

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE AWKA JUDICIAL DIVISION  
HOLDEN AT AWKA  
ON WEDNESDAY THE 24<sup>TH</sup> DAY OF SEPTEMBER 2014  
BEFORE THE HON. JUSTICE I.B. GAFAI

**JUDGE**

**SUIT NO:FHC/AWK/CS/599/2011**

**BETWEEN:**

HON. CHIKE ANYAONU ... PLAINTIFF/APPLICANT

**A N D**

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION
  2. HON. MRS EUCHARIA AZODO
  3. THE FEDERAL HOUSE OF REPRESENTATIVES
  4. THE CLERK, FEDERAL HOUSE OF REPRESENTATIVES
- ... DEFENDANTS/  
RESPONDENTS

Parties absent

C.B. Anyigbo for the 1<sup>st</sup> Defendant

F.I. Aniwkwu for the 2<sup>nd</sup> Defendant

B.S. Onuegbu for the 4<sup>th</sup> Defendant

Plaintiff Counsel absent though on notice

**RULINGS ON INTERLOCUTORY MOTIONS**  
**AND JUDGEMENT ON THE SUBSTANTIVE SUIT**

It may be recalled that when this suit came up for hearing on the 24<sup>th</sup> of June 2014, this Court heard all the pending

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interlocutory motions in the suit together with the substantive suit. Herein therefore are contained the Rulings on those motions and the judgement on the substantive suit.

Starting on the motions, the learned Counsel for the Plaintiff P.I.N. Ikwueto introduced twin motions filed on the 17<sup>th</sup> and 27<sup>th</sup> of March 2014. In the former, the Plaintiff is seeking for minor amendments by deleting the article “the” and the word “federal” in relation to the 3<sup>rd</sup> – 5<sup>th</sup> Defendants as listed in the suit. The latter motion seeks for extension of time for the Plaintiff to file his counter affidavit to the 2<sup>nd</sup> Defendant’s motion seeking to strike out the substantive suit and also to deem the Plaintiff’s said counter affidavit annexed to his motion as duly filed and served. Save the learned Counsel for the 4<sup>th</sup> Defendant who had filed a counter affidavit of four paragraphs and a written address for the 4<sup>th</sup> Defendant on the 2<sup>nd</sup> of April 2014 in opposition to the Plaintiff’s motion for amendment, both motions were conceded by the other learned Counsel for the Defendants. I have considered the 4<sup>th</sup> Defendant’s facts in opposition to the motion for amendment and the written address on it. I do not find any merit whatsoever in the objection. Consequently, both motions are granted as prayed.

Moving further towards the substantive suit, the Court is faced by yet another motion on notice dated the 14<sup>th</sup> and filed on the 19<sup>th</sup> of June 2013 for the 2<sup>nd</sup> Defendant seeking

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for an order striking out this suit on the ground that the Court lacks jurisdiction to entertain the cause of action in it. Happily however, the motion was filed simultaneously with the 2<sup>nd</sup> Defendant's defence to the substantive suit. Towing the same path, the 4<sup>th</sup> Defendant similarly filed a Notice of Preliminary Objection on the 26<sup>th</sup> of July 2013 seeking for an order dismissing the suit on the main ground that it does not disclose a reasonable cause of action against the 4<sup>th</sup> Defendant. In the same vein, a defence on the merits to the substantive suit was filed therewith. As for the 1<sup>st</sup> Defendant, till date, there were filed two separate memoranda of conditional appearance, the first by S.O. Ibrahim on the 12<sup>th</sup> of June 2013 and the other one year later by DR. O. Ikpeazu SAN on the 24<sup>th</sup> of June 2014; which marked the beginning and end of the processes filed by the 1<sup>st</sup> Defendant in the suit.

As I mentioned earlier, there are two separate Preliminary Objections in the way. Thus, it is to be understood that the Court will deal with these in the foremost and better still in the order they were filed; thereby placing that by the 2<sup>nd</sup> Defendant in the forefront. As presented by her learned senior Counsel Arthur Obi Okafor SAN, the grounds for challenging the competence of

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the suit and the jurisdiction of this Court are that:

- “i This Honourable Court has no jurisdiction to entertain the cause of action in this suit which is an agitation against the declaration of result and issuance of Certificate of Return made by INEC in favour of the 2<sup>nd</sup> Defendant as the winner of the April/May, 2011 election for Aguata Federal Constituency instead of the Plaintiff.
- ii. Given Ground (i) above, the complaint as articulated in the Originating Summons thereby raises the issue of undue return which can only be agitated and/or determined upon an Election Petition duly filed before the appropriate Election Tribunal and not by way of an Originating Summons as presently articulated.
- iii. The Plaintiff being aggrieved by the return of the 2<sup>nd</sup> Defendant as the winner of the April/May, 2011 election ought to have brought a properly constituted Election Petition at the appropriate Election Tribunal within 21 days of the Declaration days of the Declaration of Result.
- iv. The Honourable Court does not have the jurisdiction to entertain the complaint of the Plaintiff on the candidacy of the parties since the result of the

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Subject election had been declared and the 2<sup>nd</sup> Defendant issued with a Certificate of Return.

v. This suit in view of Suit No.FHC/AWK/CS/05/2011 (now FHC/ABJ/CS/29/2013 and Election Petition No. EPT/AN/NAE/HR/56/2011 earlier filed by and/or on behalf of the herein Plaintiff on the same subject matter/issue of who was the proper candidate of PDP for the same April/May, 2011 election for Aguata Federal Constituency, is an abuse of Court process.

vi. It is in the interest of justice to dismiss this Suit”

These grounds are supported by a 25 paragraph affidavit deposed to by the 2<sup>nd</sup> Defendant Hon. Mrs Azodo Eucharua to which a compendium of documents composing of certified copies of an earlier motion on notice filed in this Court on the 17<sup>th</sup> of January 2011 by the Plaintiff in a representative capacity in suit No.FHC/AWK/CS/05/2011, another motion by the Plaintiff in the same suit, a Petition filed by the Plaintiff against the 2<sup>nd</sup> Defendant at the National Assembly Election Tribunal in Awka on the 25<sup>th</sup> of May 2011, a Court of Appeal judgement on the said election Petition between the Plaintiff and the 2<sup>nd</sup> Defendant and lastly another Court of Appeal judgement in an appeal between Dr. Andy Uba and Prince Nicholas Ukachukwu and the 1<sup>st</sup> Defendant herein, labelled

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as exhibits "A" to "E" respectively. A copious written address on these grounds was filed therewith.

In his response, the Plaintiff has deposed to and filed a 22 paragraph counter affidavit on the 14<sup>th</sup> of March 2014, attaching thereto certified copies of three successive ex parte injunction made by this Court coram Olayiwola J. and a copy of a counter affidavit all in suit No.FHC/AWK/CS/05/2011. These four annexures were respectively labelled exhibits "FA1" to "FA4". A written address by the Plaintiff's learned Counsel Ejike Efobi was also filed therewith.

Allow me a little indulgence at this stage to digress; to specifically place on records my deep appreciation and gratitude to both learned Counsel for the Plaintiff Ejike Efobi and that of the 2<sup>nd</sup> Defendant Arthur Obi-Okafor SAN for their thorough, articulate and well researched submissions. I am truly enriched and I commend their industry, more particularly that of the learned SAN to other learned Counsel.

Now, back on track, the issues raised by both in their lengthy submissions may fairly and simply be summarised thus: who amongst the two parties is the valid winner of the April/May 2011 general election into the seat of member representing the Aguata Federal Constituency in the House

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of Representatives? It is what the entire suit is all about and what the parties have fought in several other suits. For ease of understanding, let me summarise the bulky facts in the shortest possible words and also so as to properly contextualise the issues canvassed in both written addresses. As gleaned from the processes filed by all the parties, both the Plaintiff and the 2<sup>nd</sup> Respondent are members of the Peoples Democratic Party (PDP) in Anambra State. Both had their eyes glued to the May/April 2011 general election into the seat of member in the House of Representatives representing the Aguata Federal Constituency. In accordance with their party's prescription, they both submitted themselves for a primary election conducted by the National Working Committee of the party on the 7<sup>th</sup> of January 2011. In this country, all political parties conduct this exercise commonly called the party primaries which is to test the popularity and legitimacy of a candidate before fielding him or her at the general polls. It is for good reasons; for which commander will deliberately present a lame duck at the battle front? So far, all the parties in this suit are agreed on these summarised facts. But that is the end of their convergence and the beginning of the intense discord between the Plaintiff and all the Defendants, culminating into this suit among others.

According to the Plaintiff, he won the primaries with 42 votes defeating the 2<sup>nd</sup> Defendant who polled 18 votes.

