IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE EKPOMA JUDICIAL DIVISION
HOLDEN AT EKPOMA

BEFORE HIS LORDSHIP HON. JUSTICE J. O. OKEAYA – INNEH ON THURSDAY THE 28th DAY OF MAY, 2020

BETWEEN: **SUIT NO. HEK/ 9 /2020**

1. **ERUANGA GALLANT C.**
2. **VICTOR IDIAKHEOA ESQ.,**
3. **JIDE OBALOWOSHE ESQ.,**

CLAIMANTS/RESPONDENTS

AND

1. PEOPLES DEMOCRATIC PARTY (PDP).....1ST DEFENDANT/APPLICANT
2.INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) ... 2ND DEFENDANT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice filed by Learned Counsel for the 1st Defendant praying this court for an Order striking out this suit.

The Grounds for this application are as follows:

i. That the Claimant commenced this suit vide a defective and incompetent Writ of Summons and Statement of Claim which were signed by proxy for S. O. Agwinede& Co., a firm of Legal Practitioners not called to the Bar or entitled to practice as a Legal Practitioner in Nigeria.

ii. That the Claimants failed to seek or obtain the prior leave of this Honourable Court before the issuance of the Writ of Summons in this case for service on the 1st and 2nd Defendants whose addresses for service are outside Edo State and in the Federal

Capital Territory, Abuja, outside the jurisdiction of this Honourable Court.

iii. That the Writ of Summons filed by the Claimants in this case does not contain the necessary and mandatory endorsements or particulars required of a valid Writ of Summons for service outside the Jurisdiction of this Honourable Court.

iv. That the subject matter of the Claimantsôsuit relates to the internal domestic affairs of the Peoples Democratic Party (PDP), a voluntary association, which are not justiciable before this Honourable Court.

v. That the Claimant did not exhaust the remedies in the domestic forum of the Peoples Democratic Party (PDP) with a view to resolving the dispute before resorting to litigation in this case.

vi. That the Claimants suit is premature and fails to disclose any cause of action or reasonable cause of action against the 2nd Defendant.

vii. That this Honourable Court lacks jurisdiction and cannot exercise its jurisdiction to entertain this suit as presently constituted.

This application is supported by an 8 paragraph affidavit one Exhibit attached. A written address in support of the application was also filed and attached where the learned (SAN) for the 1st Defendant/Applicant formulated one issue for determination in this application, which is whether the Claimantsôsuit as presently constituted is competent and

capable of properly invoking the jurisdiction of this Honourable Court against the Defendants, in all the circumstances of this case.

Arguing the sole issue as formulated, learned (SAN) Counsel stated that the law is now well settled and trite that a Court of law can only have and properly exercise its jurisdiction to hear and determine a case before it where the following conditions are satisfied, namely;

i) Where the proper parties are before the Court,
ii) Where the Court is properly constituted as to members and qualification,
iii) Where the subject matter of the case is within the jurisdiction and there are no features in the case which prevent the Court from exercising jurisdiction; and
iv) Where the case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the assumption of jurisdiction.

Reference was made to the following cases:-

1. **C.B.N VS. S.A.P. NIG**. (2005) 3 NWLR (Pt. 911) 152 at 177.
2. **MADUKOLU VS. NKEMDILIM** (1962) 1 ALL NLR 587 at 595, (1962) 2 SCNLR 341.
3. **SALATI vs. SHEHU** (1986) 1 NWLR (Pt. 15) 198 at 218.

While urging this Court to decline jurisdiction and strike out this suit, the learned (SAN) relied on conditions(iii) and (iv) above and stated that this

suit was commenced by a defective and incompetent Writ of Summons and as such, the proceedings and orders of this Honourable Court previously entered were made in excess of jurisdiction and the subject matter of the Claimantsô suit is not justiciable in that it relates to the internal domestic affairs of the Peoples Democratic Party (a voluntary association) and the Claimants have not fulfilled the mandatory conditions precedent to the invocation of the jurisdiction of this Honourable Court in that they failed to explore, resort to or exhaust internal remedies of the Political Party/voluntary Association before resorting to litigation and as such, this Court has no jurisdiction and cannot exercise its jurisdiction to entertain this suit. To demonstrate this, the learned SAN drew the Courtôs attention to the fact that a critical look at the Writ of Summons and Statement of Claim filed by the Claimants in this case will readily show that they were issued and signed by proxy for the law firm of S. O. Agwinede & Co., (Claimants Counsel) which is not a juristic person or Legal Practitioner called to the Bar or entitled to practice law in Nigeria.

The learned SAN submitted that there can be no dispute that the word ***"For"*** prefixed to the firm name as contained above is an indication that

the named Counsel signed the process for and on behalf of S. O. Agwinede & Co., firm of solicitors.

Counsel further submitted that what the above endorsements mean is that it was the law firm of S. O. Agwinede & Co., that issued the said process and authorized the named Counsel to sign as proxy for it and not that the named Counsel signed on her own right as Counsel and that the position of the law is well settled that he who does an act through another does it by himself. Reference was made to the case of **ESSANG V. AUREOL PLASTICS LTD (2002) FWLR (Pt.129) 1471 at 1488 paragraph G – H** where the Court of Appeal per the lead Judgment of EKPE, JCA stated the law thus:

> ***"The legal position is that an agent acting on behalf of a known and disclosed principal incurs no liability. The act of the agent is the act of the principal. The situation is in law as if it was the principal that did what the agent did or omitted to do…."***

The learned SAN argued that the pertinent questions therefore are: can a Legal Practitioner who signed a court process ñby proxyò for a law firm be held to have complied with the law laid down in sections 2(1) and 24 of the Legal Practitioners Act, 1975 as interpreted by the Supreme Court

in **OKAFOR V. NWEKE** (2007) 10 NWLR (Pt.1043) 521 (among others) which require that a court process must be signed by a Legal Practitioner? Can a law firm practice law as ñClaimantsô Counselò and issue a court process and authorize a Legal Practitioner to sign for it as its proxy? Is the way and manner the Writ of Summons and Statement of Claim was signed and issued in this case in line with the law and the decisions of the Supreme Court particularly in **SLB CONSORTIUM LTD V. N.N.P.C** (2011) All FWLR (Pt.583) 1902 at 1916 paragraph F ï A where the Supreme Court in nullifying a similarly defective originating process held (per Fabiyi JSC (Rtd.) as he then was stated thus:

