

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY, 13TH DAY OF MARCH, 2020
BEFORE HIS LORDSHIP, HON. JUSTICE B.F.M. NYAKO
JUDGE

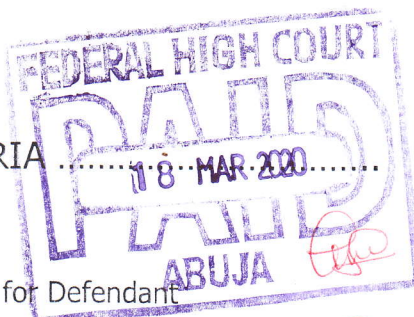
SUIT NO: FHC/ABJ/CS/1206/2017

BETWEEN:

THE ATTORNEY GENERAL OF THE FEDERATION **PLAINTIFF**

AND

THE NATIONAL ASSEMBLY OF
THE FEDERAL REPUBLIC OF NIGERIA **DEFENDANT**



Parties: Absent

Counsel: Ifeanyi Okpor for Plaintiff
Dubem Anene with Kaodi Onuoha for Defendant

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JUDGMENT

The Plaintiff in this matter by an Originating Summons dated and filed the 6th December 2017, seeks the determination of the following questions to wit:

1. Whether the employment, attendance at work, disengagement, reinstatement and or promotion of a civil servant are matters within the exclusive and concurrent legislative lists contained in the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
2. If the answer to the above question is negative, whether the National Assembly can legitimately regulate the employment, attendance at work, disengagement, reinstatement and or promotion of civil servant, which are matters exclusively within the purview of the Federal Civil Service Commission under the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

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3. If the answer to the above question is also negative, whether the National Assembly has the legislative competence to investigate the employment, attendance at work, disengagement, reinstatement and or promotion of a civil servant which are matters exclusively within the purview of the Federal Civil Service Commission under the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
4. Whether the power of investigation vested the National Assembly by Section 88(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) is not limited such that can only be exercised within the confines of Section 88(2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
5. Whether it is constitutionally ultra vires the office of the Plaintiff as the Chief Law Officer and Minister of Justice of the Federation to ensure compliance by the Federal Government of Nigeria and or any of its cognate organs/agencies with the express or implied contents of extant Judgements and Orders of competent Courts of the land especially one in which his office was one of several Defendants on record qua the Judgements of Adamu Bello, Federal Judge (as he then was) in Suit No: FHC/ABJ/CS/65/2013 delivered on 27th March, 2013.
6. Whether the Defendant being a principal party whose decisions/actions inter alia precipitated the adverse judgement in the said Suit No: FHC/ABJ/CS/65/2013 can without more and in disregard of the doctrine of separation of powers enshrined in the Constitution of the Federal Republic of Nigeria 1999 (As Amended) constitute itself into a quasi-appellate Court, tribunal or panel with a view to reviewing any Executive action taken in compliance with the adverse judgment in the said Suit No: FHC/ABJ/CS/65/2013.

7. Whether the exercise of any investigative and or adjudicatory powers by the National Assembly outside the provisions of Sections 88 and 89 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) is not arbitrary and an unnecessary infraction of the principles of separation of powers guaranteed by the Constitution of the Federal Republic of Nigeria.

Upon the determination of the above questions answered in the affirmative. The Plaintiff prays for the following reliefs to wit:

1. **A DECLARATION** that the employment, attendance at work, disengagement, reinstatement and or promotion of civil servant are matters outside the exclusive and concurrent legislative lists contained in the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
2. **A DECLARATION** that the National Assembly cannot legitimately regulate the employment, attendance at work, disengagement, reinstatement and or promotion of civil servant, which are matters exclusively within the purview of the Federal Civil Service Commission under the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
3. **A DECLARATION** that the National Assembly lacks the legislative competence to investigate the employment, attendance at work, disengagement, reinstatement and or promotion of a civil servant which are matters exclusively within the purview of the Federal Civil Service Commission under the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
4. **A DECLARATION** that the power of investigation vested the National Assembly by Section 88(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) is limited and such that can only be exercised within the confines of Section 88(2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

5. **A DECLARATION** that the Plaintiff as the Chief Law Officer and Minister of Justice of the Federation is bound to ensure compliance by the Federal Government of Nigeria and or any of its cognate organs/agencies with the express or implied contents of extant Judgements and Order of competent Courts in Nigeria.
6. **A DECLARATION** that the Defendant cannot constitute itself into a quasi-appellate Court, tribunal or panel with a view to reviewing any Executive action taken in compliance with the adverse judgment in the said Suit NO: FHC/ABJ/CS/65/2013.
7. **A DECLARATION** that the conduct, manner of and proceedings by the National Assembly into Executive and Judicial actions are ultra vires and an interference with pending and ongoing judicial and executive processes containing criminal and civil ramifications.
8. **AN ORDER** of Court perpetually restraining the National Assembly whether directly or through any of its organs from infringing upon or interfering with the exercise of the powers vested the Executive Arm of Government under Section 5 and such other Sections of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
9. **AN ORDER** of Court perpetually restraining the National Assembly whether directly or through any of its organs from infringing upon or interfering with the exercise of the judicial powers contained in Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

