

General Powers of the Court of Appeal - Conditions Precedent to the Exercise Thereof

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 17th Day of March, 2023

Before Their Lordships
John Inyang Okoro
Uwani Musa Abba Aji
Helen Moronkeji Ogunwumiju
Adamu Jauro
Tijjani Abubakar
Justices, Supreme Court

SC/CV/127/2023

Between

MRS. ADANMA ODE

APPELLANT

And

- 1. F.S.A. UZOR**
- 2. PEOPLES DEMOCRATIC PARTY**
- 3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)**

RESPONDENTS

(Lead Judgement delivered by Honourable Helen Moronkeji Ogunwumiju, JSC)

Facts

The Appellant and the 1st Respondent contested the primary election of the 2nd Respondent for the nomination of its candidate to contest for the Udi/Ezeagu Federal Constituency in the 2023 general elections. At the time the 1st Respondent purchased the Expression of Interest and Nomination Form and participated in the primary election, he was holding office as a political appointee in the capacity of Chief of Staff to the Governor of Enugu State.

The 1st Respondent won the primary election with 99 votes while the Appellant came second with 8 votes. The Appellant however took the view that the 1st Respondent was still in office as a political appointee by virtue of his holding office as the Chief of Staff to the Governor of Enugu State and did not resign his position before purchasing the Expression of Interest and Nomination Form as required by the 2nd Respondent's Electoral Guideline. It was also her case that the 1st Respondent contravened the Electoral Act 2022 which forbids a political appointee from voting or being voted for in the convention or congress of any political party for the purpose of nomination of candidates for any election. The Appellant, thus, commenced an action at the Federal High Court wherein she raised questions for consideration, including the validity of the 1st Respondent's participation in the primary election of the 2nd Respondent. She thereby, sought a declaration that the 1st Respondent's participation at the 2nd Respondent's primary election while still holding office as a political appointee is in contravention of the PDP Electoral Guidelines and Section 84(12) of the Electoral Act, 2022. She also sought a declaration that having come second at the said primary election, she is the candidate of the 2nd Respondent for the general election. She also sought Orders voiding the 1st Respondent's nomination and directing the 3rd Respondent to delist the 1st Respondent as the 2nd Respondent's candidate for the general election.

In reaction, the Respondents filed their respective counter-affidavits in opposition to the Appellant's Originating Summons and Notices of Preliminary Objection challenging the jurisdiction of the trial court to entertain the suit.

After hearing counsel for the parties, the trial court delivered its judgement wherein it upheld the Preliminary Objection of the 1st Respondent and held that the court lacked the jurisdiction to hear and determine the matter as the action was statute barred. The basis of the court's decision was that the timeline for the purchase of the Expression of Interest Forms of the 2nd Respondent was between 17/3/22 and 14/4/22 while the 1st Respondent filed the action on 3/6/22 which was outside the 14 days provided by Section 285(9) of the 1999 Constitution (as amended).

Dissatisfied, the Appellant lodged an appeal against the part of the decision of the trial court that the suit is statute barred. At the Court of Appeal, the Appellant posited that the trial court had determined the substance of the issue of legality or otherwise of the 1st Respondent's participation in the primaries. She thus, urged the Court of Appeal to exercise its general powers to make consequential orders granting the reliefs sought in the Originating Summons.

The Court of Appeal, after hearing arguments of parties, reasoned that the Preliminary Objection was erroneously upheld, and the suit was not statute barred. The court consequently set aside the decision of the trial court that the Appellant's suit is statute barred. However, the Court of Appeal disagreed with the Appellant on her contention that the trial court had resolved the substantive issues in the Originating Summons. The appellate court refused to grant any of the reliefs sought in the Originating Summons on the ground that it could not invoke Section 15 of the Court of Appeal Act to resolve substantive issues and grant the reliefs as the 180 days allowed by Section 285(10) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) for the trial court to resolve substantive issues had lapsed.

Aggrieved, the Appellant appealed to the Supreme Court, while the 1st and 2nd Respondents cross-appealed. The parties submitted their respective issues before the apex court.

Issue for Determination in Main Appeal

The Supreme Court, after reading the record and arguments of counsel, crystallized the following sole issue for determination of the substantive appeal:

Whether the Court of Appeal was right when it held that the trial court did not pronounce on or determine the substantive matter and therefore refused to make any Consequential Order as urged by the Appellant.

Issue for Determination in the Cross-Appeal

Whether the Court of Appeal was correct in holding that the cause of action in the suit crystallized on the 22nd of May 2023 when the primary election was conducted.

Arguments

Arguing the main appeal, counsel for the Appellant submitted that the trial court fortuitously resolved and pronounced on the issues as to the applicability of Section 84(12) of the Electoral Act in the circumstance of the suit before it and the invalidity of the 1st Respondent's purchase of the 2nd Respondent's nomination form whilst still holding office as a political appointee when it held that the Supreme Court having not struck out Section 84(12) of the Electoral Act, 2022 in the case of **PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA AND 1 OR. v NATIONAL ASSEMBLY AND**

ORS in Suit No. SC/CV/504/2022, it means that said Section is still operative. The Respondents posited otherwise.

