

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON THURSDAY 13TH DAY OF FEBRUARY, 2020
BEFORE THEIR LORDSHIP

MARY UKAEGO PETER-ODILI
OLUKAYODE ARIWOOLA
JOHN INYANG OKORO
AMINA ADAMU AUGIE
EJEMBI EKO

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

SC.1/2020

BETWEEN:

1. PEOPLES DEMOCRATIC PARTY (PDP)
2. SENATOR DOUYE DIRI
(GOVERNORSHIP CANDIDATE OF PDP, IN THE
NOVEMBER 16, 2020 BAYELSA STATE
GOVERNORSHIP ELECTION)
3. SENATOR LAWRENCE EWHRUDJAKPO
(DEPUTY GOVERNORSHIP CANDIDATE OF
PDP IN THE NOVEMBER 16, 2020 BAYELSA
STATE GOVERNORSHIP ELECTION)

.. APPELLANTS

AND

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Oyin Olatoye, Esq
REGISTRAR
Supreme Court of Nigeria

1. BIOBARAKUMA DEGI-EREMIENYO
(APC DEPUTY GOVERNORSHIP CANDIDATE
FOR BAYELSA STATE)
2. LYON DAVID PEREWORIMIN
(APC GOVERNORSHIP CANDIDATE FOR
BAYELSA STATE)
3. ALL PROGRESSIVES CONGRESS (APC)
4. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)

.. RESPONDENTS

JUDGMENT
DELIVERED BY EJEMBI EKO, JSC

The 2nd Respondent won the nomination to contest the Governorship election in Bayelsa State on the platform of the A.P.C. He in turn nominated the 1st Respondent as his running mate. Both 1st and 2nd Respondents were A.P.C. candidates for the offices of Governor and Deputy-Governor of Bayelsa State. It was a joint ticket on the platform of the A.P.C.

The A.P.C, in compliance with Section 31(1) of the Electoral Act, 2018, as amended submitted the names and personal

information and particulars of the 1st and 2nd Respondents to INEC, and the same contained in INEC Form CF001 for each of the 1st and 2nd Respondents. 1st Respondents Form CF001 duly sworn to by him was published. Pursuant to S.31(5) of the Electoral Act the Appellants approached the Federal High Court, claiming that the information contained therein were false. They sought the Federal High Court to invoke S.31(6) Electoral Act to disqualify the 1st Respondent (and consequentially the 2nd Respondent) from contesting the election. They predicated their action on the fact that the 1st Respondent presented false information in his Form CF001 to the 4th Respondent (INEC) in support of his nomination. They alleged inter alia that in his sworn INEC Form CF001 other than in his name: BIOBARAKUMA DEGI-EREMIENYO.

- i. The name in his First School Leaving Certificate issued in 1976 was
DEGI, BIOBRAGHA,
- ii. His WAEC/GCE, 1984 bears the name
ADEGI BROKUMO,
- iii. His First Degree bears the name –
DEGI BIOBARAKUMA WANGAWA
- iii. In his Affidavit of Correction and Confirmation of Name sworn to 9th August, 2018 he asserted that his correct name is BIOBARAKUMA DEGI
- v. In another Affidavit of Regularisation of Name sworn to on 18th September, 2018 he averred that his correct name is BIOBARAKUMA WANAGHA DEGI ERKMIENYO
- vi. In another Affidavit of 18th September, 2018 deposed before an unnamed Notary Public on a letter Heading: Stanley Damabide & Partners he averred that while registering for WASCE examination “the alphabet “A” was inadvertently added to (his)

surname to read thus – Biobarakuma Wanagba ADEGI and same was captured in the Certificate he obtained therefrom.

(The 1984 WAEC/GCE at page 61 however bears the name ADEGI BIOBAKUMA – not Biobarakuma Wanagha ADEGI)

- vii. In the said Affidavit of 18th September 2018 he further averred that later in time he took Chieftaincy title and by Nembe Custom he added Eremienyo to his surname and his full name reads: BIOBRAKUMA WANAGHA ADEGI-EREMIENYO
- viii. On the Statutory Declaration of Age dated 31st July, 1990 it was declared that the 1st Respondent bearing the name BIOBARAKUMA DEGI was born on 22nd February, 1959. The deponent, Henry Vanman, described himself (at Page 65) as the uncle of the 1st Respondent

- ix. **On his Form CF001 (at page 531) the 1st Respondent gave his name as DEGI-EREMIENYO, BIOBARAKUMA WANAGHWA.**

- x. **By the Change of Name published in the Chronicles Newspapers of 20th July 2018 (as page 91) the 1st Respondent announced the change of his name from BIOBARAKUMA WAMAGHA DEGI to BIOBARAKUMA WANAGHA DEGI-EREMIENYO**

It is on these facts, not disputed (in fact admitted) by the 1st Respondent that the Appellants sought the Federal High Court to declare that the 1st Respondent had given false information, by the fact of his multiplicity of names, to INEC. The issue turned largely on the interpretation of these largely documentary evidence.

