

IN THE NATIONAL ASSEMBLY ELECTION PETITION TRIBUNAL

HOLDEN AT SOKOTO

ON MONDAY THE 6TH DAY OF MAY, 2019

BEFORE:

HON. JUSTICE P.A. AKHIHIERO-----CHAIRMAN

HON. JUSTICE A.N. YAKUBU-----1ST MEMBER

HIS WORSHIP S.T BELLO -----2ND MEMBER

PETITION NO: EPT/SKT/HR/02/2019

ELECTION TO THE OFFICE OF MEMBER, HOUSE OF REPRESENTATIVES

REPRESENTING ISA/SABON – BIRNI FEDERAL CONSTITUENCY HELD ON THE

23RD DAY OF FEBRUARY, 2019.

BETWEEN:-

**1. SANI AMINU ISA
2. ALL PROGRESSIVES CONGRESS } -----PETITIONERS/APPLICANTS**

AND

**1. MHAMMED SAIDU BARGAJA
2. PEOPLES DEMOCRATIC PARTY
3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION } ----RESPONDENTS/RESPONDENTS**

RULING

This is a ruling on a motion on notice, dated the 22nd of April, 2019 filed on the 23rd of April, 2019 brought pursuant to section 54 of the Electoral Act 2010 (as amended) Order 48

Rule 4 of the Federal High Court (Civil Procedure) Rules 2009 and the inherent jurisdiction of the Tribunal. The Applicants are praying the Tribunal for the following orders:

1. An Order extending time within which the petitioners/applicants can file and serve their reply to the 1st and 2nd respondents' reply to the petition.
2. An Order deeming the said reply filed separately as duly filed and served if prayer 1 above is granted.
3. And for such further Order or Orders as the Tribunal may deem fit to make in the circumstances.

The grounds upon which the application is brought are as follows:

- a. The 1st and 2nd respondents reply was served on the petitioners counsel on the 1st April 2019.
- b. The reply could not be filed within time because the lead counsel's attention was not drawn to the reply in good time by the counsel who received service.
- c. That the reply is now ready but the order of the court is needed extending time before it can be filed, hence this application.
- d. Respondents will not be prejudiced by this application.

The application is supported by a 10 paragraphs affidavit and a Written Address of Counsel which was adopted as his arguments in support of the application.

In his Written Address, the learned counsel for the Applicants, Chief S.U.Nwoke identified a sole issue for determination as follows:

“Whether having regards to the circumstances of this application, the Applicants are entitled to the exercise of the discretion of this Honourable Tribunal in their favour.”

Arguing the issue, learned counsel submitted that applications of this kind are such that require the exercise of discretion of the Court or Tribunal which is to be exercised judicially and judiciously based on the facts and materials placed before the Tribunal in order to sustain the grant for such applications especially where the Rules of Court permits the Court to hear such applications. See: *Azuh vs. Union Bank of Nig. Plc. (2014) 5 s.c (p+ 1) 112 at 153, Oyegun vs. Nzeribe (2010) 7 NWLR (p+ 1194) 577 at 593; University of Lagos v. Olaniyan (1985)1 S.C 199.*

He submitted that the facts upon which the Applicants are seeking for an extension of time to file their Reply and other accompanying processes to the petition are as averred in paragraphs 5,6,7,8, and 9, of their supporting affidavit.

He contended that these are facts which ought to weigh on the mind of this Honourable Tribunal in considering the exercise of its discretion in favour of the Applicants.

According to him, the circumstances as constituted now warrant the invocation and exercise of this Honourable Tribunal's discretion in favour of the Applicants to grant the application as prayed. He posited that extending time for the applicants to file their Reply to the petition is in tandem and consonance with the letters, spirit and dictates of the right to fair hearing guaranteed under Section 36 of the 1999 Constitution (as amended). He said that this will enable the petitioners/applicants respond to the allegations made in the 1st and 2nd respondents reply.

In conclusion, he urged the Tribunal to grant the application as prayed.

In opposition to the motion, the learned counsel for the 1st and 2nd Respondents, Ibrahim Abdullahi Esq. filed a 4 paragraphs counter affidavit and a Written Address of Counsel which he adopted as the arguments in opposition to the application.