It is supported with 9 paragraphs Affidavit dated the 6th day of December 2017, deposed to by Paul Daniel with an Exhibits 1A-2A but only Exhibit 2A is attached and a Written Address, wherein Counsel raised (2) issues for determination to wit:

Issue one:

Whether the investigation and adjudication being under taken by the Defendant in the present circumstances do not amount to a fundamental

● breach of the principle of separation of powers provided in Sections 4, 5, 6, 88 and 89 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

Issue two:

Assuming without conceding that the Defendant could validly exercise its investigative powers pursuant to Section 88 and 89 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), is not estopped from constituting itself into a quasi-judicial appellate Court, tribunal or panel with a view to reviewing the judgment in suit No. FHC/ABJ/CS/65/2013 and accelerated consequences.

On issue one, Learned Counsel argued on the provisions of Section 4(8), 5, 6, 88(2) and 89 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended). He brought the attention of the Court to the nature of investigative hearing in paragraph 5 of the Defendant Affidavit in support of the Originating Summons.

He continued that the matter falls within the legislative competence of the Federal Civil Service Commission (FCSC) pursuant to Section 11 of the third schedule of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

Learned Counsel cited Section 153, 158 and 160 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and the case of **OBAYOUWANU V. ALLI & ORS (1983) 12 SC 147 at 191-192 and EL-RUFAI V. HOUSE OF REPRESENTATIVES (2003) 12 WRN.**

He continued further that it is evident from the Affidavit in support that the Defendant did not satisfy any of the condition precedent of publication in official gazette or journal and constituting of a proper and lawful investigation for the purpose of enacting or amending any law and the actions of the Defendant is liable to be invalidated by this Court and relied on **SENATE V. TONY MOMOH (1982) 4 NCLR 105**, he urge the Court to answer this question in the affirmative.

On issue two, Learned Counsel argued that the warrant of arrest which was nullified by this Honourable Court's Judgment is said in suit No. FHC/ABJ/CS/65/2013 (i.e. Exhibit 2A) was issued by the Defendant who is part of the said suit. He maintained that the Defendant cannot be permitted to sit in a quasi-judicial appellate capacity over the judgment and or any fallout of same, the law is settled that a party cannot be a judge in his own case.

He pointed out that the provisions of Section 180(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) make the Plaintiff the Chief Legal Officer of the Federation constitutionally charged with the responsibility of ensuring that the Nigeria State, its organisational and citizenry act in compliance with the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

Counsel urged the Court to grant the prayers sought in the proceeding.

In opposition to the Originating Summons, the Defendant filed 8 paragraph Counter Affidavit dated and filed the 18th January 2018 disposed to by one Rita Igenebor (Mrs.) with a Written Address, wherein Learned Counsel raised a sole issue for determination to wit:

SOLE ISSUE:

Whether the Defendant in view of the facts of the case acted beyond or outside its constitutional powers.

Counsel argued on the sole issue and highlighted some constitutional powers of the Legislative powers to make laws for the peace, order and good government of the Federation pursuant to Section 4(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended). He relied on the case of **A.G. ABIA, DELTA, LAGOS STATE VS. A.G.F (2006) 9 MJSC 1.**

On the powers of the Defendant, he referred to Chapter V, 47 – 89 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

He submitted that the question readily came to mind in view of the facts presented by the parties in this case is who and what are the object and

subject of investigating hearing? In answering the question, he cited paragraphs 5 and 6 of the Counter Affidavit that Mr. Abdulrasheed Maina was not only a civil servant but headed (Pension Reform Task Team) where there was allegation of misappropriation of funds which brought about the law suit and the various investigation.

He continued on the matter pertaining pension are specifically contained in the exclusive legislative list and he relied on the case of **A.G LAGOS STATE V. A.G FEDERATION (2003) FWLR (PT.168) 909**. He urged the Court to so hold.

He argued further in paragraph 4:4 on page 10 of the Plaintiffs Address and paragraph 5 of said Counter Affidavit show that there were allegations of corruption on Mr. Maina which was acknowledge in paragraph 30 in the Plaintiff Affidavit in support of the Originating Summons.

Counsel further argued more in suit No. FHC/ABJ/CS/65/2013 that both parties are in the same suit which was concluded and judgment was delivered upon. He maintained that the Defendant has the constitutional powers to conduct investigation in respect of this matter and he referred to paragraph 22 of the judgment.

In conclusion, Learned Counsel urged the Court to so hold and submitted that the Defendant acted within its legitimate powers and relied on the case of **DAPRANLANG V. DANYA (2007) 8 MJSC 140**.

