

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON WEDNESDAY, THE 28TH DAY OF JULY, 2021
BEFORE THEIR LORDSHIPS

MARY UKAEGO PETER-ODILI
JOHN INYANG OKORO
EJEMBI EKO
MOHAMMED LAWAL GARBA
IBRAHIM M. M. SAULAWA
TIJJANI ABUBAKAR
EMMANUEL AKOMAYE AGIM

JUSTICE, SUPREME COURT
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SC/CV/448/2021

BETWEEN:-

1. MR. EYITAYO OLAYINKA JEGEDE
2. PEOPLES DEMOCRATIC PARTY (PDP) } APPELLANTS

AND

1. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)
2. ALL PROGRESSIVES CONGRESS (APC)
3. OLUWAROTIMI ODUNAYO AKEREDOLU
4. LUCKY ORIMISAN AIYEDATIWA } RESPONDENTS

JUDGMENT

(Delivered by JOHN INYANG OKORO, JSC)

I have had the privilege of reading in draft the lead judgment of my learned brother, **Emmanuel Akomaye**

Agim, JSC just delivered and I agree entirely with both his reasoning and conclusion reached therein to the effect that this appeal lacks merit and deserves an order of dismissal. Although his Lordship has meticulously dealt with the salient issues submitted for the determination of this appeal, I propose to chip in a few words in support of the judgment.

The narrow issue in this appeal is to determine whether the case of the Appellants as constituted and presented before the Trial tribunal could have been properly and effectively determined without His Excellency Mai Mala Buni being a party to the proceedings. Both the Trial Tribunal and the court below held, rightly in my opinion that the non-joinder of Mai Mala Buni was fatal to the petition.

It has to be noted that the issues adumbrated before this court has nothing to do with the primary election of the

All progressives Congress – 2nd Respondent herein which produced the 3rd and 4th Respondents as its candidates in the governorship election in Ondo State. Also, it has nothing to do with the number of votes scored by the 3rd and 4th Respondents at the election. Clearly, what is in issue relates strictly to the action of Mai Mala Buni who is alleged to have breached section 183 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). It is on record that the Appellants had abandoned all other grounds of their petition leaving only the ground anchored on the alleged breach of sections 177(c) and 183 of the 1999 Constitution by Mai Mala Buni. Paragraphs 29 – 37 of the petition clearly demonstrate how much Buni is involved and very central to this case. The said paragraphs state as follows:-

“29. The Petitioners contend that contrary to the provision of the constitution of the Federal

Republic of Nigeria, 1999 (as amended), the one "His Excellency Mai Mala Buni" and one "Sen. John J. Akpan Udoedehe PhD" who both signed the INEC Form EC9B (submission of Names of Candidates by Political Parties) as well as the covering letter dated 27th July 2020 as "National Chairman Caretaker/Extra-Ordinary Convention Committee" and National Secretary Caretaker/Extra-Ordinary Convention Committee" and who at all material times were not members of National Executive Committee or National Working Committee elected by the Convention of the 2nd Respondent superintend over the purported sponsorship of the 3rd and 4th Respondents and forwarded the names of the 3rd and 4th Respondents to the 1st Respondent.

- 30. Petitioners contend that at all material times in the election of the 10th October, 2020 in Ondo State, the said "Mai Mala Buni was and is the Governor of Yobe State and a colleague of the 3rd Respondent who was the Governor of Ondo State and both are at all material times member of the National Council of States.*
- 31. Further to and or in the alternative to the above paragraphs, the Petitioners shall contend that the constitution of the 2nd Respondent constitute a bye-law, drawing its legitimacy and strength*

from the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

- 32. Further to paragraph 31 supra, the signatory to both Form EC9B and the Covering Letter dated 27th July, 2020 acted in contravention of the 2nd Respondent. The Petitioners hereby pleads Form EC9B of the 2nd Respondent. During hearing, the Petitioners shall rely on the said Form EC9B of the 2nd Respondent.*
- 33. Further to paragraph 32 supra, the Petitioners contend that to the extent that the letter of 27th July, 2020 and the Form EC9 with which the names of the 3rd and 4th Respondents were presented to the 1st Respondent as its sponsored candidates for the Governorship election of Ondo State were signed by "His Excellency Mai Mala Buni, current Governor of Yobe State of Nigeria as "National Chairman Caretaker/Extra-Ordinary Convention Committee of the 2nd Respondent, contrary to Section 183 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, the sponsorship of the 3rd and 4th Respondents are null, void and of no effect.*
- 34. Petitioners avers that "His Excellency Mai Mala Buni, at all material time, has put himself forward as the national chairman or acting national chairman of the 2nd RESPONDENT,*

which position, is an executive and managerial position within the 2nd Respondent's party.