In his written address, the learned counsel formulated a sole issue for determination as follows: ***“Whether this Honourable Tribunal has the jurisdiction to grant the prayers of the Applicants.”***

Arguing the sole issue for determination, learned counsel emphasized the fundamental nature and paramount importance of the jurisdiction of a court as decided in a plethora of cases. He referred to the dictum of ***Bairamain JSC*** in the classical case of: ***MADUKOLU VS. NKEMDILIM (1962) 1 ALL NLR 587 AT 595***, where His Lordship also referred to the following decisions of the apex court on the point: ***AFRICAN NEWSPAPERS OF NIGERIA & ORS. VS. THE FEDERAL REPUBLIC OF NIGERIA (1985) 2 NWLR (PT.6) 137 AT 159-160; and WESTERN STEEL WORKS LTD. VS. IRON & STEEL WORKERS UNION (1986) 3 NWLR (PT.30) 617 AT 627-628.***

He posited that a cursory look at the application would reveal that it is seeking an extension of time to file a Reply to the 1st & 2nd Respondent’s Reply. He said that upon the admission of the Petitioners/Applicants that they were served with the 1st & 2nd Respondent’s Reply since the 1st of April, 2019, it is evident that that they are clearly out of time.

He contended that by the provisions of Paragraph 16(2) of the 1st Schedule to the Electoral Act of 2010 (as amended), no extension of time can be granted to file a Petitioners Reply after the expiration of the period of 5 days limited for filing same. He reproduced the provisions of the said Paragraph 16(2) of the 1st Schedule to the Electoral Act of 2010 (as amended) as follows:

“The time limited by sub-paragraph (1) of this paragraph shall not be extended”
(underlined by him).

He concluded that the above paragraph has ousted the jurisdiction of the Tribunal to grant this application and urged the Tribunal to strike it out.

We have carefully examined all the processes filed in this application together with the submissions of counsel on the matter.

The relevant statutory provision in relation to the application is ***Paragraph 16 (1) & (2) of the 1st Schedule to the Electoral Act of 2010*** (as amended) which stipulates as follows:

“16 (1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the Registry, within five (5) days from the receipt of the respondent’s reply a petitioner’s reply in answers to the new issues of fact, so however that-

(a) the petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him; and

(b) the petitioner's reply does not run counter to the provisions of

subparagraph (1) of paragraph 14 of this Schedule.

- (2) *the time limited by subparagraph (1) of this paragraph shall not be extended.***

Pursuant to the aforesaid provisions of Paragraph 16(1) of Schedule 1, a petitioner is entitled to file a reply where the respondent's reply raises new issues of fact. However, where a Petitioner fails to file a reply within the period stipulated under the Act, the Tribunal has no power to extend the time for filing a reply to the respondent's reply. See the case of: ***HASIDU v. GOJE (2003) 15 NWLR (Pt. 843) 352 @ 380.***

In the case of: ***NDUKWE & ANOR v. UBA & ORS (2015) LPELR-40643(CA)***, the Court of Appeal emphasized the position thus:

“The 5 days period for the filing of the petitioner's reply and its accompaniments cannot be extended by any means and under any guise by virtue of the absolute prohibition of extension of the said time. I agree with the submission of the Learned SAN for the 1st respondent that any written witness deposition that is supposed to accompany the petitioner's reply and be filed along with it within 5 days from the receipt of the respondent's reply, would be incompetent, if it does not accompany the petitioner's reply and is filed after the 5 days for filing the petitioner's reply and that after the expiration of the said 5 days period, the petitioners loss the right to file a reply as well as the lists , oath statements and documents that should accompany it and that therefore the said lists and oath statements sought to be filed by the petitioners cannot be filed.” See also the case of: ***OKE & ANOR v. MIMIKO & ORS (2013) LPELR-20317(CA.)***

From the foregoing, it is crystal clear that by virtue of the provisions of Paragraph 16(2) of the 1st Schedule to the Electoral Act of 2010 (as amended), no extension of time can be granted to file a Petitioners Reply after the expiration of the period of 5 days limited for filing same. While Paragraph 16 (1) of the First Schedule to the Electoral Act requires the petitioners to file their reply within 5 days from the receipt of the respondent's reply, Paragraph 16 (2) prohibits any extension of time.

Since the Petitioners' Reply was filed outside the five days period, by virtue of the provisions of Paragraph 16 (1) and (2) of the First Schedule to the Electoral Act, the Reply is statute barred and time cannot be enlarged to accommodate it. The prohibition is absolute.

In the event, the sole issue for determination is resolved against the Applicants. ***The application is accordingly refused with costs assessed at N20, 000.00 (twenty thousand naira) in favour of the 1st and 2nd Respondents.***

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

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| 1. CHIEF S.U. NWOKE..... | PETITIONERS/APPLICANTS |
| 2. IBRAHIM ABDULLAHI ESQ..... | 1ST RESPONDENT/RESPONDENT |
| 3. O.F. ABEGUNDE ESQ..... | 2ND RESPONDENT/RESPONDENT |