I hereby adopt the totality of his judgment as mine. However and just for purpose of emphasis, I wish to add a few words of mine.

It is pertinent to state that the appellant's case was centred around criminal allegation where by the law is trite and well established that the onus lies squarely on him who asserts to prove. S. 135 (1) and (2) of the Evidence Act Laws of the Federation of Nigeria 2004 relates to Burden of Proof and it states thus:-

*"(1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.  
(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

By nature, the reliefs sought by the appellant per his originating summons are declaratory. The suit was supported by affidavit and a written address. It is on record also that the respondents did not file any counter affidavit but a written address in opposition to the originating summons. The respondents also filed a notice of preliminary objection and challenging the jurisdiction of the trial Court. It was their contention also that the case of the appellant did not disclose any reasonable cause of action.

In his submission the appellant’s counsel anchored that the failure by the 1st and 2nd respondents to file a counter affidavit against the motion in support of the originating summons, was an indication of an admission of all the weighty allegations levied against the 1st respondent. The learned counsel argued further that the contents of the affidavits in support of the originating summons are sufficient proof of the allegations of false declaration and certificate forgery.

In his response, the respondents' counsel argues the foregoing contention as wrong and also does not represent the correct position of the law.

As rightly submitted by the learned counsel for the respondents, it is not in all circumstances that failure to file a counter affidavit amounts to an admission of the facts in the affidavit in support of a Process. The law is also well entrenched that where evidence as contained in an affidavit is not cogent and strong enough to prove the case, there will be no need to file a counter affidavit. In other words, the filing of a counter affidavit should not be a matter of course. It need not be filed if it would not either serve any useful purpose or affect the outcome. See the decision in the case of Ogoejeofo V. Ogoejeofo (2006) All FWLR (Pt. 301) 1992 at 1903 - 1904.

The law is settled also that where such averments are taken together and are not sufficient to sustain the reliefs sought, a counter affidavit in challenging same is manifestly unnecessary. As rightly argued by the learned counsel for the respondents, the facts and exhibits in the appellant's affidavit in support of his originating summons were not sufficient to sustain the appellant's case.

Furthermore and as earlier stated supra, the appellant sought for declaratory reliefs before the trial Court and also in addition levied against the 1st respondent allegation of false information and forgery of certificate.

Therefore the crux of the appellant's allegation was that the 1st respondent submitted false information to the 3rd respondent in INEC form CF001 - filed for 2011 general election as to his qualification.   
The said false information, counsel argued was omitted or concealed in the declaration made by the 1st respondent in 2015.

The nature of the allegation puts a burden upon the appellant to establish that the omission of the 2011 information in 2015 is ipso facto conclusive that the information was either false or that the certificate was forged. The allegation being clearly criminal in nature must be proved beyond reasonable doubts.

It is further settled and well established that declaratory reliefs are not granted even on admission.

The plaintiff who sought for such relief must prove and succeed on the strength of his case and not rely on the weakness of the defence. See the case ofEmenike v. P.D.P (2012) 50 NSCQR 94 at 130 per Fabiyi, JSC where it was held that:-

*"the burden of proof on the plaintiff in establishing declaratory relief to the satisfaction of the Court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence."*

The same principle was emphasized also in the case of C.P.C. V. INEC (2012) 1 NWLR (pt. 1280) 106 of 131 where this Court held and said:-

*"The Court does not make declarations of right either on admission as in default of defence without having evidence and being satisfied by such evidence to the* *plaintiff's entitlement to such a right. The requirement of oral evidence arises from the fact that the Court has discretion to grant or refuse a declaratory relief and its success depends entirely on the strength of the plaintiff's own case and not on the defence."*

It follows from the foregoing authorities that the declaration sought by the appellant in reliefs (i) - (iv) on pages 16-17 of the record of appeal against the 1st and 2nd respondents cannot be made on admission or in default of counter affidavit.

The appellant, on the totality had failed to show and prove from evidence on record that information in Exhibit P7 were false and also that the certificate, Exhibit P5 presented in 2011, by 1st respondent were forged. The best evidence to prove a false certificate was a report from the school, which was not presented before the Court.

Forgery being a criminal offence, the proof must be beyond reasonable doubt. See APC V. PDP (2015) 15 NWLR (Pt. 1481) 1 at 66-67. As rightly submitted by the counsel for the respondents, the learned justices of the Court below were right when they dismissed the appellant's case because the allegation levied against the 1st respondent, which is the basis of their case, was not proved.