> ñIn reality, ñAdewale Adesokan & Co.ò which signed the originating summons is not a legal practitioner known to the applicable Legal Practitioners Act, Cap. 207 of the Laws of the Federation of Nigeria, 1990. This is so, since it is not a person entitled to practice as a Barrister and Solicitor with its name on the Rollé
>
> It has been established that the originating summons signed by a law firm of ñAdewale Adesokan& Co.ò was not initiated by due process. As same is incompetent, this appeal rests on nothing. This appeal must be, and it is hereby struck out as the preliminary objection is sustained.ò

The learned SAN contended that the answers to these questions must necessarily be in the negative because since a firm of legal practitioners is not entitled to issue or sign court processes, it is also incapable of authorizing the signing of a court process for and on its behalf.

The learned SAN stated that the law has become well settled that any court process issued or signed by a firm of legal practitioners in the firmôs name is incurably bad and liable to be struck out. Reference was made to the case of **FIRST BANK OF NIG PLC V. MAIWADA** (2013) 5 NWLR (Pt.1348) 444 at 494 paragraph Eï F where the apex court held thus:

> ñAny court processes signed in the business names of a firmôs name as in the case of J.H.C. Okolo SAN & Co., having been rendered incurably defective ab initio are liable to be struck out.ò

It was the learned SAN further contention that since the Writ of Summons and Statement of Claim were all expressed to have been issued and signed by proxy for the firm of S. O. Agwinede & Co., which is not a Legal Practitioner called to the Nigerian Bar, they are fundamentally defective and incompetent and cannot even be cured by

amendment. The court was referred to the case of **BABATOPE V. SADIKU & ANOR** (2017) LPELR-41966(CA) page 14 paragraphs D - F where the Court of Appeal per B. A. GEORGEWILL, J.C.A. stated the principle of law and held as follows:

> ñIn law, one cannot put something on nothing and expect it to stand. It would definitely collapse. Thus, where a Writ of Summons or any Originating process or Motion was fundamentally defective and invalid, null and void, it cannot even be amended and any purported amendment of such an incompetent originating process would amount to a nullity. For in law, nullity upon nullity all is nullity. See Macfoy V. UAC Ltd. (1962) 1 AC 100 @p. 160."

The learned SAN urged court to strike out the Writ of Summons and Statement of Claim for incompetence and want of jurisdiction.

The learned SAN further noted that the Claimants also failed to comply with the provisions of Sections 96, 97 and 98 of the Sheriffs and Civil Process Act and did not seek and obtain the leave of this Honourable Court before the issuance of the Writ of Summons in this case for service on the 1st and 2nd Defendants outside Edo State and in the Federal Capital Territory, Abuja, Nigeria. Counsel argued that those

provisions have been judicially interpreted to mean that although an Originating Process issued in one State of the Federation may be served in any other State of the Federation, the leave of the Court is required to issue such Process for service out of the jurisdiction of the issuing State and to have that endorsement made on it. Reference was made to the case of **NWABUEZE V. OKOYE** (1988) 4 NWLR (Pt. 91) 664 at 685 paragraph D where the Supreme Court made it clear and held as follows:

> ñAnd from what I have been saying so far a condition precedent for the issue of the writ of summons against the defendants in this case who are resident outside the area of territorial jurisdiction of the High Court of Anambra State and who, again, neither of them carries on business within that area of jurisdiction, is that leave of the State High Court had to be first obtained before the writ is issued ï leave to issue writ which is to be served out of the jurisdiction is not a matter of course and the failure to apply for leave is not a mere irregularity.ò

The learned (SAN) further argued that this requirement of the law has been held to be applicable not only to State High Courts but also to the Federal High Court even in spite of the fact that the entire Federal

Republic of Nigeria is the coverage area of that Court. The court was referred to the case of **OWNERS OF MV "ARABELLA" V. NIGERIA AGRICULTURAL INSURANCE CORPORATION (2008) 11 NWLR (Pt.1097) 182 at 220 to 221 paragraphs H – E** where the apex court stated the law and held per Akintan JSC(Rtd.) as he then was stated thus:

> ñIt is not in doubt that the provisions of the said section 97 of the Act are applicable in all High Courts, including the Federal High Court. The said provisions, in my view, have nothing to do with the coverage of the jurisdiction of the Federal High Court, which is nation-wide. It is therefore a total misconception to believe that the provisions of the section are inapplicable to the Federal high Court because the jurisdiction of that court covers the entire nationé
>
> The rules of court requiring endorsement or leave to issue and serve outside the jurisdiction or coverage of the court issuing the writ are made applicable by section 96(2) of the Act. Such rules are also applicable to writs meant for services by the Federal high Court.ò

The learned (SAN) noted the contribution of Ogbuagu JSC who read the lead Judgment of the apex court in that case and stated the position of the law thus:

> ñWhere a defendant is outside jurisdiction, no writ for service out of jurisdiction, can be issued except by leave of courté the issue of writ of summons and the service of the same on the defendant are conditions precedent, for the exercise of a courtôs jurisdiction over the defendant.ò

The learned (SAN) contended that in the instant case, it is evident that the Writ of Summons was issued by the Registrar of this Honourable Court on the 5th day of February, 2020 and the Claimants did not seek and obtain any leave of court for the issuance and service of the said writ on the Defendants outside Edo State and in the Federal Capital Territory, Abuja. The learned (SAN) further contended that the Claimants having issued and served the writ of summons without the prior leave of the court, the same is incompetent and cannot even be cured by subsequently applying or seeking such leave. Reference was made to the case of **DEROS MARITIME LIMITED V. M.V. "MSC APAPA" & ORS** (2014) LPELR-22720(CA) page 33 to 37 paragraphs G