The trial Federal High Court (I. E. Ekwo, J) agreed with the Appellants that in his Form CF001 presented to INEC the 1st

Respondent gave false information thereby to INEC. It therefore invoked S.31(6) Electoral Act and disqualified 1st Respondent (and consequentially the 2nd Respondent) from contesting the Governorship Election in Bayelsa State. The trial Court at pages 574 – 578 held inter alia that

- 1. The affidavit of Correction and Confirmation of Name of 9th August, 2018 was a fraudulent attempt to correct the name on the First School Leaving Certificate issued in 1976 and the WAEC/GCE Certificate issued in 1984**

- 2. The only authority competent to correct anything on those Certificates was the authority that issued either Certificate and that the Affidavit of Correction and Confirmation of Name does not in his opinion, conform to the proper manner of changing name or correcting a name on a Certificate, and that it is only by Deed Poll, and not**

by mere deposition that a name on an official Certificate can be effected and further that the procedure necessarily affects official Record and Archives of the nation. That it is after the Deed Poll that the deponent approaches the Nigerian Civil Registry to have the change Published in the official gazette. None of these procedures had been done by the 1st Respondent.

On the Affidavit of Regularisation of Name deposed to on 18th September, 2018 before another Notary Public, the trial Court found at page 575, that the Notary Public is not verifiably identified. His name was not stated on the affidavit and that the affidavit (at p. 576) was invalid and fraudulent. The learned trial Judge further found that the 1st Respondent having not approached the lawful authorities that issued the First Leaving Certificate in 1976 and WAEC that issued the 1984 GCE

Certificate the 1st Respondent, brandishing Certificates that do not carry his name and using affidavits to assert his ownership of the Certificate does so in error and fraudulently. He held that the affidavits were bereft of any probative value.

The learned trial Judge, at page 578, held that there was no nexus between the name of the 1st Respondent on his Form CF001 and the various Certificates (including the First Degree Certificate from Rivers State University of Science and Technology, NYSC Exemption Certificate of 2nd October, 1990, the Award of Masters in Business Administration (MBA) Degree dated 14th February, 2002; and that the 1st Respondent's name in Form CF001 is not the same name on the Statutory Declaration of Age of 1st July, 1990.

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Supreme Court of Nigeria

13/02/2020

On 12th November, 2019 the trial Court delivered its final judgment wherein included its decision overruling the preliminary objection that

- i. the suit disclosed no reasonable cause of action**
- ii. the suit should not be heard on Originating Summons since the various affidavits exchanged are seriously in conflict on the allegations that in the INEC Form CF001 the 1st Respondent through his sponsoring party, APC (the 3rd Respondent herein) presented false information about his name viz a viz the various certificate attached thereto.**

The A.P.C on one hand and the 1st and 2nd Respondents herein on the other filed two separate Notices of Appeal to the Court of Appeal (the lower Court) respectively on 13th November, 2019 and 18th November, 2019. The lower Court

allowed the appeal. It agreed with the 3rd Respondent herein (as one of the Appellants), and the 1st and 2nd Respondents herein (another set of Appellants) that

- 1. The suit at the trial Court did not disclose any reasonable cause of action to warrant the disqualification of the 1st Respondent herein**
- 2. The resolution of one Notice of Preliminary Objection by one party which in substance was the same as the Notice of Preliminary Objection raised by another without adverting to the other tantamounts to denial of fair hearing to the party who raised the other Notice of Preliminary Objection. [The finding is perverse in view of the trial Court's eloquent resolution of the issue of the Plaintiff's suit disclosing reasonable cause of action at page 546 – 547 (3rd Respondent's Objection) and page 552 (1st and 2nd Respondent's objection). The same issue against the party in the**

same suit would operate as issue estoppel against the other party objectors in the same suit on the same issue].

3. The Originating Process procedure adopted by the trial Court was not appropriate for the instant suit since the facts in the supporting affidavits and the counter affidavits “are in dispute and (or likely to be hostile)”. [The lower Court did not however transfer the suit to the General Cause List to be heard on pleadings and evidence].
4. That the allegation that the 1st Respondent presented false information to INEC (4th Respondent) in his Form CF001, duly vouched and verified on oath, “is essentially an allegation of crime (of perjury) which requires proof beyond reasonable doubt” and it was not proved beyond reasonable doubt.

