

17/4/23
501

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

MOTION NO:

BETWEEN

Fue/ABI/CS/510/2023

1. SENATOR AISHA DAHIRU AHMED
2. ALL PROGRESSIVES CONGRESS (APC)

APPLICANTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. AHMADU UMARU FINTIRI

RESPONDENTS

MOTION EX-PARTE

BROUGHT PURSUANT TO ORDER 34 RULES (1)(a), 3(1)(2) (a, b, c), and (6)(a) OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE RULES) 2019 AND SECTION 251 (1)(q) and (r) OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (as amended), SECTION 149 AND 152 OF THE ELECTORAL ACT 2022 AND THE INHERENT POWERS & JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the ----- day of ----- 2023 at the hour of 9. o'clock in the forenoon or soon after, as counsel on behalf of the applicants may be heard praying for the following order:

1. **LEAVE OF COURT** allowing the Applicants to file an application for an **ORDER OF PROHIBITION** and **CERTIORARI** removing to this Court for the purpose of being set aside the administrative decision of the 1st Respondent made on 16th April 2023 in respect of the declaration of the winner from the Gubernatorial Election of Adamawa State held on the 18th of March, 2023 and the supplementary election held on 15th April 2023
2. **AN ORDER** preventing the 1st Respondent, its agent, assign or any person acting on its behalf from taking any further steps towards the declaration of the winner from the Gubernatorial Election of Adamawa State held on the 18th of March, 2023 and the supplementary election held on 15th April 2023, pending the determination of the application for judicial review.

3. **AND** for such further or other orders as this court may deem fit to make in the circumstances.

GROUND UPON WHICH THE APPLICATION IS BROUGHT

1. The 1st Applicant **SENATOR AISHA DAHIRU AHMED** is the candidate sponsored by the 2nd applicant **ALL PROGRESSIVES CONGRESS** in the Gubernatorial Election held on 18th March 2023 in Adamawa State and the supplementary Gubernatorial Election of Adamawa State held on 15th April 2023
2. After the completion of the vote in the supplementary Gubernatorial Election of Adamawa State held on 15th April 2023, the 1st Respondent did its collation of results
3. After the collation of results, the 1st Respondent declared **SENATOR AISHA DAHIRU AHMED** as the winner of the Gubernatorial Election and was thereby returned as elected.
4. Pursuant to the declaration of **SENATOR AISHA DAHIRU AHMED** as the winner of the Gubernatorial Election, any dissatisfied candidate is to resort to the tribunal for redress if any.
5. The 2nd respondent **PEOPLES DEMOCRATIC PARTY** and the 3rd Respondent **AHMADU UMARU FINTIRI** who lost in the election resorted to fighting and causing a public disturbance which led to the beating and manhandling of one of the 1st Respondents staff.
6. The crisis caused by the 2nd and 3rd Respondents led the 1st Respondent to announce that it has cancelled the initial declaration made by it on 16th April 2023.
7. The 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** has no powers to cancel or declare a declaration which has been made as null and void.
8. The only court with the power on a declaration made from the conduct of an election is only the Election Petition Tribunal set up by the 1999 Constitution of Nigeria (as amended)
9. The 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** after the declaration of **SENATOR AISHA DAHIRU**

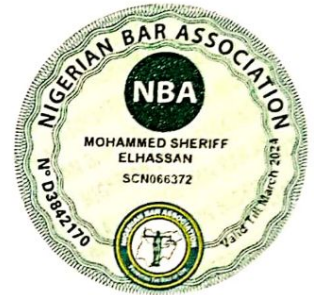
AHMED as the winner usurped the Powers of the Election Petition Tribunal and declare the declaration null and void.

10. The 1st Respondent INDEPENDENT NATIONAL ELECTORAL COMMISSION does not have the requisite powers to declare an election in which the winner has been declared null and void.

11. This led to this application before this Court.

DATED THIS 16th DAY OF April 2023

Hussaini Zakariyau, SAN.
M.E SHERIFF, Esq. LL.M (Signed)
Umar Yunusa, Esq. LL.M MCIarb
M.K Abdullah, Esq. LL.M
A.K Maude Esq. ACarb
Munirat Yahaya, Esq.
Balogun Sofiyullahi, Esq.
J.D Adeyemi Esq
(Applicant's Counsel)
Savannah Law LP.