37. The Petitioners aver that only legitimate National officers of the 2nd Respondent, as lawful Representatives of the 2nd Respondent, and not a public officer, i.e. Governor of Yobe State, that can lawfully and validly superintend and/or act to sponsor or present the names of the 3rd and 4th Respondents in the election to the office of Governor and Deputy Governor of Ondo State."

From the above paragraphs of the Appellants' Petition, it is crystal clear that the wrong doings regarding the improper forwarding or conveyance of the sponsorship of the 3rd and 4th Respondents to the 1st Respondent was orchestrated by Mai Mala Buni which is alleged to be contrary to section 183 of the Constitution of the Federal Republic of Nigeria, 1999.

Now, in view of the enormous involvement of Mr. Buni in this matter, coupled with the provision in section 36(1) of

the 1999 Constitution of the Federal Republic of Nigeria, can this matter be fully and fairly resolved without the presence of the said Buni. Whereas the learned Senior counsel for the Appellants submitted that it is possible since the 2nd respondent has been sued, all the learned Senior counsel for the Respondents argue otherwise. In fact the learned Senior counsel for the 2nd Respondent, L. O. Fagbemi, SAN, submitted that Mallam Mai Mala Buni who is alleged to have breached the Constitution is distinct from the 2nd Respondent and that the violator of the Constitution must be personally held liable for his misdeed and/or infraction. Learned Senior counsel further opined that Buni, being the alleged violator of section 183 of the 1999 Constitution (as amended), must be afforded opportunity to defend the allegation made against him.

On this issue, the court below, in its judgment held as follows:-

“The central issue in the Appellant’s Petition is the signing and conveyance of Exhibit “P21” (the letter of sponsorship of the 3rd and 4th Respondents by the 2nd Respondent to the 1st Respondent). Their case simply stated is that the signatory, His Excellency Mai Mala Buni, the Executive Governor of Yobe State by signing the letter contravened the provision of Section 183 of the 1999 Constitution of the Federal Republic of Nigeria..... This is an alleged constitutional breach. It is an allegation of immense magnitude that could have far reaching implication to the Governor and the 2nd Respondent which he claims as its Chairman. If the court must probe into this issue, the legality or otherwise of the Governor must be determined.”

The above position of the court below cannot be faulted. A careful consideration of Section 183 of the Constitution (*supra*) will disclose that it relates to the governor personally. The Section states:-

“The Governor shall not, during the period when he holds office, hold any other executive office or paid employment in any capacity whatsoever.”

The marginal note of Section 183 of the Constitution clearly explains the purport of the Section. It states:-

“Governor: disqualification from other jobs.”

From the wordings of Section 183 of the Constitution (*supra*), it is not in doubt that it prohibits a governor, while serving as such, from accepting any other executive office or paid employment in any capacity whatsoever. The words “any capacity whatsoever” includes permanent and/or acting capacities amongst others. The primary person who can breach that section is a sitting Governor. There is no doubt about that, for in the interpretation of statutes, the Constitution inclusive, courts are enjoined to have in mind the clearly defined objectives of such a statute. The law is

also well settled that where the words of a statute are clear and unambiguous, the courts are to give them their literal and ordinary meaning. See *Maizabo v Sokoto N.A.* (1957) 2 FSC 13, (1957) SCNLR 142, *Olarenwaju v Governor of Oyo State & ors* (1992) 9 NWLR (pt. 265) 335, *Adewunmi & anor v Attorney General of Ekiti State* (2002) 2 NWLR (pt. 751) 474.

As was observed by the court below, allegation of breach or infraction of the Constitution is of immense magnitude with far reaching implications. Therefore, it should not be handled with levity. If it is found that Buni has contravened section 183 of the Constitution, it means that all his actions and activities while holding any other executive position will be null and void as you cannot put something on nothing and expect it to stand. The position of the law is

that every act which is founded on a void act is not only bad but incurably bad. See *Macjoy v U.A.C. Ltd (1962) AC 152 at 160*. In such a situation, Mai Mala Buni, who is alleged to have breached the Constitution ought to have been made a party to the Petition. I agree with the learned Senior counsel for the 2nd Respondent that the alleged violator of the Constitution must be personally held liable for his misdeeds. There should be no vicarious liability in this type of situation. It cannot be a case of *"the fathers have eaten soar grapes and the children's teeth are set on edge."*

More importantly is the provision in Section 36(1) of the Constitution which states:-

"36(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in

such a manner as to secure its independence and impartiality."