This further appeal is against the said judgment of the lower court delivered on 23 December, 2019. The four issues were raised for the determination in this appeal.

The trial Court correctly found at pages 554 that “the entire proceedings here in my opinion is based on documentary evidence”. The finding of fact was neither challenged at the lower court nor disturbed by it. the Appellants, as the plaintiffs, merely asked the trial Court in their Originating Summons to interpret the documentary evidence viz a viz the claim of the 1st Respondent that the various names on those documents did not belong to him and that he had no nexus with them as he had falsely claimed in his Form CF001.

The Respondents, as defendants, particularly the 3rd and 2nd Respondents did not dispute those documents. They in fact admitted that the documents belong to the 1st Respondent and

that he owned those multiple names appearing variously on the said documents. The facts, not being in hostile conflict, are the basis for the proceedings in the Originating Summons. The lower court erred when it found that the facts on which the Originating Summons rested and was premised on were in conflict. They were not. The trial Court found correctly that the facts were not contentious and that it was merely called upon to decide from the non-contentious facts whether the 1st Respondent had falsely laid claims to those exhibited documents and the various names appearing therein.

Now, on the affidavit evidence: did the Appellants, as plaintiffs, not establish their case founded on Section 31 (5) of the electoral Act to warrant the trial Court invoking the sanction provided in subsection (6) of Section 31 of the Electoral Act? They did, as the as the trial court correctly found at pages 574 –

577 of the Record. The 3rd, 1st and 2nd Respondents, as appellants at the lower court, did not challenge the holding of the trial Court that it is only the authorities that issued the First School Leaving Certificate issued in 1976, and the West African Examination Council that issued GCE Certificate in 1984 that can effectively change the names appearing thereon, and that no affidavit of Correction or Regularisation can effectively change the names thereon. The trial court also correctly stated the procedure for regularisation and correction. Its statement at pages 575 and 576 “that affidavit of change, correction and confirmation of name has to be by Deed Poll and not mere deposition” is adverse to the 1st, 2nd and 3rd Respondents. This specific point in the decision of the trial Court was not challenged. It subsists and remains binding on the parties. Even when on this reasoning the trial Court found at pages 574 and 575 that the attempted

change of name or regularisation by Affidavit of Correction and confirmation of Name was futile and fraudulent, and that the 1st Respondent could not claim to be the person referred to therein; the 1st and 2nd Respondents in their joint Notice of Appeal at the lower court, in grounds 9 and 11 therein, merely complained that the decision of the trial Judge was laced with conjecture, or “grounded in speculation and conjecture” and that there is no evidence that the 1st Respondent was not the holder of the Certificate attached to his Form CF001. The lower court, perversely, seemed to agree with the preposterous stance.

At page 132 is the statutory Declaration of Age deposed to by one Henry Vanman, an uncle of the 1st Respondent, it was claimed therein that the name of 1st Respondent, as at 31st July 1990 was Biobarakuma Degi. However in the purported Affidavit of Regularisation of Name deposed by the 1st Respondent on 18th

september, 2018 before a faceless Notary Public the 1st Respondent averred that “my name at birth is Biobarakuma Wangagha Degi”. His uncle in 1990 gave his name as Biobarakuma Degi in the Statutory Declaration of Age. The 1st Respondent also claimed in the said Affidavit of Regularisation of Name that “while registering for my West African School Certificate Examinations the alphabet ‘A’ was inadvertently added to my surname to read thus: BIOBARAKUMA WANAGAGHA ADEGI and same was captured in the Certificate I obtained therefrom”. He lied on this. The WAEC General Certificate of Education, at page 61, bears ADEGI BIOBAKUMA and not BIOBARAKUMA WANAGAGHA ADEGI.

The 1st Respondent did not explain why in 1990, inspite of the alleged error in 1984, Rivers State University of Science and Technology still inscribed the name: “DEGI, BIOBARAKUMA” on

the Certificate at page 62 and not BIOBARAKUMA WANAGAGHA DEGI, his name at birth or BIOBARAKUMA DEGI appearing on his 1990 Statutory Declaration of Age. It is clearly fraudulent for one person to allegedly bear several names that he uses variously, chameleonicly to suit the changing environment.