(Legal Practitioners, Arbitrators and Notary Public)

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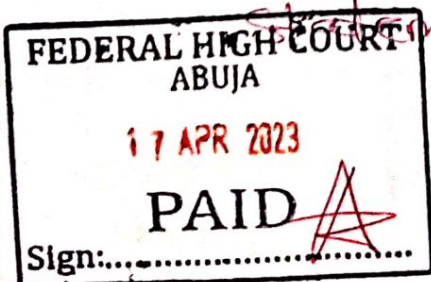
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Statement - 100.00

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17/4/23
1:58pm

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
MOTION NO:

BETWEEN

1. SENATOR AISHA DAHIRU AHMED
2. ALL PROGRESSIVES CONGRESS (APC) ----- APPLICANT

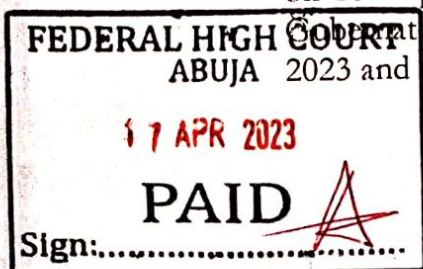
AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. PEOPLES DEMOCRATIC PARTY (PDP) ----- RESPONDENTS
3. AHMADU UMARU FINTIRI

STATEMENT SETTING OUT THE NAMES AND DESCRIPTION OF THE APPLICANTS, RELIEF SOUGHT AND GROUNDS FOR THE RELIEF

1. The 1st Applicant SENATOR AISHA DAHIRU AHMED; is a Politician and a card-carrying member of the 2nd Applicant.
2. The 1st Applicant SENATOR AISHA DAHIRU AHMED is the Gubernatorial Candidate of the 2nd Applicant in the supplementary Gubernatorial Election held on 15th April, 2023 in Adamawa State.
3. The 2nd Applicant ALL PROGRESSIVES CONGRESS is a political party registered in Nigeria and has been participating in various elections in Nigeria
4. The 2nd Applicant ALL PROGRESSIVES CONGRESS is the political party that sponsored the 1st applicant in the contest for the supplementary Gubernatorial Election held on 15th April, 2023 in Adamawa State
5. The Applicants seek the following reliefs:

- (a) **LEAVE OF COURT** allowing the Applicants to file an application for Judicial review of the administrative decision of the 1st Respondent made on 16th April 2022 in respect of the declaration of the winner from the Gubernatorial Election of Adamawa State held on the 18th of March, 2023 and the supplementary election held on 15th April 2023.



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(b) **AN ORDER** preventing the 1st Respondent, its agent, assign or any person acting on its behalf from taking any further steps towards the declaration of the winner from the Gubernatorial Election of Adamawa State held on the 18th of March, 2023 and the supplementary election held on 15th April 2023, pending the determination of the application for judicial review.

(c) **AND** for such further or other orders as this court may deem fit to make in the circumstances.

GROUND UPON WHICH THE APPLICATION IS BROUGHT

1. The 1st Applicant **SENATOR AISHA DAHIRU AHMED**, is the candidate sponsored by the 2nd applicant **ALL PROGRESSIVES CONGRESS** in the Gubernatorial Election held on 18th March 2023 in Adamawa State and the supplementary Gubernatorial Election of Adamawa State held on 15th April 2023
2. After the completion of the vote in the supplementary Gubernatorial Election of Adamawa State held on 15th April 2023, the 1st Respondent did its collation of results
3. After the collation of results, the 1st Respondent declared **SENATOR AISHA DAHIRU AHMED** as the winner of the Gubernatorial Election and was thereby returned as elected.
4. Pursuant to the declaration of **SENATOR AISHA DAHIRU AHMED** as the winner of the Gubernatorial Election; any dissatisfied candidate is to resort to the tribunal for redress if any.
5. The 2nd respondent **PEOPLES DEMOCRATIC PARTY** and the 3rd Respondent **AHMADU UMARU FINTIRI** who lost in the election resorted to fighting and causing a public disturbance which led to the beating and manhandling of one of the 1st Respondents staff.
6. The crisis caused by the 2nd and 3rd Respondent led the 1st Respondent to announce that it has cancelled the initial declaration made by it on 16th April 2023.
7. The 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** has no power to cancel or declare a declaration which has been made as null and void

8. The only court with the power on a declaration made from the conduct of an election is only the Election Petition Tribunal set up by the 1999 Constitution of Nigeria (as amended)
9. The 1st Respondent INDEPENDENT NATIONAL ELECTORAL COMMISSION after the declaration of **SENATOR AISHA DAHIRU AHMED** as the winner usurped the Powers of the Election Petition Tribunal and declare the declaration null and void.
10. The 1st Respondent INDEPENDENT NATIONAL ELECTORAL COMMISSION does not have the requisite power to declare an election in which the winner has been declared as null and void.
11. This led to this application before this Court.