In respect of the Cross-Appeal, it was the contention of counsel for the 1st and 2nd Respondents, as Cross-Appellants, that the findings of the Court of Appeal that the Appellant's cause of action crystallized on 22nd May 2022 when the primaries were conducted was tantamount to saying that the said cause of action, although arising from the 2nd Respondent's purchase and submission of the form, was inchoate until the 2nd Respondent participated and won the primary elections on 22nd May 2022. He submitted that the cause of action arose on the date the 2nd Respondent purchased and submitted the Expression of Interest and Nomination Form.

Court's Judgement and Rationale

In its determination of the issue, the Supreme Court reiterated its admonition in most cases and particularly in election cases that the trial court must, after determining the issue of jurisdiction, determine also the substantive issues brought before it as it helps to oil the wheels of justice and reduces delays occasioned by appeals decided by the penultimate court being remitted for retrial on the merits. The court held that in this instance, although the trial court found that Section 84(12) of the Electoral Act is still operative, it never made a specific finding or determination of the rights of parties on that point before it struck out the Appellant's suit. *Had it been that the trial court made a definitive finding, it would ordinarily have been the duty of the court below having found that the action is not statute barred to utilize its powers under Section 15 of the Court of Appeal Act to determine the substance of the issue in contention between the parties.*

The court held further that *even if Section 15 of the Court of Appeal Act was to be invoked, the following conditions must exist: (1) The lower court or the trial court must have the legal power to adjudicate in the matter before the appellate court can entertain it; (2) The real issue raised by the claim of the appellant at the lower court or trial court must be seen to be capable of being distilled from the grounds of appeal; (3) All the necessary materials must be available to the court for consideration; (4) The need for expeditious disposal of the case must be apparent on the face of the materials presented; (5) The injustice or the hardship that will follow if the case is remitted to the court below must be clearly manifest.*

The Supreme Court also referred to **WAKILI v CHAIRMAN APC NATIONAL PRIMARY ELECTORAL COMMITTEE, NIGER STATE (2019) LPELR-48475 (CA)** where the Court of Appeal held that "*A condition precedent to the exercise of the power*

under Section 15 of the Court of Appeal Act is that the lower court from which the appeal has or still has jurisdiction to deal with the matter.” In this case however, by the time the appeal was heard at the Court of Appeal, the Court of Appeal which was to step in the shoes of the trial court to do what the trial court ought to do but failed to do, pursuant to its powers under Section 15 of the Court of Appeal Act, could do nothing simply because the trial court had lost its powers to act as the 180 days within which the trial court could determine the matter had lapsed. The suit was filed at the trial court on 3/6/22 and determined on 17/11/11 and by 19/1/23 when the judgement of the court below was delivered, the trial court had lost its jurisdiction. The Court of Appeal was thus right to have struck out the suit. The Supreme Court held further that *where the lower court lacks jurisdiction to entertain or continue to entertain the matter, the Court of Appeal is also without jurisdiction to hear and determine the merit of the matter pursuant to its powers under Section 15 of the Court of Appeal Act.*

Determining the Cross-appeal, the apex court held that *a cause of action accrues when the cause of action becomes complete so that an aggrieved party can begin and maintain an action.* Relying on its decision in **JULIUS BERGER NIGERIA PLC v R. I. OMOGUI (2001) LPELR - 1638 (SC) 19-22 F-A**, the court held that *there may be more than one good and effective cause of action arising out of the same transaction and the cause of action accrues on the happening of the latest of such facts.*

The court agreed with the finding of the Court of Appeal that *at the time the 1st Respondent purchased the form without first resigning his political appointment, no cause of action accrued in favour of the Appellant.* Their Lordships held that the Appellant had not suffered injury at that time because the 1st Respondent, upon purchase of the form, may be disqualified by the party, withdraw his candidacy, or participate in another congress. Therefore, it would have been premature for the 1st Cross-Respondent to approach the court on that basis alone as the narrow window provided for aspirants to ventilate their grievances by Section 84(14) of the Electoral Act, 2022 had not opened. The Court of Appeal was thus right that the cause of action arose on 22/05/2022 when the 1st Respondent participated in the primary election.

Appeal and Cross-Appeal Dismissed.

Representation

Ken C. Ikonneh with B.I. Attamah, Esq. and Nike Okejimi, Esq. for the Appellant.

A.J. Offia, SAN with Ikechukwu Onuoma, Esq. and Daniel Aloh, Esq. for the 1st Respondent/Cross Appellant.

A. I. Ani, SAN with Eromosele Eharie, Esq. for the 2nd Respondent/Cross-Appellant
Alhassan A. Umar, SAN with Ibrahim S. mohammed, Esq. M.A. Umar, Esq. and N.N.
Dankogi Iknonne, Esq. for the 3rd Respondent.

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