ï C where the Court of Appeal per Iyizoba JCA (Rtd.) as he then was clarified the position of the law and held as follows:

> ñThe Appellant was in grave error to have issued the writ before obtaining the leave of the Court. In the case of MITI V. NEW NIG. BANK PLC (1997) 3 NWLR (Pt 496) 737 @ 743, this court per Akpabio JCA observed:
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> "The question for determination therefore is whether a Writ of Summons which was signed by the registrar a day before leave was actually granted by the Judge was valid Writ or not. I have looked at all the decided cases on the point and find that obtaining of leave is a conditional precedent to issue of Writ outside jurisdiction. If no such leave was obtained, the issuance and service of the said Writ of Summons will be a nullity, invalid and void".

The learned (SAN) argued that there is nothing before this Honourable Court to suggest or show that the Claimants applied for, sought and obtained the leave of this Honourable Court before taking out or issuing the Writ of Summons in this case against the Defendants, both of whom are ordinarily resident in the Federal Capital Territory, Abuja, outside the territorial jurisdiction of this Honourable Court and that the consequence of this said failure is now rather clear and well settled as it renders the suit defective and incompetent and liable to be set aside as the fundamental conditions precedent to its validity has not been fulfilled.

Reference was made to the case of **JUMOSIMA WARI & ORS V. MOBIL INC OF AMERICA & ANOR** (2013) LPELR-21996(CA) page 48 to 49 paragraphs C ï F where the Court of Appeal per Garba JCA clarified the position of the law and held as follows:

> ñBy the combined provisions of Sections 96, 97 and 99 of the Sheriff and Civil Process Act, where a writ of summons is to be served out of the jurisdiction of the issuing State High Court, the following requirements must be satisfied:-
>
> (a) the writ must be endorsed with the address at which the defendant is to be served outside jurisdiction,
>
> (b) there must be a period of not less than thirty (30) days within which the defendant shall answer to the writ after the date of service,
>
> (c) except otherwise provided by law, leave of the court must be obtained for the issue and service of the wit outside jurisdiction.
>
> These are fundamental requirements, the breach of which have been held to affect the jurisdiction of the court. See Jadcom Ltd. v Oguns Electrical (2004) 3 NWLR (859) 153; Ajibola v Sogeke (supra); Kida v Ogunmola (2000) 13 NWLR (997) 377; Owena Bank Plc v Olatunji (2002) FWLR (124) 529 at 573.ò

The learned (SAN) urged that the Writ of Summons which was issued and served without the prior leave of this Honourable Court as required by law be set aside for failure to comply with all the necessary conditions precedent to the invocation of the jurisdiction of this Honourable Court.

The learned (SAN) submitted that on the Claimants own showing in the Writ of Summons and Statement of Claim, the address of the Defendants is in the Federal Capital Territory, Abuja outside Edo State and that it is clear from the said endorsement that while the Defendants are resident in the Federal Capital Territory, Abuja, outside the territorial jurisdiction of this court and as such, an originating process or writ of summons from this Court cannot be issued for service on them without due compliance with the mandatory provisions of section 97 of the Sheriffs and Civil Process Act.

The learned (SAN) stated that the Claimants have woefully failed to comply with the above mandatory requirement of the law and rules of the Court and that there is no endorsement of any notice in the Writ of Summons in this case to show that the Writ was issued as concurrent or that it was issued for service on the Defendants in the Federal Capital Territory, Abuja outside the territorial jurisdiction of this Honourable Court.

The learned (SAN) further stated that the consequence of this said failure is now rather clear and well settled that it renders the writ defective and incompetent and liable to be set aside as the fundamental

conditions precedent to its validity have not been fulfilled. The court was referred to the case of **BELLO V. N.B.N** (1992) 6 NWLR (Pt.246) 206 at 218 paragraph D ï F where the Court of Appeal per Achike JCA (as he then was) clarified the position of the law and held thus:

> ñIt is clear that the provisions of section 97 of Sheriffs and Civil Process Act are couched in mandatory terms. Any service of a writ without the proper endorsement as stipulated under section 97 is not a mere irregularity but is a fundamental defect that renders the writ incompetent.ò

The learned (SAN) stated that there can be no doubt that the requirement of proper endorsement of Originating Processes for service outside the territorial jurisdiction of the issuing court is a fundamental requirement of law and a condition precedent to the proper invocation of the jurisdiction of the Court to entertain a matter and that the Claimants whose duty it is to prepare the Originating Processes and ensure that all conditions precedent to the invocation of the Courts jurisdiction are fulfilled have failed to do so, this suit has not been initiated following due process and in compliance with all conditions precedent, the consequence of which is that the writ is therefore incompetent and incapable of properly invoking the jurisdiction of this court over the

Defendants and is therefore liable to be struck out for want of jurisdiction. The court was referred to the case of **KIDA V. OGUNMOLA (2006) All FWLR (Pt.327) 402 at 416–417 paragraphs E – C** where the Supreme Court per Oguntade JSC (Rtd.) stated the law and held thus:

> ñSection 97 above prescribes that every writ of summons for service outside the state whose High Court is issuing the writ shall carry the endorsement set out in the section. It is only when this has been done, that the writ of summons can validly be served outside jurisdiction. See Nwabueze v. Okoye (1988) 4 NWLR (Pt.91) 644.
>
> In the instant case, as the issuance of the writ of summons, had not conformed with the mandatory provisions of section 97 of Cap. 407, the writ of summons could not be served personally outside jurisdiction on the 2nd Defendant.ò

The learned (SAN) urged court to strike out the suit for being incompetent and having failed to invoke the jurisdiction of this court.