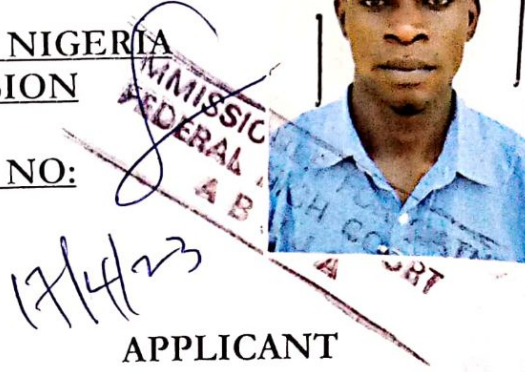
DATED THIS 16th DAY OF April 2023



Hussaini Zakariyau, SAN.
M.E SHERIFF, Esq. LL.M (Signed)
Umar Yunusa, Esq. LL.M MCIarb
M.K Abdullah, Esq. LL.M
A.K Maude Esq. ACarb
Munirat Yahaya, Esq.
Balogun Sofiyullahi, Esq.
J.D Adeyemi Esq
(Appellant's Counsel)
Savannah Law LP.
(Legal Practitioners, Arbitrators and Notary Public)

17/4/23
11:58pm

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
MOTION NO:



BETWEEN

1. SENATOR AISHA DAHIRU AHMED
2. ALL PROGRESSIVES CONGRESS (APC)

APPLICANT

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. PEOPLES DEMOCRATIC PARTY (PDP). --- RESPONDENTS
3. AHMADU UMARU FINTIRI

VERIFYING AFFIDAVIT OF FACTS RELIED ON IN SUPPORT OF
MOTION EXPARTE

I, Onuminya James, Adult, Female, Christian and a Nigerian citizen of Savannah law Chambers of Ground Floor, 10, Gimbiya Street, Area 11, Garki Abuja do make oath and state that:

1. I am the litigation secretary in the law firm of Savannah Law Chambers, No.10, Gimbiya Street, area 11, Abuja solicitors to the Applicants.
2. I have the consent of both the applicants and my employer to depose to this affidavit.
3. By virtue of my position; I am conversant with the facts of this case and the circumstances giving rise to this application.
4. I am informed by M.E. Sheriff, and **SENATOR AISHA DAHIRU AHMED** counsel to the applicants on the 16th day of April, 2023 at the hour of 2.30 pm in the forenoon while receiving instruction from him on behalf of my employer at our office in Abuja at the above-stated address of information which I verily believe the information to be correct and true as follows:
 - a. The 1st Applicant **SENATOR AISHA DAHIRU AHMED**, is the candidate sponsored by the 2nd applicant **ALL PROGRESSIVES CONGRESS** in the Gubernatorial Election held on 18th March 2023 in

Adamawa State and the supplementary Gubernatorial Election of Adamawa State held on 15th April 2023

- b. After the election of 18th March 2023, the 1st Respondent declared the election inconclusive and thereafter ordered a supplementary election on 15th April 2023 in Adamawa and Kebbi State.
- c. The supplementary election took place in Adamawa and after the completion of the vote in the supplementary Gubernatorial Election of Adamawa State held on 15th April 2023, the 1st Respondent did its collation of results.
- d. After the collation of results, the 1st Respondent declared **SENATOR AISHA DAHIRU AHMED** as the winner of the Gubernatorial Election and was thereby returned as elected.
- e. Pursuant to the declaration of **SENATOR AISHA DAHIRU AHMED** as the winner of the Gubernatorial Election; any dissatisfied candidate is to resort to the tribunal for redress if any.
- f. The 2nd respondent **PEOPLES DEMOCRATIC PARTY** and the 3rd Respondent **AHMADU UMARU FINTIRI** who lost in the election resorted to fighting and causing public disturbance which led to the beating and manhandling of one of the 1st Respondents staff.
- g. The crisis caused by the 2nd and 3rd Respondent led the 1st Respondent to announce that it has cancelled the initial declaration made by it on 16th April 2023 in which **SENATOR AISHA DAHIRU AHMED** was declared the winner. A copy of the 1st Respondent's bulletin is attached here as **EXHIBIT A**
- h. The 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** doesn't have the power to cancel or declare a declaration which has been made as null and void.
- i. The only forum for questioning declaration made by the 1st Respondent is the Election Petition Tribunal set up by the 1999 Constitution of Nigeria (as amended)
- j. The 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** after the declaration of **SENATOR AISHA DAHIRU AHMED** as the winner usurped the Powers of the Election Petition Tribunal and declare the declaration null and void.

