

IN THE NATIONAL ASSEMBLY ELECTION PETITION TRIBUNAL

HOLDEN AT SOKOTO

ON WEDNESDAY THE 8TH 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/08/19

ELECTION TO THE OFFICE OF MEMBER, HOUSE OF REPRESENTATIVES FOR GORONYO/GADA FEDERAL CONSTITUENCY HELD ON THE 23RD DAY OF FEBRUARY 2019.

BETWEEN:

1. MUHAMMAD BELLO ALIYU
2. PEOPLE'S DEMOCRATIC PARTY (PDP)

} PETITIONERS

AND

1. MUSA S. ADAR
2. ALL PROGRESSIVE CONGRESS (APC)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION
4. COMMISSIONER OF POLICE, SOKOTO STATE

} RESPONDENT

RULING

This is a Ruling on a Motion on Notice, dated and filed on the 23rd of April, 2019, brought pursuant to paragraph 14 of the Rules of Procedure for Election Petitions, 1st Schedule to the Electoral Act 2010 (as amended); Order 17 Rules 2 and 3 of the Federal High Court (Civil Procedure) Rules 2009 and under the inherent jurisdiction of the Tribunal, praying the Tribunal for the following reliefs:

1. AN ORDER of this Honourable Tribunal granting leave to the Petitioners to amend their Petition No: EPT/SKT/HR/08/19 as per the underlined portion of the Amended petition herein annexed as Exhibit A.
2. AN ORDER of this Honourable Tribunal granting leave to the Petitioner's to amend the witness statement on Oath of A.L and U.I as per the underlined portion off the amended witness statement on oath herein annexed.
3. AN ORDER of this Honourable Tribunal granting leave to the Petitioners to file additional witness Statements on Oath herein annexed as follows:
 - i. U. A
 - ii. H. A. T
 - iii. M. S
 - iv. I. D
 - v. B. H
 - vi. S. U
 - vii. N. D
 - viii. Z. A
 - ix. K. S
 - x. T. B
 - xi. A. A
 - xii. F. M
 - xiii. Z. A
 - xiv. H. A
 - xv. B
 - xvi. B. S
 - xvii. D. A
 - xviii. L. S 1
 - xix. A. H
 - xx. S. M. G
 - xxi. B. A
 - xxii. L. S 2
 - xxiii. H. S 1
 - xxiv. H. S 2
 - xxv. A. A
 - xxvi. ALHAJI S. G

4. AN ORDER of this Honourable tribunal deeming the attached Amended Petition, Amended witness Statement on oath as well as the Additional witness statement on oath of the witnesses listed in prayer 3 above as duly filled and served, the requisite fees having been paid.
5. AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Tribunal may deem necessary to make in the circumstance.

The application is supported by a four (4) paragraph affidavit deposed to by one Jonathan Ahmadu and with one exhibit attached as Exhibit A that is, the Amended Petition as well as the accompanying processes.

The Petitioners/Applicants also filed a Written Address of counsel which was adopted by their counsel as his arguments in support of the application.

In the said written address, the learned counsel for the Applicants, *F.E.Okotete Esq.* formulated a sole issue for determination as follows:

Whether the Tribunal can grant the reliefs in this application from all the facts and circumstance of the case?

Arguing the issue, learned counsel submitted that the Rules of Procedure for Election Petition as contained in the 1st schedule to the Electoral Act 2010 provides for amendment of an Election Petition in paragraph 14 as follows:

- (1) ***Subject to subparagraph (2) of this paragraph, the provisions of the civil procedure Rules relating to amendment of pleadings shall apply in relation to an election petition or a reply to the election petition... “Civil Procedure Rules” is defined under paragraph 1 of the said Rules of Procedure to mean the civil procedure Rules of the Federal High Court for the time being in force.***

He said that ***Order 17, rules 1, 2 and 3 of the Federal High Court (Civil Procedure) Rules 2009*** also provides for amendment as follows:

1. ***A party may amend his originating process and pleading at any time before judgment but not more than twice.***
2. ***Application to amend may be made to a Judge. Such application shall be supported by an affidavit exhibiting the proposed amendment and may be allowed upon such terms as to costs or otherwise as may be just.***
3. ***Where any originating process and or a pleading is to be amended, a list of any additional witness to be called together with his written***

statement on oath and a copy of any document to be relied upon consequent on such amendment shall be filed with the application.

He said that the Petitioners/Applicant brought this application exhibiting the Amendment to their Petition as well as the accompanying documents in accordance with the above rules. He posited that the Rules of procedure for Election Petition as provided in paragraph 14 (2) of Schedule 1 states as follows:

2. After the expiration of the time limited by -

a. Section 134 (1) of this Act for presenting the election Petition, no amendment shall be made-

- i. Introducing any of the requirements of subparagraph (1) of paragraph 4 of this schedule not contained in the original Election petition filed, or*
- ii. Effecting a sustained alteration of the ground for, or prayer in, the election petition.*
- iii. Except anything which may be done under the provision of subparagraph (2) (a) (ii) of this paragraph, effecting sustain alternations or addition to, the statement of facts relied to support the ground for, or sustain the prayer in the election petition...*

He submitted that the gamut of these provisions therefore is that a substantial amendment to an election will not be allowed after expiration of the time for presentation of petition. That this was aptly captured by the court in the case of: **Dr. Chris Nwabueze Ngige V. Mr. Peter Obi & Ors (2006) 10 WRN 33 at p. 197 – 199** when it stated thus:

In effect, any amendment which is substantial which alters the grounds for or the prayer in election petition will not allowed.