The learned (SAN) submitted that a careful reading of the Claimants Writ of Summons and Statement of Claim will readily reveal that the Claimants are members of the Peoples Democratic Party (PDP) Edo State Chapter and that their claim is wholly founded on their displeasure with the conduct of ward congress elections of the 1st Defendant for the

election of its officials to run the affairs of the political party which held on the 2nd day of February, 2020 in Edo State and that the Claimants are seeking by this suit to enlist the coercive powers of this Honourable Court to intervene by nullifying and setting aside the ward congress election of the 1st Defendant on account of the Claimants displeasure with the conduct and outcome of the said elections as reached by the majority members of the party.

The learned (SAN) further submitted that shorn of all legal verbiage, the Claimants wants this Court to interfere in the internal management and running of the voluntary association and second guess the decisions of the majority members of the party for the benefit of the Claimants and that these matters raised by the Claimantsô suit are not justiciable in a court of law because they relate to the internal domestic affairs or management of the Peoples Democratic Party (a voluntary association) and as such, these disputes can only be remedied as provided in the Political Party constitution itself. Counsel called in aid the decision in **ONUOHA V. OKAFOR (1983) 2 SCNLR 244 at 261 paragraph G** where the Supreme Court per Obaseki JSC(Rtd.) of blessed memory clarified the position of the law and held that:

ñThe party, like any other corporation, operates within the guidelines, the powers and duties set out in its Constitution. All its members are bound by its provisions and their rights and obligations created by their constitution can be remedied as provided by the constitution if breached by any of its membersé Lord Denning delivering his judgment in the House of Lords in Institute of Mechanical Engineers v. Cane (1961) AC 696 at 724 said:

œ when you are dealing with a voluntary association of individuals, the doctrine of ultra vires has no placeé ò

The learned (SAN) argued that there can be no dispute that the Peoples Democratic Party (the 1st Defendant) is a voluntary association of individuals and is governed by the principles of majority rule such that in all matters or decisions of the association, the doctrine of ultra vires does not apply. Therefore, any decision or action taken by the association is only subject to majority decision which can ratify any action or decision, whether right or wrong, on the principles of majority rule while any wrong done to its members can only be remedied by resort to the internal dispute resolution mechanism of the party as enshrined in its constitution. This is because all the rights as provided for and enshrined

in the Political Party constitution can only be remedied as provided for in the constitution itself. Reference was made to the case of **MBANEFO V. MOLOKWU** (2009) 11 NWLR (Pt.1153) 431 at 454 paragraphs G ï H where the Court of Appeal per Tsamiya JCA stated the law and held thus:

> ñé a court cannot tell such a voluntary association how it must be organized. If any member of such an association does not like its decision it is open to such a member to resign. See section 6(c) of exhibit A. Any society or association comprising of members who voluntarily join it, is entitled to come to any decision which they like. It must be said loud and clear, the party or association or even a club, to which any person belongs is supreme so far as its affairs go. See MacDougall vs. Gardiner (1875) 1 Ch.D. 13 at 25 per Millish, L.Jé
>
> A man who joins a society as in this case, must abide by the will of that association or clear out. If a man finds himself, as a member of such association and it takes a decision which he does not accept, a decision which could even be contrary to common sense, he has only one course open to him, and that is, to get out. He has to abide or get out as voluntarily as he came in.ò

Further reference was made to the case of **OZIGBO V. PDP** (2010) 9 NWLR (Pt. 1200) 601 at 655 paragraph G - H where the Court of Appeal per Abba Aji JCA as he then was now (JSC) confirmed this position of the law and held thus:

> ñA man who joins a society, as in the case of a political party must abide by the will of that association or clear out. If a man finds himself as a member of such association and it takes a decision which he does not accept, a decision which could even be contrary to common sense, he has only one course open to him, and that is to get out. He has to abide or get out as voluntarily as he came in.ò

The learned (SAN) argued that it is clear from the Writ of Summons and the Statement of Claim of the Claimants in this case that the Claimantsô suit is all about the internal domestic affairs or management of the People Democratic Party (P.D.P.), a voluntary association. It is about the Claimants displeasure with the actions, inactions and decisions of its members and leadership in the management and running of the affairs of the Political Party, which actions, inactions and decision he perceives to be ultra vires the Political Party.

The learned (SAN) submitted that these are intra party disputes on internal domestic affairs of the Party which can be redressed only through resort to the internal dispute resolution process provided for in the party constitution. Such grievances or disputes are not justiciable and do not fall within the jurisdiction of this Honourable Court. This proposition of the law was supported with the case of **JANG V. INEC** (2004) 12 NWLR (Pt. 886) 46 at 78 paragraph F ï G where the Court of Appeal per Ogbuagu JCA (as he then was now JSC) in determining whether intra-party disputes are justiciable held thus:

> ñLet me emphasize here that intra-party matters is entirely within the partyôs internal affairs exclusively and completely outside the province or competence of courts or tribunals. The courts do not have the competence to determine the candidates to represent a political party in an election or to appoint officials of political parties or even to determine disputes arising from internal affairs of the political party. See Onuoha vs. Okafor (supra); Musa v. PRP (1982) 2 NCLR 763; Bakam v. Abubakar (1991) 6 NWLR (Pt.199) 564; Ibrahim vs. Gaye (2002) 13 NWLR (Pt.784) 267 and Abdulkadir vs. Mamman (2003) 14 NWLR (Pt.839) 1.ò

Further reference was made to the case of **CHINWO V. OWHONDA** (2008) 3 NWLR (Pt. 1074) 341 at 360 where the court had this to say;

ñIt is well settled in our judicial system that courts are restrained in relation to domestic matters of associations é ..ò

The learned (SAN) stated that assuming but without conceding that the instant claim was justiciable, the same is premature and incompetent because the Claimants have failed to explore and utilize the internal disputes resolution mechanisms provided for in the constitution of the 1st Defendant and to which they are bound to adhere as members of the political party. Reference was made to Sections 60(1)-(4) and 61(1)-(2) of Exhibit A of the PDP Constitution which stipulates grievance remedial procedures thus:

ñREMEDIES

60. (1) If any member of the Party is aggrieved, he shall report to the appropriate authority.
(2) If he or she is not satisfied, an appeal shall lie with the next higher Party authority.
(3) All appeals must be dealt with timely, expeditiously; in any event not later than 2 weeks after the filing of the appeal.
(4) The National Executive Committee of the Party shall be the final arbiter, provided that failure, refusal or neglect to treat a report, petition, complaint or appeal on the part of the arbiter shall, in itself, constitute an offence.

