

**IN THE HIGH COURT OF JUSTICE**  
**EDO STATE OF NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP THE HON. JUSTICE G. O. IMADEGBELO – JUDGE**  
**ON MONDAY THE 5<sup>TH</sup> DAY OF MAY, 2014**

**BETWEEN:** **SUIT NO. B/45/OS/2013**

**PEOPLES DEMOCARTIC PARTY** ..... **CLAIMANT**  
**AND**  
**EDO STATE INDEPENDENT ELECTORAL COMMISSION** **DEFENDANT**

**J U D G M E N T**  
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The Claimant commenced this suit by originating summons filed on the 19<sup>th</sup> April 2013 seeking the following reliefs:

*“Whether having regard to sections 221 and 222 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Defendant can still accept as candidates for the Edo State Local Government election fixed for 20<sup>th</sup> April, 2013 candidates of Action Congress of Nigeria (ACN) that has ceased to exist from 19<sup>th</sup> April, 2013”.*

That if the answer to the question above is in the negative, the Claimant shall seek the following reliefs:-

- “1. A declaration that Action Congress of Nigeria (ACN) having ceased to exist as a political party in Nigeria with effect with from 19<sup>th</sup> April, 2013 the Defendant can no longer accept as candidates for the April, 20<sup>th</sup> 2013 Local Government election in Edo State candidates sponsored by the defunct political party.*
- 2. An order directing the Defendant to delete from its list of candidates for the April, 20<sup>th</sup>, 2013 Local Government election all candidates of the defunct Action Congress of Nigeria (ACN).”*

K. O. Obamogie Esq. learned Counsel for the Claimant submitted that only a political party that is still legally in existence that can sponsor candidates for an election in Nigeria. This position becomes imperative in view of the clear provisions of section 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides as follows:-

***“221. 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 election expenses of any candidate at an election.”***

That the above constitutional provisions are clear and unambiguous. Consequently, the said constitutional provisions ought to be given their plain literal meaning as enjoined in the following judicial authorities. **Atikpekpe V Joe & others (1999) 6 N.W.L.R. (pt. 607) 428 at 437; Adejumo V Governor of Lagos State (1972) 3 SC 45; Lawal V G. B. Ollivant (1972) 3 SC 124.**

Counsel further submitted that the use of the word “shall” in section 221 of the constitution connotes compulsion. **Kaliel & Anor V Aliero & others (1999) 4 N.W.L.R. (pt. 597) 139 at 154.** That Action Congress of Nigeria (ACN) having been formally dissolved, the Defendant can no longer accept as candidates for the April 20, 2013 Local Government election in Edo State candidates of Action Congress of Nigeria (ACN) that has ceased to exist on the political landscape of Nigeria. The Political platform known as Action Congress of Nigeria is no longer a legal entity capable of sponsoring candidates for the said Local Government election.

Counsel further submitted that the affidavit evidence is uncontradicted and all facts are deemed admitted. **Egbuna V Egbuna 1989 2 N.W.L.R. (pt. 106) pg. 774 para. D-E.** That the fact that the election has been held does not remove the jurisdiction of the court to hear the case. That the jurisdiction is sacrosanct. **Amaechi V INEC 2008 5 N.W.L.R. (pt.1080) pg. 227 at 314 para. E – G; Ojedo V INEC 2008 17 N.W.L.R. (pt. 1117) pg. 544 at pg. 613 para A – B, pg. 614 para E – F, 634 G-H. S.15, 16 of the Local Government Law.**

I have read the pleadings filed and given consideration to the submissions of Counsel. If the answer to the issue for determination posed by the Claimant is answered in the negative, whom are the persons to be affected by the judgment of the court? Is it the Edo State Independent Electoral Commission; the defendant? The persons to be affected are the Action Congress of Nigeria candidates for the April, 20<sup>th</sup> 2013 Local Government election in Edo State.

It is a cardinal principle of Nigeria jurisprudence that;

- (a) A Court cannot make an order against a person who is not a party to the suit.
- (b) Nor to make an award to a party of what the said party has not claimed

(c) An order or award cannot be made against a party without giving him an opportunity to being heard.

**Onyekwulunne V Ndulue (1997) 9 NWLR pg. 512 pg. 277.**

The Claimant is seeking the interpretation of sections 221 and 222 of the Constitution of the Federal Republic of Nigeria, 1999. If the Edo State Independent Electoral Commission can accept as candidates for the Edo State Local Government election fixed for 20<sup>th</sup> April 2013 candidates of Action Congress of Nigeria (ACN) that has ceased to exist from 19<sup>TH</sup> April, 2013. The Claimant did not put on notice the candidates of the Local Government election of the Action Congress of Nigeria (ACN) whom would be affected thereby by the judgment of this court, neither were they made parties to the suit.

A judgment obtained against a person who was not a party to a pending suit smarks of injustice and ought not be allowed to stand. **Oyekwulunne V Ndulue supra. Green V Green (1984) 3 NWLR (pt.61) 480; Uku V Okumagba (1974) 1 All NLR (pt.1) 475.**

Having said the foregoing, I find the suit incompetent and it is accordingly struck out.

**HON JUSTICE G. O. IMADEGBELO  
J U D G E  
5/5/2014**

**COUNSEL:**

K. O. Obamogie Esq. .... Claimant