See also **Adeseun V. Ilaka (2012) 9 WRN 133 at 147.**

He said that the question therefore is whether the amendment sought to be made by the Petitioner/Applicants is substantial and alters the grounds for or the prayers in the petition. He contended that the amendments they seek to make are not substantial enough to affect the grounds of the petition as some comprise of mainly typographical errors and some facts as clearly seen in Exhibit A attached to the affidavit in support of this application.

In conclusion, he urged the Tribunal to resolve the sole issue in this application in favour of the Petitioners/Applicants and grant all the reliefs sought in the application.

In opposition to the application, the 1st Respondent filed a counter affidavit of 4 paragraphs and his counsel filed a written address.

In his written address, the learned counsel for the 1st Respondent, *Chief J.E.Ochidi* formulated a sole issue for determination as follows:

“ Whether the petitioners can validly amend the said petition at this stage of the proceedings when the statutory time limited to the petitioners for presentation of an election petition has since lapsed.”

Arguing the sole issue, learned counsel submitted that the jurisdiction vested on this Honourable Tribunal to amend an election petition is as stipulated in *paragraph 14(2)(a)(i), (ii) and (iii) of the First Schedule to the Electoral Act, 2010 (as amended)* which provides as follows: -

- “(2) After the expiration of the time limited by –**
- (a) Section 134(1) of this Act for presenting the election petition, no amendment shall be made: -**
- (i) introducing any of the requirements of sub paragraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed, or**
 - (ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition, or**
 - (iii) except anything which may be done under the provisions of subparagraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition”.**

He submitted that in the instant petition, it is crystal clear that the time limited to the petitioners to file an election petition has since elapsed. That the nature of the amendment now sought to be made by the petitioners in the said petition *vide* this instant application of the petitioners are not matters of mere topographical errors as being alleged by the petitioners but amount to alteration of the statement of facts being relied upon by the petitioners to support the grounds of the petition i.e. that the election was invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended) and that the 1st respondent was not duly elected by majority of lawful votes cast at the said election. He submitted that it is settled law that such a substantial amendments to the facts being relied upon to support the ground of the petition or to sustain the prayer in the petition can only be granted if same is made before the expiration of the time limited for presentation of an election petition. He referred to the case of: ***OKEREKE VS. YAR’ADUA (2008) ALL FWLR (PT 430) 626 AT 665***, where Tabai JSC held thus: -

“Amendment of substantial nature can only be sought and granted before the expiration of 30 days from the date the result of the election was declared. In the instant case, the petitioner sought amendment of his petition outside the prescribed time frame for such amendment. Therefore, the petition was rightly struck out on appeal for being incompetent.”

Again, he referred to the decision of the Court of Appeal in ***DALHATU VS. DIKKO (2005) ALL FWLR (PT 242) 483 AT 501*** where the said court held thus: -

“By virtue of section 14(2)(a) of the Electoral Act 2002, after the time limited by section 134 of the Electoral Act for presentation of an election petition, no amendment shall be made. In the instant case, by 4th of June, 2003 when the motion for amendment was brought by the appellant, the time for presenting the election petition had expired and as such, it was too late to effect any amendment in the petition.”

He therefore submitted that it is too late in the day for the petitioners to be granted leave by this Honourable Tribunal to amend the said petition in the manner herein proposed by the petitioners. He urged the Tribunal to so hold and to resolve this issue in favour of the 1st respondent. He therefore urged the Tribunal to strike out this application or to dismiss same for lacking in merit.

In opposition to the application, the 2nd Respondent also filed a counter affidavit of 4 paragraphs and his counsel filed a written address.

In his written address, the learned counsel for the 2nd Respondent, ***Chief S.U.Nwoke*** formulated the same sole issue for determination as follows:

“Whether the petitioners can validly amend the said petition at this stage of the proceedings when the statutory time limited to the petitioners for presentation of an election petition has since lapsed.”

In his written address, he articulated his arguments in opposition to the application. In a nut shell he also contended that the amendments are quite substantial and go beyond mere correction of typographical errors.

Also in opposition, *Abdulrahman Aliyu Esq.* filed a counter affidavit of 5 paragraphs and a written address of counsel. He equally contended that the amendments were not only too substantial but out of time.