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Notwithstanding the outcome of the primaries as he contends, the other Defendants proceeded to recognise the 2<sup>nd</sup> Defendant as the winner of the said primary election. Though the Plaintiff appears shy to add, it is abundantly on record and is a fact judicially noticeable by the Court that the 2<sup>nd</sup> Defendant did thereafter contest and win the said April/May 2011 general election for the seat contested by the Plaintiff. It is against this backdrop that the Plaintiff now in this suit claims against the Defendants jointly and severally for:

- “a. A declaration that the Plaintiff is the authentic and dully Sponsored/nominated Candidate of the Peoples Democratic Party (PDP) for the House of Representatives Election in the Aguata Federal Constituency in the 2011 General Election.
- b. A declaration that it is ultra vires the 1<sup>st</sup> Defendant to in any manner whatsoever deal with or relate with the 2<sup>nd</sup> Defendant as the nominated and sponsored candidate of the Peoples Democratic Party for the Aguata Federal Constituency in the April 2011 general elections.
- c. A declaration that any dealing or relationship by the 1<sup>st</sup> Defendant with the 2<sup>nd</sup> Defendant as the Peoples Democratic Party nominated and sponsored candidate



as aforesaid is patently illegal, null, void and of no effect.

- d. An order of injunction directing the 1<sup>st</sup> Defendant to recall all documents issuing from the 1<sup>st</sup> Defendant and suggesting that the 2<sup>nd</sup> Defendant was ever the nominated and sponsored candidate of the Peoples Democratic Party in the Aguata Federal Constituency for the general election of April 2011.
- e. An order directing the 1<sup>st</sup> Defendant to withdraw any Certificate of Return/Declaration of winner of the House of Representatives Election in the Aguata Federal Constituency issued to the 1<sup>st</sup> Defendant as the candidate of the Peoples Democratic Party.
- f. An order directing the 1<sup>st</sup> Defendant forthwith to issue to the Plaintiff, (being the PDP Candidate) the Certificate of Return/Declaration as the winner of the House of Representatives Elections for the 2011 General Elections held in Aguata Federal Constituency.
- g. An order directing the 4<sup>th</sup> & 5<sup>th</sup> Defendants by themselves and or their officers, Privies, Servants and or assigns to forthwith swear in the Plaintiff as the dully elected member of the House of Representatives for the Aguata Federal Constituency and to afford/accord to the Plaintiff all the rights, privileges and benefits due

to him as the member of the House of Representatives for Aguata Federal Constituency.

- h. Any general or other relief which may be given as the Court may think just to meet the justice of this case”

It is on these summarised facts and the Reliefs just reproduced that the 2<sup>nd</sup> Defendant’s Preliminary Objection is to be viewed. For the sake of clarity, I shall alter the order in which the six grounds of the Preliminary objection are listed (supra) by the learned Senior Counsel; choosing to begin with the fifth ground which I now reproduce here again thus:

“This suit in view of suit No.FHC/AWK/CS/05/2011 (now FHC/ABJ/CS/29/2013) and Election Petition No.EPT/AN/NAE/HR/56/2011 earlier filed by or on behalf of the herein Plaintiff on the same subject matter/issue of who was the proper candidate of PDP for the same April/May 2011 election for Aguata Federal Constituency, is an abuse of Court Process.”

Abuse of Court Process is a long established legal concept which simply connotes improper use of a Court Process in litigation. The situations in which it can be invoked are infinite and varied. For instance, in **Ogboru vs Uduagha**

**(2013) 13 NWLP Pt 1370, 33 @ 59** para E-G, the Supreme Court conceptualised it thus:

“Abuse of Court Processes is when the Process of the Court has not been used bona fide and properly. It involves an improper use of judicial process by a party in litigation. Abuse of Court Process is also characterised by an action initiated without a just or reasonable cause. It merely takes an undue advantage of the reason that the process is available for indulgence. An abuse of Court process is a situation where the law is wrongly interpreted for purpose of accommodating actions in bad faith. It impugns the dignity of the Court ... The concept of abuse therefore lies in the multiplicity and the manner employed for the exercise of the right ...”

Also in **Commissioner for Education Imo State vs Amadi (2013) 13 NWLP Pt 1370 133 & 154 paras C-E** the Supreme Court further explained the concept thus:

“Multiplicity of Court Process on the same subject matter before one or more Courts of competent Jurisdiction and between the same parties is what the Courts have described as improper use of the Judicial process to the irritation, annoyance and

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another suit no.EPT/AN/NAE/HR/56/2011 which was an election petition filed at the National Assembly Election Petition Tribunal on the 25<sup>th</sup> of May 2011; maintaining that she defended that suit both at the Election Petition Tribunal and at the Court of Appeal. Paragraphs 8 to 20 of her affidavit in support refer.