APPEAL

61. (1) Any member of the Party who is aggrieved by a decision taken against him by any of the organs or officers of the Party shall have the right of appeal to the

immediate higher organ of the Party within fourteen days of the decision.

(2) An appeal shall be determined by the appropriate appeal body within twenty-one days from the date of the receipt of the notice of appeal by the appropriate Executive Committee.ò

The learned (SAN) contended that the above provisions clearly affords the Claimants the opportunity to seek redress by appeal against the decisions, subject matter of this suit, to the appropriate authority within the Political Party hierarchy for redress, as a condition precedent to resort to litigation and that it is instructive that Section 58 of the same PDP constitution makes it an offence for any member to

> ñResort to court action or litigation on any dispute or on any matter whatsoever concerning rights, obligations and duties of any member of the party without first availing himself of the remedies provided by the Party under this constitutionò

The learned (SAN) contended that there is nothing before this Court in the Writ of Summons and Statement of Claim to suggest that the Claimant complied fully with these provisions or has exhausted the internal remedies of appeal provided for in the PDP Constitution before instituting this suit and that quite to the contrary, it is clear on the Claimants own showing in paragraph 18 of the Statement of Claim that

all they did was to send a petition to the National Chairman of the 1st Defendant on the 2nd day of February, 2010 before proceeding to court.

The learned (SAN) further contended that there can be no doubt that this feeble effort of the Claimants falls far short of the requirements of the Political Party Constitution aforesaid as it relates to resort to the internal dispute resolution mechanism of the party as the Claimants have not shown that they have reported their grievances to the appropriate authority of the party in the State, in the South-South Geo-political zone or appealed to the National Working Committee. A mere complaint to the national chairman or secretariat of the party, the learned (SAN) insisted is not the same thing as reporting a specific grievance to the appropriate authority or organ of the party for redress and that in any case, there is nothing to show that the Claimants awaited the decision or outcome of the complaint or that they appealed same to the next level as required under the PDP constitution before instituting this claim.

The learned (SAN) argued that the Claimants are people who have no regard for the rules and regulations of the Party and are prepared to violate same and commit every known offence under the constitution

while at the same time insisting on litigating with the party of which they remain as members.

The learned (SAN) submitted that having failed, neglected or refused to submit their grievance to the appropriate organs of the party or to file the relevant or necessary appeals against the alleged actions, inaction or decisions in this case or to pursue them to a logical conclusion or indeed to follow the due process of exhausting internal remedies available at the domestic forum, the Claimants have failed to fulfil the conditions precedent for the commencement of this suit which therefore renders this suit premature and incompetent. Reference was made to the case of **AKINTEMI V. ONWUMECHILI** (1985) 1 NWLR (Pt.1) 68 at 85 paragraph H where the Supreme Court held per Obaseki JSC (Rtd.) of blessed memory that the need to exhaust internal or domestic remedies before resorting to court litigation:

> ñé can only mean that until the remedies available in the domestic forum are exhausted, any resort to court action would be premature.ò

Further reference was made to the case of **T. O. OWOSENI V. JOSHUA IBIOWOTISI FALOYE** (2005) 14 NWLR (Pt.946) 719 at 757 paragraph

B-C where the apex court per Oguntade JSC (Rtd.) confirmed this position of the law and explained its rationale thus:

> ñIt is important to stress that Laws which prescribe that some procedural steps be taken to resolve a dispute before embarking on actual litigation are not and cannot be treated or categorised as ousting the jurisdiction of the Court. Indeed, if such laws attempt to do so, they would be in conflict with the provisions of the Constitution. Such laws only afford the body to which such disputes must be referred to in the first instance an opportunity to resolve the dispute if it can before a recourse is had to the court. In other words, they serve the purpose of preventing actual litigation in court where it is possible or desirable to resolve the dispute.ò

The learned (SAN) argued further that the Peoples Democratic Party Constitution is the charter of the party and binds all its members, including the Claimants and having voluntarily subscribed to membership of the party and agreed thereby to be bound by the said constitution, the Claimants cannot be allowed to derogate from their avowed obligations to abide by the provisions requiring compliance with internal mechanisms for dispute resolution and rush to court, particularly in the circumstances of this case where the Claimants are alleging non-

compliance with some provisions of the same constitution. Reference was made to the case of **DALHATU V. TURAKI** (2003) 15 NWLR (Pt.843) 310 at 347 para Fï G

The learned (SAN) submitted further that in so far as the Claimants failed to comply with the internal dispute resolution mechanisms of the 1st Defendant or failed to exhaust the available remedies in the domestic forum of the party, there is a failure to fulfil vital conditions precedent necessary for commencing this action which renders this action premature and incompetent and therefore urged court to decline jurisdiction in this case and strike out the claim.