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

Amendment of pleadings in ordinary civil suit is allowed at any stage, in order to settle the dispute between the parties. The courts have very wide discretion in granting or refusing leave to amend. *See Ojoh & Ors V Ogboni (1976) 1 NMLR 95, Oguntimehin V Gubere (1964) 1 All NLR 176.*

In election petitions however, considering its peculiar and *sui generis* nature, time is of great essence. See: *Asunbor V Ashiomole (2007) 1 NWLR (Pt.1065) 32 at 40, Odon V Barigha-Amange (no.1) (2010) 12 NWLR (Pt. 1207) 1 at 10.* Consequently amendment in an election petition is subjected to restriction as to time limitation.

On the amendment of Election Petitions, *Paragraph 14 of the 1st Schedule to the Electoral Act, 2010 (as amended)* provides as follows:

“14. (1) Subject to subparagraph (2) of this paragraph, the provisions of the Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election petition or a reply to the election petition as if for the words "any proceedings" in those provisions there were substituted the words "the election petition or reply".

(2) After the expiration of the time limited by-

(a) Section 134 (1) of this Act for presenting the election petition, no amendment shall be made:

(i) introducing any of the requirements of subparagraph (1) of paragraph 4 of this Schedule not contained in the original Election petition filed, or;

(ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition, or;

(iii) except anything which may be done under the provisions of subparagraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition; and

(b) Paragraph 12 of the Schedule for filing the reply, no amendment shall be made-

(i) alleging that the claim of the seat or office by the petitioner is incorrect or false; or

(ii) except anything which may be done under the provisions of subparagraph (2) (a) (ii) of this paragraph, effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply.

By virtue of the aforesaid paragraph 14 (2) of the Schedule the courts have consistently held that no substantial amendments to the petition or reply can be made at the expiration of the time prescribed by section 134 of the Electoral Act. Substantial amendments to the petition or reply are excluded, where not made within the time for filing petition or reply under the provision stipulated by section 134 of the Electoral Act: **JANG v. DARIYE (2003) 15 NWLR (Pt.843) 436; OBI-ODU v. DUKE (2005) 10 NWLR (Pt. 932) 105 @ 143.** No amendment outside the period prescribed for presenting a petition will be allowed if the amendment will be substantial: **YUSUFU v. OBASANJO (2003) 16 NWLR (Pt.847) 554 @ 606; OJUKWU v. ONWUDIWE (2007) 3 EPR 892.**

It must however be noted that the said section 134 has been deleted from the present Electoral Act. So there is no provision in the Electoral Act that prescribes the time for the filing of a petition or for the hearing and determination of petitions. However, by virtue of **section 9(5) of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010**, the time for filing and determination of petitions are now matters of Constitutional provisions. Section 5 of the second Alteration Act stipulates that **“an election petition shall be filed within 21 days after the date of the declaration of result of the elections.”**

Thus the cross reference in Paragraph 14(2)a of the Schedule to the deleted section 134 of the Electoral Act should now be to section 9(5) of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.

In the light of this statutory development, previous decisions of the courts that took cognizance of the provisions of the deleted section 134 of the Act can still be considered as precedents in considering applications for amendments. See: **OKE v. MIMIKO (No. 1) (2014) 1 NWLR (Pt.1388) 225**, where the Supreme Court noted the fact of the non-existence of section 134 of the Electoral Act.

Where a petitioner intends to make substantial amendments to the petition or the respondent to the reply, such application for amendment has to be made within the time prescribed for the filing of petition (in the case of an amendment to a petition or reply).

However, the electoral Act does not define what amounts to substantial alteration or addition to the contents of a petition. It is to be determined in the light of the nature of the particular amendment sought.

In the instant application it is not in dispute that the application for amendment was filed long after the expiration of the 21 days limited for filing an election petition. The main thrust of the objection of the respondents is that the intended amendments are substantial and that they go beyond correction of typographical errors.

Upon a careful examination of the proposed amendments attached as Exhibit A to the motion, we agree with the respondents that they are not matters of mere typographical errors as being alleged by the petitioners but amount to alteration of the statement of facts being relied upon by the petitioners to support the grounds of the petition i.e. that the election was invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended) and that the 1st respondent was not duly elected by majority of lawful votes cast at the said election. Such a substantial amendment to the facts being relied upon to support the ground of the petition or to sustain the prayer in the petition can only be granted if same is made before the expiration of the time limited for presentation of an election petition.

Consequently, in view of our salient findings above, we are unable to accede to the submissions of the Petitioners that this petition can still be amended at this stage. The sole issue for determination is resolved in favour of the Respondents and the motion is dismissed with N20, 000.00 (twenty thousand naira) costs in favour of the Respondents.

HON. JUSTICE P.A. AKHIHIRO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

- 1. F.OKOTETE ESQ...1ST & 2ND PETITIONERS/APPLICANTS**
- 2. CHIEF J.E,OCHIDI.....1ST RESPONDENT/RESPONDENT**
- 3. CHIEF S.U.NWOKE.....2ND RESPONDENT/RESPONDENT**
- 4. ABDULRAHMAN ALIYU ESQ.....3RD RESPONDENT**