The facts of the 2<sup>nd</sup> Defendant on this ground as just summarised have been copiously and graphically explained by her learned Senior Counsel in his submissions canvassed under issue no.ii at pages 22 to 27 of his written address on the Preliminary objection. Therein, he has summarised the twin suits nos. FHC/ABJ/CS/29/13 (originally no. FHC/AWK/CS/05/2011) and EPT/AN/NAE/HR/56/11, demonstrating the similarity of the issues therein with those in this suit and submitting thereby that this suit constitutes an abuse of Court Process. To buttress his submission, he has referred this Court to the decision of the Supreme Court in **Dingyadi vs. INEC (No.1) (2010) 18 NWLR Pt 1224, 1 @ 74** reproducing the text of the relevant portion thereof.

As I mentioned much earlier, the Plaintiff deposed to and filed a 22 paragraph counter affidavit on the 14<sup>th</sup> of March 2014 in response to the 2<sup>nd</sup> Defendant's Preliminary Objection. Much as I laboured over and over

again through the Plaintiff's counter affidavit, I have been able to distil only the facts in paragraphs 10 and 20 thereof somewhat relevant to the issue at hand as vaguely deposed therein. I think it is best to reproduce same here in verbatim thus:

"10. Save that suit no.FHC/AWK/CS/05/11 was filed in a representative capacity, paragraphs 4, 5, 13, 14, 15, 16, 17, of the affidavit of the 2<sup>nd</sup> Defendant/Applicant are denied as false."

"20. Save that I filed an Election Petition numbered as EPT/AN/NAE/HR/56/11 against the strange, Illegal and contemptuous "gift" of Certificate of Return by the 1<sup>st</sup> Defendant/Respondent to the 2<sup>nd</sup> Defendant/Applicant, which petition was Struck out by the Election Tribunal and the Court of Appeal, I deny the rest of all paragraphs 8,9,10 and 11 of the motion on notice".

As evasive and elusive as these facts are presented by the Plaintiff, they are yet the closest to the issue at hand; with all their inherent fogs and mists strategically designed to becloud the real issue for determination, which once again is the 2<sup>nd</sup> Defendant's claim that this suit is an abuse of Court Process. Towing the same line, his learned Counsel also ignored all the submissions of his learned

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senior colleague for the 2<sup>nd</sup> Defendant on this ground without the least reference to or acknowledgement of it.

During the hearing of the Preliminary objection, learned Counsel F. I. Aniukwu who appeared for the 2<sup>nd</sup> Defendant submitted in line with the written submissions for the 2<sup>nd</sup> Defendant summarised earlier herein, while that for the Plaintiff submitted also in line with the written submissions for the Plaintiff and both urged the Court to proceed accordingly. I should add here in passing that the facts in the Plaintiff's counter affidavit are the same with those in his further affidavit in support of the originating summons; i.e. the substantive suit. I shall return to this aspect later.

As I explained earlier, I have not found any discernible facts in the Plaintiff's defence or response to the issue at hand; but I have reproduced in verbatim (supra) those that appear somewhat relevant to the issue. Notwithstanding, I have x-rayed the entire relevant facts for both parties, viz-a-viz the claim of the 2<sup>nd</sup> Defendant that this suit constitutes an abuse of Court process. In particular, I have closely examined the relevant fundamental features of suit no. FHC/AWK/CS/05/11 (now FHC/ABJ/CS/29/13). It was filed in this Court. I have summarised it earlier. It was commenced

in a representative capacity by Senator Annie Okonkwo and Prince Hon. Nicholas Ukachukwu for themselves and on behalf of other aspirants that were alleged to have won the Primary election that rightly or wrongly saw the 2<sup>nd</sup> Defendant through to the general elections. The clear, indirect aim of the suit was to secure among others a declaratory order by this Court that the Plaintiff herein is the rightful candidate of the PDP in the April/May general election for member in the House of Representatives representing the Aguata Federal Constituency. As reproduced, the Plaintiff in paragraph 10 of his counter affidavit posits that the said suit was filed in a representative capacity; implying that he was not a named party to it and that the 1<sup>st</sup> Defendant therein is the Independent National Electoral Commission, not the 2<sup>nd</sup> Defendant. In other words, the Parties in the said suit are not the same with those in this suit; in particular the Plaintiff himself and the 2<sup>nd</sup> Defendant. This position is neither here nor there; for ironically, the Plaintiff has till date been founding on the said suit against the 2<sup>nd</sup> Defendant. What is more, viewed from whatsoever angle, it is the Plaintiff and the 2<sup>nd</sup> Defendant who stands to gain or lose by that suit, just as is the case in this suit. The bone of contention in both suits is the same. In fact, the Plaintiff presents the interlocutory, injunctive orders made by this Court in that suit coram Olayiwola J. as his biggest defence to the entire grounds of the 2<sup>nd</sup> Defendant's