Responding, learned Counsel for the Claimants/Respondents filed a 6 paragraph Counter Affidavit and a written address in opposition to this Application. One issue for determination was submitted by Counsel which is:-

> ñWhether the 1st Defendant/Applicantôs Motion on Notice dated and filed on the 13th day of February 2020 is not lacking in merit and ought to be dismissed.ò

Arguing the sole issue as formulated, Counsel argued that the Originating Process and the accompanying processes of the

Claimant/Respondent were duly and validly signed in accordance with the requirements of the law as it contains the following details, in the sequence:

a. The signature of the lawyer
b. The name of the legal practitioner
c. The name of the law firm
d. The party it represents.
e. Address of the law firm

Counsel further submitted that this sequence is sufficient and valid to authenticate the said processes and referred court to the case of **OKPE V. FAN MILK PLC & ANOR** (2016) LPELR-42562 (SC), where the Supreme Court, per Muhammad J.S.C as he then was later CJN (Rtd.) at page 34, Paragraph B-D held thus:

> ñIn SLB Consortium vs NNPC (supra) this Court made it clear:ò all processes filed in Court are to be signed as follows:
>
> A) First the signature of counsel which may be any contraption.
> b) Secondly the name of the counsel clearly written
> c) Thirdly who counsel represents.
> d) Fourthly, name and address of legal firm.ò

Counsel argued that the paramount issue is that the process must be signed by a Legal Practitioner known to law and that the 1st

Defendant/Applicant is not contesting that A..I. Ekama (Mrs.) is not a known Legal Practitioner. Counsel further argued that the presence of the name of the law firm of Agwinede & Co., shows nothing more than that the lawyer, A. I. Ekama (Mrs.) is from the said law firm.

Counsel urged court to discountenance the argument of the 1st Defendant/Applicant in this regard.

Counsel contended that the case of **TANIMU V. RABIU** (2018) 4 NWLR (Pt. 1610) 505 cited by the 1st Defendant/Applicant's counsel is completely inapplicable to this case because in that case, the name of the law firm appeared immediately after the signature and therefore, the court was of the view that the signature belonged to the law firm, not the lawyer.

Distinguishing the above case with the present matter before court, Counsel stated that in this present case, the processes were clearly signed by a legal practitioner known to law and the name of the lawyer appeared immediately after the signature.

Counsel contended that under the Edo State High Court (Civil Procedure) Rules 2018 and the Sheriffs and Civil Process Law, no leave

of Court is ever required to issue any Writ of summons for service outside Edo Sate and that each State of the Federation has its respective Rules of Court and the Rules of the High Court of one State in the Federation, does not automatically apply to other States.

Counsel argued that the endorsement on the writ for service outside jurisdiction is the duty of the Registrar of this Court and no litigant ought to be punished for the failure or omission of the Registrar. The court was referred to **Order 3 Rule 12 of the Edo State High Court (Civil Procedure) Rules 2018** which provides thus:

> ñSubject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the Court for service in Nigeria outside Edo State shall be endorsed by the registrar of the court with the following notice.
>
> ñthis summons (or as the case may be) is to be served out of Edo State of Nigeria and in the .....Stateò

Counsel argued that endorsement is part of the functions of the Registrar of this Honourable Court and the Claimants/Respondents did everything they needed to do since they disclosed that the addresses on record for the Defendants were outside Edo State, and drew the attention of the Registrars to make the necessary endorsement and also paid the appropriate filing and service fees.

Counsel contended that it is the law that no litigant shall be punished for the actions or omissions of the Registrars of the Court and that in all instances where the Registrar omitted to do its duty as it relates to a process, the Court always remedies the omission by directing the Registry to perform its functions. The court was referred to the case of **AKPAJA V. UDEMBA** (2009) LPELR 371 (SC)**,** where the Supreme Court held thus:

> ñsurely and certainly, the error or inadvertence of the said Registrar, cannot, in my respectful and firm view, be said to be that of the respondent.ò

Counsel stated that failure to endorse the Writ is a mere irregularity which this court can direct to be remedied. Reference was made to the case of **ODU' A INVESTMENT CO LTD V TALABI** (1997) LPELR-2232 (SC).

Counsel urged court to hold that the omission to endorse the said writ of Summons is a mere irregularity and direct the registrar to make/write the endorsement.

Counsel submitted that by **Order 7, Rule 8 of the Edo State High Court (Civil Procedure) Rules 2018**, the Defendants can validly be

served within their addresses in Edo State and that the failure to make the endorsement led to no miscarriage of justice.

Counsel argued that the cause of action is clearly justiciable as there are clear violations of the rights of the Claimants/Respondents which are in dire need of remedying, and only the process of this Honourable Court can actually compel the 1st Defendant/Applicant to observe the law and its own Constitution.

Counsel submitted further that the Claimants/Respondentsô complaints have been well articulated in the Statement of Claim with cognisable reliefs and that all that is left is for the court to hear the parties and decide the case, along with making the necessary orders.

Counsel argued that the Claimants/Respondents exhausted all the internal resolution mechanism of the 1st Defendant/Applicant before the institution of this case. Reference was made to the depositions in paragraph 4 (b) of the Counter Affidavit.

Counsel added that the issue of exhausting the internal party mechanism was already raised by the Claimants/Respondents in their pleadings in the substantive case and that the Court can only resolve

this issue after the trial noting that it is trite that Courts must refrain from determining substantive issues at the interlocutory stage. Reference was made to the case of **NNPC V. FAMFA OIL LTD & ANOR** (2009) LPELR- 2023 (SC) where the Supreme Court, per Adekeye J.S.C (Rtd.) held that ñIt is trite that a Court must take all precaution not to determine a substantive matter at an interlocutory stageò

Counsel stated that the Claimants/Respondents have constitutionally guaranteed rights to have their case determined by this court and further stated that the combined effect of **Sections 6(1), 6(5) (e), 6(6)(b), Section 272(1) and Section 4(8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended),** which permits the Claimants/Respondents to bring this action and this courtôs jurisdiction cannot be taken away by any law of any legislative body let alone the constitution of any association or political party.

Counsel argued that to determine whether a reasonable cause of action has been disclosed, it is only the originating processes of the Claimants/Respondents that are considered. Reference was made to the case of **BARBUS & CO (NIG) LTD & ANOR V. OKAFOR UDEJI** (2018) LPELR-44501 where the Supreme Court held that it is only the

originating processes of the Claimant that are considered in order to determine the reasonable cause of action.

Counsel submitted that from the totality of the pleadings of the Claimants/Respondents and the reliefs sought against the Defendants, a reasonable cause of action has been disclosed against the Defendants.