Clearly, the lower court erred when it held that the Affidavit of Correction and Confirmation of Name sworn to by the 1st Respondent on 9th August, 2018 and the Chronicle newspaper advertorial placed by the 1st Respondent himself explained the discrepancies in all the information, Certificates and documents. For instance, neither the said Affidavit nor the advertorial explained the name BIOBARAKUMA DEGI on the Statutory Declaration of Age. While ADEGI on the WAEC/GCE Certificate was said to be an error committed at the time of registering for examination leading to the issuance of the Certificate; no word

was uttered on the name BIOBAKUMA, instead of BIOBARAKUMA, also appearing, on the same Certificate. The first School Leaving Certificate issued in 1976, at page 129, has the surname DEGI and the first name BIOBARAGHA which is not a synonym of BIOBAKUMA nor WANAGAGHA or WANGAGHA.

On this note I hereby resolve these issues against the Respondents particularly the 3rd, 1st and 2nd Respondents in favour of the Appellants. Section 182(1)(j) of the 1999 Constitution, as amended, provides that no person shall be qualified for election to the office of Governor of a State if he has presented a forged certificate to the Independent National Electoral Commission. The certificate used here is in small letters. It bears its ordinary natural meaning. It is here used a noun that derives from the verb: certify which means to – attest, testify, vouch, ascertain, verify. The word “forged” qualifies the

word “certificate” in this provision. In my humble view the word forged used here is in the context of fabricating, framing, falsifying, inventing a false attestation, vouching falsely.

That was my stance in ANGOS DIDE v. SELEKETIMIBI (2009) LPELR – 4038 (CA) that is almost on all fours with the instant case.

In his Form CF001 the 1st Respondent, on oath, vouches in paragraph F thereof –

I hereby declare that all the answers, facts and particulars I have given in this Form are true and correct and I have to the best of my knowledge fulfilled all the requirements for qualification for the office I am seeking to be elected.

This clearly is a certificate of the truth of the facts and particulars given by the 1st Respondent in the said Form CF001.

If any fact vouched to be true turns out to be false, particularly deliberately false, then in my view the 1st Respondent has presented to INEC a forged or false Certificate: DIDE v. SELEKETIMIBI (supra).

Section 31(5) of the Electoral Act complements Section 182(1) (j) of the Constitution. It empowers any person who has reasonable grounds to believe that any information given by a candidate (like the 1st Respondent in the affidavit i.e Form CF001) submitted by that candidate is false to file a suit at the Federal High Court, High Court of a State or FCT against such person seeking a declaration that the information contained in the affidavit is false. The sanction for presenting to INEC Form CF001 containing false facts about the personal particulars or information of the candidate, by virtue of Section 31 (6) of the

Electoral Act, is an order issued by the High Court, disqualifying such candidate from contesting the election.

The lower court was wrong in holding that the Appellants did not establish that the 1st Respondent's Form CF001 presented to INEC contained materially false facts and information or personal particular of the 1st Respondent. The trial court, on the contrary was right. On this issue I also allow the appeal, set aside the judgment of the lower court delivered on 23rd December, 2019 and do hereby reinstate the judgment of the trial Court delivered on 12 November, 2019 including all the orders made therein. The sum total is that the joint ticket of the 1st and 2nd Respondents sponsored by the 3rd Respondent was vitiated by the disqualification of the 1st Respondent. Both candidates disqualified are deemed not to be candidates at the Governorship election conducted in Bayelsa State. It is hereby ordered that INEC (the 4th Respondent herein) declare as winner of the Governorship election in Bayelsa State the candidate with the highest number of lawful votes cast with the requisite constitutional (or geographical) spread. The 4th Respondent

(INEC) is hereby further ordered to forthwith withdraw the Certificate of Return issued to the 2nd and 1st Respondents and issue Certificate of Return to the candidate who had the highest number of lawful votes cast in the Governorship election and who also had the requisite constitutional (or geographical) spread.

Parties shall bear their respective costs.

By consent of all Counsel appeal: SC.2/2020 shall abide the outcome of this appeal – SC.1/2020.



**EJEMBI EKO,
JUSTICE, SUPREME COURT**

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REGISTRAR
Supreme Court of Nigeria

Appareances:-

Yunuz Ustaz Usman, SAN with Sir F. N. Nwosu, Esq., Udu Diegbe, Esq., Lona Aake-Adekwu and Andrew O. Ijer, Esq., for the Appellant

M. J. Numa Esq., with Julius Iyekoroghe, Esq., I. G. Kelubia, Esq., Y. M. Zakari, Esq., and T. M. Eke, Esq., for the 1st and 2nd Respondent

Audu Anuga, Esq., with I. S. Ibanichuka, Esq., Festus Jumbo, Esq, Samson Eigege, Esq., and Adewale Adegboyega, Esq., for the 3rd Respondent

T. M. Inuwa SAN, A. A. Umar, SAN with Nendy Kuku, Esq., Bashir M. Abubakar and S. M. Danbaba for the 4th Respondent

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