- k. The 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** does not have the requisite power to declare an election in which the winner has been declared as null and void.
 - l. This led to this application before this Court.
5. I was also reliably informed by **M.E Sheriff Esq**, counsel to the applicants on the 16th day of April 2023 at the hour of 2.30 pm in the forenoon while receiving instruction from him on behalf of my employer at our office in Abuja at the above-stated address of information which I verily believe the information to be correct and true as follows
- a. The 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** uses its administrative power in declaring the declaration of the 1st applicant as the winner of the Gubernatorial election null and void.
 - b. It is the constitutional power of this Court to review the administrative power of the 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** where it is used arbitrarily.
 - c. The 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** having declared its declaration null and void is assuming and exercising the powers of the Election Petition tribunal under the 1999 Constitution of Nigeria (as amended)
 - d. It is only this Court that has power over the 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** in preventing/restraining it from exercising the powers of an Election Petition Tribunal or Court.
6. This Court is Constitutionally clothed to check the exercise of the administrative powers of the 1st Respondent **INDEPENDENT NATIONAL ELECTORAL COMMISSION** when it is used arbitrarily or exercised without the powers to do so.
7. I also verify that all statements and facts relied upon herein are true to the best of my knowledge
8. It is in the interest of justice to grant this application.
9. The Respondents will not be prejudiced by this application.

10. I swear to this affidavit in good faith, conscientiously, believing the same to be true, correct and in accordance with the Oaths Act currently in force.




Deponent

Sworn to at the Federal High Court Registry, Abuja.

DATED THIS 17th DAY OF April 2023

BEFORE ME

~~COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA~~
COMMISSIONER FOR OATHS

FEDERAL HIGH COURT
ABUJA
17 APR 2023
PAID 
Sign:.....

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2023
17/4/23
12:58pm

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2. PEOPLES DEMOCRATIC PARTY (PDP) --- RESPONDENTS
3. AHMADU UMARU FINTIRI

WRITTEN ADDRESS IN SUPPORT OF APPLICATION
FOR JUDICIAL REVIEW

1.1 INTRODUCTION

1.2 This is a written address in support of an application for judicial review of the act of the 1st Respondent INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) in declaring its declaration of the 1st Applicant as null and void after the 1st Respondent has been declared winner of the Gubernatorial Election in Adamawa State.

1.3 BRIEF FACTS OF THE CASE

1.4 The 1st Respondent conducted its election for the Gubernatorial office in Adamawa State on 18th March 2023. After the conduct of the election; the 1st Respondent declared the election as inconclusive.

1.5 The 1st Respondent thereafter fixed the 15th April 2023 as a new date for a supplementary election. On 15th April 2023; the supplementary election was conducted and on 16th April 2023, the 1st Respondent declared the 1st Respondent as the winner of the Governor of Adamawa State and return her as such.

1.6 The 1st Respondent thereafter announced that its initial declaration of the 1st Respondent as the winner of the election is null and void.

FEDERAL HIGH COURT
ABUJA
17 APR 2023
PAID
Sign:.....

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1.7 The applicants felt that the 1st Respondent after its declaration ceases to enjoy any powers in Law to reverse its declaration describing the same as null and void.

1.8 This led to this case before this court.

1.9 **ISSUES FOR DETERMINATION**

1.10 **WHETHER** this Court can grant this application.

1.11 **ARGUMENT OF THE ISSUE FOR DETERMINATION**

1.12 By the extant rule of this court, we submit that this court can grant this application, particularly Order 34 Rule 3 (1) and (2) which provides:

“(1) An application for judicial review shall not be made unless the leave of the court has been obtained in accordance with this order

(2) An application for leave shall be made ex-parte to the judge and shall be supported by-

(a) a statement setting out the name and description of the applicant, the reliefs sought and the grounds on which it is sought

(b) an affidavit verifying the facts relied on; and

(c) a written address in support of application for leave”

1.13 My lord we submit that the instant application satisfies all the above conditions and we urge my lord to so hold in granting the applicants' leave to apply for judicial review of the Act of the 1st Respondent declaring the declaration of Adamawa State Governorship Election Null And Void.