Counsel added that the 1st Defendant/Applicant ought to have filed its pleadings and therein raised these points of law and that this application of the 1st Defendant/Applicant is premature and constitutes a Demurrer Proceedings which has been abolished by the Rules of this Court noting that the 1st Defendant/Applicant ought to have filed its Defence and raised the issue therein, so that if the Court rules against it, then the case can proceed to speedy trial. Reference was made to **Order 22 Rule (1) and (2) of the Edo State High Court (Civil Procedure) Rules 2018**. Counsel argued that this application by the 1st Defendant/Applicant is an abuse of Court process as same has already been positively abolished by the Rules of this Court.

Counsel urged court to dismiss the 1st Defendant/Applicantôs Motion on Notice dated and filed on the 14th day of February 2020 as same is utterly lacking in merits and constitutes an abuse of court process.

I have carefully considered this application and the written submissions of learned counsel for the parties. I must commend the learned SAN counsel for the 1st defendant/applicant and counsel for the claimants for the thorough and brilliant research put into the presentation of this extant application before this court. I now proceed.

This application queries the jurisdiction on this court to hear and determine the substantive suit on the grounds listed above. It bears repeating to restate the grounds which are as follows:

a. That the Claimant commenced this suit vide a defective and incompetent Writ of Summons and Statement of Claim which were signed by proxy for S. O. Agwinede & Co., a firm of Legal Practitioners not called to the Bar or entitled to practice as a Legal Practitioner in Nigeria.

b. That the Claimants failed to seek or obtain the prior leave of this Honourable Court before the issuance of the Writ of Summons in this case for service on the 1st and 2nd Defendants whose addresses for service are outside Edo State and in the Federal Capital Territory, Abuja, outside the jurisdiction of this Honourable Court.

c. That the Writ of Summons filed by the Claimants in this case does not contain the necessary and mandatory endorsements or

particulars required of a valid Writ of Summons for service outside the Jurisdiction of this Honourable Court.

d. That the subject matter of the Claimantsôsuit relates to the internal domestic affairs of the Peoples Democratic Party (PDP), a voluntary association, which are not justiciable before this Honourable Court.

e. That the Claimant did not exhaust the remedies in the domestic forum of the Peoples Democratic Party (PDP) with a view to resolving the dispute before resorting to litigation in this case.

f. That the Claimants suit is premature and fails to disclose any cause of action or reasonable cause of action against the 2nd Defendant.

g. That this Honourable Court lacks jurisdiction and cannot exercise its jurisdiction to entertain this suit as presently constituted.

This application touches on the jurisdiction of this court to hear and determine this suit according to Applicantôs Counsel, on account of the originating process not being in compliance with the due process of law. Essentially, the Applicantôs grouse is that the mandatory requirement that a writ to be served out of jurisdiction and which must be so endorsed on the face of the Writ of Summons in compliance with Sections 97 and 98 of the Sheriffs and Civil Process Act, was not complied with in this suit.

Now, on the face of the Writ of Summons the Applicant seeks to strike out, the mandatory requirement that an endorsement that the writ is to be served out of jurisdiction is not shown as enjoined by the provisions of Sections 97 of the Sheriffs and Civil Processes Act.

The jurisdiction of a court to hear and determine a matter is, and has always been a threshold issue and the live-wire of every adjudication. See the case of **WESTERN STEEL WORKS LTD. V. IRON & STEEL WORKERS UNION** (1986) 2 NSCC (Vol.17) 786 at 798, where the Supreme Court instructively held per Oputa J.S.C**. (Rtd.)** of blessed memory stated as follows: -

> ñA court has to be competent in the sense that it has jurisdiction before it can undertake to probe and decide the rights of the parties. But because it is regarded as a threshold issue and a lifeline for continuing any proceedings, objection to jurisdiction ought to be taken at the earliest opportunity if there are sufficient materials before the court; to consider it and a decision reached on it before any other step in the proceedings is taken because if there is no jurisdiction, the entire proceedings are a nullity no matter how well conducted.ò

This application will be determined based on the grounds upon which this was brought.

The contention of the Learned Senior Counsel for the Applicant is that the Claimant commenced this suit vide a defective and incompetent Writ of Summons and Statement of Claim which were signed by proxy for S. O. Agwinede & Co., a firm of Legal Practitioners not called to the Bar or entitled to practice as a Legal Practitioner in Nigeria. It is already settled and remains so that any court process issued or signed by a firm of legal practitioners in the firmôs name is incurably bad and liable to be struck out. From the processes before court under reference, there is a distinction from the circumstance giving rise to the objection of the Applicant.

The Supreme Court has, in interpreting the provisions of Sections 2 (1) and 24 of the Legal Practitioners Act in a long line of cases, settled the question of the competence of court processes signed in the name of a law firm. The Supreme court opined in the cases that by the provisions of the Legal Practitioners Act only persons whose names are listed on the Roll of Barristers and Solicitors in Nigeria can practice law in this country and, that since the practice of law includes the drafting and signing of court processes, only the persons so listed on the Roll of Barristers and Solicitors can sign court processes for filing in our courts,

and the only exception is where processes are signed by a litigant who chooses to represent himself. The present position of the law as settled by the Supreme Court is that all court processes signed in the name of a law firm without specifically stating thereon the name of the individual legal practitioner who appended the signature on behalf of the law firm are null and void because a law firm is not one of the persons listed on the Roll of Barristers and Solicitors in Nigeria. See **KLM ROYAL DUTCH AIRLINES & ANOR v. TOBA & ORS (2014) LPELR-23993(CA)**

In the instant case, the process in question was signed by a Legal Practitioner called to the Nigerian Bar. It was not signed by a Law Firm as to offend the provision that a law firm is precluded from signing court processes. The objection raised in that regard is therefore misconceived and discountenanced.

The second ground upon which this application is brought is that the Claimants failed to seek or obtain the prior leave of this Honourable Court before the issuance of the Writ of Summons in this case for service on the 1st and 2nd Defendants whose addresses for service are outside Edo State and in the Federal Capital Territory, Abuja, outside the jurisdiction of this Honourable Court.