Preliminary objection, contending that this Court had by those injunctive orders restrained the 1<sup>st</sup> Defendant herein from recognising the 2<sup>nd</sup> Defendant as the rightful candidate of the PDP in the April/May general elections for member in the House of Representatives representing the Aguata Federal Constituency. Two significant points are imbedded in this contention. The first is that the Plaintiff, by his own showing, concedes that the issues being litigated upon in that suit are in reality between himself and the 2<sup>nd</sup> Defendant, though couched and presented in the manner it was commenced. If anything, on the facts, it is in fact the 2<sup>nd</sup> Defendant that should cry foul now that she was not made a party in that suit leading to the draconian orders by this Court against her life ambition; but definitely not the Plaintiff. The second point is that at the material time the Plaintiff realised that the 1<sup>st</sup> Defendant was set to flout the injunctive orders of this Court (against the 2<sup>nd</sup> Defendant), what did he (the Plaintiff) do? What steps did he take to bring to the attention of the Court the imminent breach of its said injunctive Orders? For some unexplained reasons, he chose to do nothing and is now in this suit raising the alleged breach as a defence to the 2<sup>nd</sup> Defendant's Preliminary Objection. The long and short of all I have been explaining here is that regardless of the nomenclature by which the Parties are described in suit no FHC/AWK/CS/05/11 now FHC/AWK/C/S/29/13 it is the Plaintiff and the 2<sup>nd</sup> Defendant



herein that are the Principal characters therein, both litigating in this suit the same fundamental issues in the other. A rose by any other name called will smell as sweet!

I now move on to the second leg of the ground in issue, i.e suit no. EPT/AN/NAE/HR/56/11 which as I explained earlier was an election petition by the Plaintiff against the 2<sup>nd</sup> Defendant before the National Election Petition Tribunal. It is exhibit "C" attached to the 2<sup>nd</sup> Defendant's supporting affidavit. Both parties rely on it. I have examined it carefully. The Plaintiff herein was the Petitioner therein. The 2<sup>nd</sup> Defendant herein was the 1<sup>st</sup> Respondent therein. I have very carefully examined the four Reliefs the Plaintiff sought in that Petition, viz-a-viz those in this suit. For whatever they were worth before the Election Tribunal, those Reliefs altogether sought in reality the same now being sought by the Plaintiff in both this suit and the earlier suit no CS/05/11 now before my learned brother sitting in Court 7 in Abuja division of this Court. To attempt disguising the Reliefs sought before the Election Tribunal as separate and different is to create a difference without a distinction. Both have as their ultimate aim the disqualification and removal of the 2<sup>nd</sup> Defendant from being member in the House of Representatives and declaring the Plaintiff as the rightful member. The said Petition before the Election Tribunal was filed by the present Plaintiff on the 25<sup>th</sup> of May 2011. I have observed that this suit was commenced in this Court long

after the Petition before the Election Tribunal was disposed of and the Parties were already contesting the outcome of the Petition at the Court of Appeal. Precisely, this suit was commenced here on the 4<sup>th</sup> of August 2011. In other words, it was commenced during the Pendency of Appeal no.CA/E/EPT/07/11, to litigate over the same issues already before the Court of Appeal. The contention of the Plaintiff that this suit was initially filed much earlier than the 4<sup>th</sup> of August 2011 but misplaced by the Registry of this Court is lame and unfortunate as it is not substantiated by any evidence. The bottom line is that this suit was filed, co-excited with and litigated simultaneously with the election petition appeal no. CA/E/EPT/07/11. What is more, if the purpose of the Plaintiff's allegation is to deflate the 2<sup>nd</sup> Defendant's further claim in paragraphs 38 and 39(v) of her supporting affidavit that:

“..... the present suit was filed on 4/8/2011 more than a period of 3 months from the date of the accrual of the cause of action in this suit”

the Plaintiff's allegation has neither been satisfactorily explained in that direction nor even linked howsoever to the 2<sup>nd</sup> Defendant's clear claim that the suit is statute barred having been instituted more than 3 months after the alleged wrongdoing by INEC (1<sup>st</sup> Defendant) which gave rise to this

suit. There is no how this Court may fail to agree with the submission of the learned Senior Counsel for the 2<sup>nd</sup> Defendant on this ground.