Section 36 of the Constitution, grants a right to fair hearing to all persons who have matters against them in a court of law. One of the attributes or principle of fair hearing is that a court or tribunal shall not take or hear evidence in a case or receive any submissions or representation from one party at the back of the other. With the exception of certain applications which could be moved *ex-parte*, no court is permitted to hear a matter against a person *ex-parte* and deliver judgment on same behind the back of the said party. The law does not allow an aggrieved party to make complaints against another in court *ex-party*. He must summon the wrong doer before the court can exercise jurisdiction over the matter. A court of law will decline jurisdiction where a party sought to be punished or

disciplined is not found in a suit before it. See *Ejike v Nwan-Kwoala & ors* (1984) 12 SC 301, *Ndukauba v Kolomo & anor* (2005) 4 NWLR (pt. 915) 411.

I need to emphasize that the right to fair hearing is a Constitutional right which cannot be waived or statutorily taken away. The court must give equal treatment, opportunity and consideration to all the parties. Where one party who should answer to allegations made against him is not brought to court, the court will not have jurisdiction to entertain such a matter. See *Ovunwo & anor v Woko & ors* (2011) 17 NWLR (pt.1277) 522, *Usani v Duke* (2004) 7 NWLR (pt.871) 116, *Okafor v Attorney General, Anambra State* (1991) 3 NWLR (pt. 200) 59.

The issue in this appeal is so bad in that in spite of the fact that His Excellency Mai Mala Buni is the central figure in the Appellants' Petition, he was not made a party to the

Petition. But how could his head be shaved in his absence? Section 36(1) of the Constitution will not allow this to happen. As was held by this court in *Okonta v Philip (2010) 18 NWLR (pt. 1225) 320* at 326, it is only when proper parties are before the court which makes the court competent to adjudicate on the suit. Also, that a court has no jurisdiction to make an order which affect the interest of a person who has not been joined as a party. His Excellency Mai Mala Buni was indeed a necessary party to these proceedings. It is trite that a necessary party to a proceeding is a party whose presence is essential for the effectual and complete determination of the claim before the court. It is the party in the absence of whom the claim cannot be effectually and completely determined. See *Ige & ors vs Farinde & ors (1994) 7 NWLR (pt. 354) 42*, *Azubuike v PDP & ors (2014) LPELR - 22258 (SC)*. In *Green v Green (2001) FWLR (pt. 76) 795* at 814, this court held that a necessary party is one who is not only interested in the subject matter of the proceedings but whom in his absence, the proceedings cannot be fairly and judiciously decided. In

other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless the necessary party to the particular claim is joined in the action. In my well considered view, paragraphs 29 - 37 of the petition, making weighty allegation of constitutional breach against Mai Mala Buni, make him a necessary and desirable party to this proceedings. Any order made against him will be a nullity having been denied a right to be heard. I need not say more on this.

On the whole, it is my well considered opinion that the court below was right to uphold the decision of the Trial Tribunal that failure to join His Excellency Mai Mala Buni was fatal to the Petition. Based on the above reasons and the fuller ones adumbrated in the lead judgment, I am satisfied to hold that there is no merit in this appeal. It is hereby dismissed by me. I shall make no order as to costs.

Having taken the position I have reached in this appeal, it becomes academic and/or unnecessary to consider the various cross appeals file by the four respondents.

Accordingly, the cross appeals and appeal Nos. SC. 507/2021, SC. 508/2021 and SC. 509/2021 shall abide the outcome of the main appeal No. SC. 448/2021.

Appeal Dismissed.

**JOHN INYANG OKORO
JUSTICE, SUPREME COURT**

APPEARANCES:

Dr. Onyechi Ikpeazu, SAN, Chief Ifedayo Adedipe, SAN, A. T. Kehinde, SAN, O. Jolaawo, SAN, D. A. Awosika, SAN for the Appellants.

Charles Uwensuyi Edosomwan, SAN, I. K. Bawa, SAN, with Chris Onwugbonu, Esq, Sarafa Yusuf Esq, and O. F. Ejeh Esq, for the 1st Respondent/Cross Appellant.

L. O. Fagbemi, SAN, H. O. Afolabi, SAN, Chief Olusola Oke, SAN, Chief Abdulkabir Ajana, SAN, with Omosanya A. Popoola Esq for the 2nd Respondent/Cross Appellant.

Chief Akin Olujinmi, SAN, Remi Olatubora, SAN, Chief Adeniyi Akintola, SAN, with Yinka Orokoto Esq, and Olumide Olujinmi Esq for 3rd and 4th Respondents/Cross Appellants