The fact that the documents listed in Exhibit 7 which was submitted in 2015 omitted some documents listed in Exhibit 5 submitted in 2011 was not a conclusive evidence of giving false information. The appellant's case was rightly speculative and the Court below was right to have dismissed it as it lacked merit. In other words, the concurrent decisions of the learned trial judge and the Court below in favour of the respondents were apt and unassailable.

With the few words of mine and particularly relying on the comprehensive reasoning of the lead judgment by my learned brother, I also find no merit this appeal but dismiss same in terms of his judgment.  
Appeal is dismissed by me.

**KUMAI BAYANG AKA'AHS, J.S.C.:**

I had a preview of the judgment just delivered by my learned brother, Nweze, JSC, I agree that the appeal lacks merit and should be dismissed.

The main contention is that the 1st respondent failed to file a counter-affidavit to controvert the averments he made in the affidavit in support of the originating summons seeking declaratory reliefs against him (1st respondent) and in consequence is deemed to have admitted the facts contained in the affidavit in support. Declaratory judgments are not granted on admission in default of defence. See: Okoya v. Santalli (1990) 2 NWLR (Pt. 131) 172; Ntuks v. Nigerian Ports Authority (2007) 13 NWLR (pt. 1050) 392; Addah v. Ubandawaki (2015) 7 NWLR (Pt. 1458) 325.

It is provided in Section 135(1) Evidence Act that:-

*"If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt".*

The burden lay with the appellant to prove his allegation against the respondent beyond reasonable doubt despite the fact that the 1st respondent did not file a counter-affidavit to deny the allegation.

The lower Court was right to dismiss the appeal by the appellant and this Court sees no reason to interfere with the concurrent findings of the two lower Courts. The appeal therefore lacks merit and it is accordingly dismissed.

**KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C.:**

I have had a preview of a draft of the judgment of my learned brother, CHIMA CENTUS NWEZE, JSC just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

The substance of the Originating Summons before the trial Court was the appellant's contention that the 1st respondent, a member of the same All Progressives Congress (APC) to which he also belongs, submitted false information to the 3rd respondent in his Form CF001 and was therefore disqualified from standing as the candidate of the party for the 2015 General Election for Kware/Wammakko Federal Constituency of Sokoto State. The alleged false information relates to his educational qualifications at the tertiary level. All that the appellant relied on at the trial Court were the Form CF001 submitted by the 1st respondent in 2011 when he previously contested and won the same seat and the Form CF001 submitted in respect of the 2015 exercise contending that certificates relied upon in the 2011 exercise were omitted from the Form submitted for the 2015 exercise because they were forged. The appellant also relied on the fact that the 1st respondent did not file a counter affidavit challenging the averments in support of the Originating Summons.

The law is well settled that in a claim for declaratory reliefs (as in the instant case), the plaintiff must prove his entitlement to such declaratory reliefs by cogent and credible evidence. He must rely on the strength of his own case and not on the weakness of the defence (if any). Indeed a declaratory relief will not be granted on the basis of admission by the adverse party. See:Dumez Nig. Ltd. V. Nwakhoba (2008) 18 NWLR (pt. 1119) 361; Wallersteiner V. Moir (1974) 3 ALL ER 217 @ 251; Bello V. Eweka (1981) 1 SC (Reprint) 63; Emenike V. P.D.P. (2012) LPELR - 7802 (SC); Matanmi V. Dada (2013) LPELR - 19929 (SC). It follows therefore that the failure of the 1st respondent to file a counter affidavit cannot enure in the appellant's favour.

Furthermore, the allegation of forgery is criminal in nature. The standard of proof is beyond reasonable doubt. Evidence that would establish the allegation in this case beyond reasonable doubt would include:

(a) exhibiting both the document from which the alleged forgery was made and the forged document;

(b) evidence that it was the 1st respondent who forged the document(s);

(c) communication from the Polytechnic of Sokoto State disputing the 1st respondent's claim to have studied there.

See: A.P.C. V. P.D.P. & Ors (2015) LPELR - 24587 (SC); Ndoma-Egba v. A.C.B. Plc (2005) 14 NWLR (Pt.944) 79.

None of this evidence was supplied before the trial Court. The Court below was therefore correct in affirming the finding of the trial Court that the appellant's action did not disclose a reasonable cause of action and that in the absence of a ground of appeal attacking that finding, it subsists.

The appellant has failed to satisfy me that the decisions of the two lower Courts are perverse or that there is any special circumstance to warrant interference by this Court.

For these and the more detailed reasons advanced in the lead judgment, I also dismiss this appeal for being devoid of merit.

Appeal dismissed.