This leads me in the ascending order to the 4<sup>th</sup> ground of the 2<sup>nd</sup> Defendant's Preliminary Objection listed as no. iv in the grounds. Once again, it is thus:

“the honourable Court does not have jurisdiction to entertain the complaint on the candidacy of the parties since the result of the subject matter had been declared and the 2<sup>nd</sup> Defendant issued with a certificate of Return”.

This ground is inextricably tied to the 3<sup>rd</sup> ground listed as no. iii in the grounds by which the 2<sup>nd</sup> Defendant contends that since the results of the general election had already been declared the only available remedy to the Plaintiff is to institute an election Petition before the Election Petition Tribunal.

It is clear that the Plaintiff did not commence this suit until he lost out at the Election Tribunal. The Petition at the Election Tribunal itself was filed after the general election of April/May 2011, that is to say, after a declaration and Return by the 1<sup>st</sup> Defendant in favour of the 2<sup>nd</sup> Defendant. In other words, here was a party who felt aggrieved by the outcome of a party Primary election. His cause of action was therefore

a pre election matter. He however chose to abandon his right to ventilate his cause of action before this Court or the High Court in accordance with the provisions of section 87(9) of the Electoral Act 2010 as amended. He chose instead to approach the Election Petition Tribunal with his pre election suit; and from there to the Court of Appeal before coming to the realisation that this or the High Court was the appropriate Court to approach in the first place. Unfortunately, by the time he commenced his suit, it was seven months after the Primary election and four months after the general election. clearly, the delay was inordinate and by no means defensible. In the unreported judgement of the Court of Appeal Owerri division, in Appeal no.CA/OW/180A/12 (Dr Andy Uba vs. Prince Nicholas Ukachukwu & 1 other), the Court held thus:

“On the whole, it is my view that since the 1<sup>st</sup> Respondent did not pursue his right or cause of action against the Appellant before the holding of the election, but waited for the election to take place, his grievance against the Appellant ceases to be a pre election matter. There is therefore no jurisdiction in the regular Courts to determine the issues as between the Appellant and the 1<sup>st</sup> Respondent....”

(Referred also by the learned Senior Counsel for the 2<sup>nd</sup> Defendant in his written address.) I find the above dictum in all fours with the facts in this suit.

There remain only two grounds listed as grounds nos i and ii in the 2<sup>nd</sup> Defendant's grounds of Preliminary Objections. I find the first substantially similar to grounds nos. iii and iv already determined herein before; and thus unnecessary to embark on further detailed analysis on it also, except to add that by its purport, the said ground no. i shall necessarily end in the same determination for the 2<sup>nd</sup> Defendant. The last ground i.e. no ii which questions the competence of the suit having been commenced by way of originating summons is by now obviously a spent ground, in view of the foregoing determinations. I do not think that a determination on it as sought by the 2<sup>nd</sup> Defendant will affect the impending outcome of the suit.

It may be recalled that I have earlier alluded to the further affidavit of the Plaintiff in support of his originating summons which I observed as containing similar facts with those in his counter affidavit to the 2<sup>nd</sup> Defendant's Preliminary Objection. This is so because the entire substantive suit has been subsumed into the issues canvassed in the Preliminary Objection. In other words, the Plaintiff's counter affidavit to the Preliminary Objection is materially similar to the facts in his substantive suit. The same pattern of similarity runs through the 2<sup>nd</sup> Defendant's affidavit in support of her Preliminary Objection with her counter affidavit to the substantive suit. The result is that a determination on the on the Preliminary Objection is in fact

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a determination on the substantive suit and therefore a judgment on same.

In consequence of all the foregoing considerations, the grounds of the 2<sup>nd</sup> Defendant's Preliminary objection listed as nos ii to v are determined in favour of the 2<sup>nd</sup> Defendant. The grounds of the Preliminary objection succeed. The substantive suit itself is without merits.

In the absence of any necessity to consider the 1<sup>st</sup> Defendant's Preliminary objection as the suit now stands, the suit is at this stage liable to be and is hereby dismissed.



**I.B. GAFAI**

**JUDGE**

24/09/2014