The previous position of the law was that failure of the Claimant to obtain the leave of Court to issue and serve the writ of summons on a Defendant outside the jurisdiction of the Court renders the issuance and service of such writ void notwithstanding the appearance and participation of the Defendant in the proceedings. This was represented in such decisions as **OTTI V. MOBIL OIL NIGERIA LTD** (1991) 7 NWLR Part 206 Page 700: **UNION BEVERAGES LTD V. ADAMITE CO. LTD** (1990) 7 NWLR Part 162 Page 348: **EKUME V. SILVER EAGLE SHIPPING AGENCIES LTD** (1987) 4 NWLR Part 65 Page 472. The current state of the law is that where a Defendant is served with a writ of summons in breach of Sections 97 and 99 of the Sheriffs and Civil Processes Act, he has a choice either to object to the service by applying to have it set aside and the court will accede to the application or ignore the defect and proceed to take steps in the matter. See **ODU'A INVESTMENT CO. LTD V. TALABI** (1997) 10 NWLR Part 523. Page 1.

The requirement to obtain leave of court to serve the originating processes out of jurisdiction is couched in mandatory terms and needed to be complied with. It was not done in this case and any service of writ without the proper endorsement as stipulated under Section 97 of the

Sheriffs and Civil Processes Act, is not a mere irregularity but is a fundamental defect that renders the writ incompetent.

The third grouse of the Applicant is that the Writ of Summons filed by the Claimants in this case does not contain the necessary and mandatory endorsements or particulars required of a valid Writ of Summons for service outside the Jurisdiction of this Honourable Court. This is also a mandatory requirement as contemplated by the Sheriff and Civil Processes Act. Respondentôs Counsel has impressed it upon court that the absence of the mandatory requirement for endorsement as to the service of the process outside jurisdiction is the duty of the Registrar of Court which liability of the failure should not be visited on the Respondents. He referred court to Order **3 Rule 12 of the Edo State High Court (Civil Procedure) Rules 2018** which provides thus:

> ñSubject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the Court for service in Nigeria outside Edo State shall be endorsed by the registrar of the court with the following notice.
>
> ñthis summons (or as the case may be) is to be served out of Edo State of Nigeria and in the .....Stateò

It is instructive to note that the Sheriff and Civil Process Act to which the above Order of the Rules of court was made subject of, did not specify that the endorsement on the Writ for Service out of jurisdiction was to be specifically made by the Registrar of Court. Failure to endorse the writ in that regard cannot by any stretch be visited on the Registrar of court. As it stands, it has to be taken that the mandatory requirement for endorsement that the writ was to be served out of the jurisdiction of this court was not complied with.

The 4th and 5th grounds upon which this application is brought is the fact that the subject matter of the Claimantsô suit relates to the internal domestic affairs of the Peoples Democratic Party (PDP), a voluntary association, which are not justiciable before this Honourable Court and that the Claimant did not exhaust the remedies in the domestic forum of the Peoples Democratic Party (PDP) with a view to resolving the dispute before resorting to litigation in this case.

It is evident that the questions which the Claimants have invited the court to determine are clearly within the purview of the internal affairs of the 1stDefendant and are not justiciable. I am further persuaded and agree with the authority of **MBANEFO V. MOLOKWU (Supra)** cited by learned

the learned (SAN). On the question of the Claimants having not exhausted the dispute resolution mechanism of the 1st Defendant, I think is will be inappropriate to decide on that at this stage because whatever said will carry a substantive meaning.

I shall now touch on the issue of demurer raised by the Claimant/Respondentôs Counsel. Claimant/Respondent Counselôs contention is that under Order 22 of the Rules of this court, no party is allowed to take the type of pre-emptive step which the Defendant/Applicants have erroneously taken in these proceedings by their notice of preliminary objection. Counsel is simply saying that demurer is no longer allowed by the rules of this court.

A demurrer is a known and well accepted common law procedure which enables a Defendant who contends that even if the allegations of facts as stated in the pleadings to which objection is taken is true, yet their legal consequences are not such as to put the defendant (demurring party) to the necessity of answering them or proceeding further with the cause. In **FABUNMI V. COMMISSIONER OF POLICE, OSUN STATE & ORS. (2011) LPELR-8776(CA)** the Court of Appeal held while quoting with

approval the position held by Uwaifo J.S.C (Rtd.) (as he then was) in **N.D.I.C V. C.B.N & ANOR** (2002) 3 SCNJ 75 at 89 reasoned thus:-

> **"The tendency to equate demurrer with objection to jurisdiction could be misleading. It is a standing principle that in demurrer, the plaintiff must plead and it is upon that pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action, or where appropriate, no locus standi. The issue of jurisdiction is not a matter for demurer proceedings. It is much more fundamental than that and does not entirely depend as such on what the plaintiff may plead as facts to prove the reliefs he seeks. What it involves is what will enable the plaintiff to seek a hearing in court over his grievance, and get it resolved because he is able to show that the court is empowered to entertain the subject matter. It does not always follow that he must plead first in order to raise issue of jurisdiction". In the circumstance therefore, where jurisdiction is the root of the matter and the claim can be dismissed for lack of jurisdiction simpliciter, it will serve no useful purpose to file a defence notwithstanding the rules of court….."**

The argument that the Preliminary objection amounts to demurrer is therefore misconceived and same is hereby discountenanced.

I must now come to the conclusion that this application succeeds as the due process of the law was not complied in instituting this suit. The failure to seek leave of court before the service of the writ of summons outside the jurisdiction of this court renders the Writ incompetent and as a consequence the jurisdiction of this court to hear and determine this suit is called into question. It is on that note that the substantive suit is hereby dismissed.

_____

HON. JUSTICE J. O. OKEAYA – INNEH
JUDGE
28th day of May, 2020

COUNSEL:
Chief F. O. Orbih SAN, FCIArb with A. S. Adesheila for the 1st Applicant.
Dele Uche Igbinedion with I. O Ukpai respondents.