1.14 Furthermore, my Lord, we submit that Judicial Review exists in order for superior courts to checkmate the actions and decisions of both inferior courts, the legislative and administrative arm of government which includes agencies and public officers.

1.15 We submit that the 1st Respondent, being an agency of the Federal Government can have its actions, records and decisions checked by this Honorable Court, we urge My Lord to so hold in line with the decision of the Apex Court in the case of **A.C.B PLC v NWAIGWE (2011) LPELR-208 (SC)** where it was held that:

“On the other hand, Judicial review is the supervisory jurisdiction of the High Court exercised in the review of the proceedings, decisions and acts of inferior courts and tribunals and acts of governmental bodies”

1.16 This decision was also followed by the Court of Appeal in the case of **HADEJIA v LADAN & ORS (2018) LPELR-45638 (CA)** where it was held that:

“Judicial review is the supervisory jurisdiction of the High Court exercised in review of the proceedings, decisions and acts of inferior courts and tribunals and acts of governmental bodies.”

1.17 My Lords we submit that the action of the 1st Respondent nullifying the declaration of the gubernatorial election was an act done outside of its powers which is in fact against the provisions of the Electoral Act 2022, particularly Section 149 of the Electoral Act 2022 which provides that:

“Notwithstanding any other provisions of this Act, and defect or error arising from any actions taken by an official of the Commission in relation to any notice, form or document made or given or other things done by the official in pursuance of the provisions of the constitution or of this act or any rules made thereunder remain valid unless otherwise challenged and declared invalid by a competent court of law or tribunal.”

1.18 My lord, we submit that only a competent court of law can nullify the actions of an official of the 1st respondent in line with the above-cited authority and not the 1st respondent itself. Thus, we submit the act of the 1st Respondent nullifying an act of its official (i.e., the declaration of the result of the gubernatorial election of Adamawa) is an action in ultra vires of its power and we submit that the 1st Respondent has no power to do so.

1.19 We submit that it is in the interest of justice that the applicant will be allowed to approach this Court for a review of the act of the 1st respondent.

1.20 The applicant's application before this Court invites the Court to exercise its Constitutional supervisory power and we submit that this court can grant this application, granting leave for the applicant to file its originating motion to enable this court to review the decision/act of the 1st Respondent.

1.21 This is as decided by the Supreme Court in the case of **Governor of Oyo State v. Folayan (1995) SCNJ 50, 83** wherein per Ogundare JSC restated some principles that guide judicial review as follows:

“In relation to matters within a public body's field of judgment, the court conducts its review from the body's standpoint and must not intervene solely on the basis that it would itself have acted differently. The following principles are to be borne in mind by a reviewing court:
(a) Judicial review is not an appeal. (b) The court must not substitute its judgment for that of the public body whose decision is being or reviewed.

(c) The correct focus is not upon the decision but the manner in which it was reached.

(d) What matters is the legality and not correctness of the decision.”

1.22 My lord, we submit that the only circumstance wherein this court would not be inclined to grant this application is as provided for under Order 34 Rule 3 (4) of the extant rules of this Court which provides that:

“The Judge shall not grant leave unless he considered that the applicant has sufficient interest in the matter to which the application relates.”

1.23 We submit that we have placed material facts in both our Affidavit in Support of this Motion as well as the verifying Affidavit evidencing that the applicant has sufficient interest in the matter to which this application relates.

1.24 We submit from the fore going that this court has the requisite jurisdiction to grant this application and we urge my Lord to grant same in the interest of justice and review the decision and act of the 1st respondent.


DATED THIS

16th

DAY OF

April

2023



Hussaini Zakariyau, SAN.
M.E SHERIFF, Esq. LL.M (Signed)

Umar Yunusa, Esq. LL.M MCIarb

M.K Abdullah, Esq. LL.M

A.K Maude Esq. ACArb

Munirat Yahaya, Esq.

Balogun Sofiyullahi, Esq.

J.D Adeyemi Esq

(Appellant's Counsel)

Savannah Law LP.

(Legal Practitioners, Arbitrators and Notary Public)