In response to the Defendant Counter Affidavit, the Plaintiff filed 8 paragraph Further Affidavit dated the 25th January 2018 deposed to by one Oladapo Agboola with a Written Address, wherein Learned Counsel raised a sole issue for determination to wit:

Whether the Defendant in view of the facts of this case, acted beyond or outside its constitutional powers?

Learned Counsel argued that it is trite law and uncontested by the Plaintiff in this case that the Constitution of the Federal Republic of Nigeria 1999

● (As Amended) imbues the National Assembly with the powers to make laws.

He argued further in paragraph 2:3 and 2:4 in the Defendant Written Address, that the National Assembly does not have the power to make laws on the Federal Civil Service by virtue of Part 1 and II of the Second Schedule of the Constitution is clear and exhaustive.

He continued that the Defendant by necessary implication lacks the power to cause an investigation into an issue or subject over which it cannot make laws. He relied on the case of **SUN INS. NIG. LTD v. U.E.C.C (2015) 11 NWLR (PT.1417) 576 PP.602-603 Paras. E-A.**

Counsel argued that paragraph 2:5 to 2:10 of the Defendant's Counter Affidavit is misconceived. He also referred the Court to Paragraphs 1-3 of the Originating Summons and Paragraphs 5 of the Affidavit in support of the Originating Summons.

He further argued in paragraphs 2:11 of the Defendant's written address in support of the Counter Affidavit to the Originating Summons they are all misconceived.

Counsel urged the Court to so hold and humbly submitted that Federal Civil Service is beyond the powers of the National Assembly.

In conclusion, Learned Counsel urged the Court to resolve the issue in favour of the Plaintiff and grant the prayers sought.

On the 29th January 2018, the Defendant filed a 5 paragraph Further and Better Affidavit deposed to by one Helen Oke with 3 Exhibits marked as Exhibit A, B and C respectively.

Learned Counsel argued on the said Exhibits and draw out 6 main issues from the Exhibits and submitted that Exhibit A is the National Assembly Journal, Exhibit B is Rules and Proceedings of the Senate (page 1034, at number 4) while Exhibit C is the House of Representative Rules and Proceedings (at page 674).

● He continued that, it was seen in the Exhibits that the Defendant did not even intend to usurp the duties of the Executive in the manner alleged by the Plaintiff.

On the issue of the National Assembly exercising its power of investigation, he relied on the case of **HOUSE OF REPRESENTATIVE V. SPDCH (2010) 11 NWLR (PT.205) 213 CA** and **SPDCN LTD V. AJUWA (2015) 14 NWLR (PT.1480) 307.**

He submitted that, it may not be out of place to argue that the Defendant can improve on its legislative duties by indicting investigation into any allegations of corruption that may arise from perceived loopholes in any law it made. Counsel urged the Court to so hold that the Defendant acted well within the powers of the Constitution.

Taking the 3 issues raised by the parties. The doctrine of separation of powers has been settled. The Legislature makes the law; the Executive operate based on the laws while the Judiciary comes in when there is a conflict or non-compliance with the laws.

Section 2 of the Civil Service Handbook which reads thus:

"Government is made of three arms, viz; the Legislature, the Executive and the Judiciary. The legislature is saddled with the following responsibilities: law making, representation, oversight and confirming the appointments of Ministers, Ambassadors, Judges, Chairmen and members of Commission etc. The Executive is responsible for day-to-day management of Government. In this content, it conceives, formulates, executes and monitors the policies, programmes and projects of the Government. The Judiciary, on its part, simply adjudicates"

In other words, once the Legislature makes the laws, it allows the operators to go to work. They do have oversight functions to ensure that the Executives are acting within the law. Where they find that the Executives are outside the law, they go to the Courts who will then interpret the laws.

● This shows the areas of overlap which is a thin thread between the 3 arms. In the instant case, the legislature has promulgated the law, i.e. the Constitution, it has created the Federal Civil Service Commission. It has vested it with powers over the following:

1. Recruitment of highly qualified personnel into the civil service based upon good educational qualifications and performance in competitive, written examinations and interviews.
2. Promotion of competent and productive senior civil servants from one grade to another.
3. Transfer of civil servants from one department to the other.
4. Disciplinary powers, like suspension or dismissal of erring civil servants
5. The power to retire civil servants and advise in the payment of their pension entitlement and allowances
6. Offering advice to the government on the appointment of suitable individuals to fill some sensitive positions in public corporation and parastatals.

If they find that the Executive are misinterpreting the law, they should approach the Courts. They do not have the power to tell the Federal Civil Service Commission who to employ or sack. They cannot dictate to the person so employed how to do the work, when to work or where to work. That is the responsibility of the Federal Civil Service Commission and the agency to which a person is employed, how he is engaged, where he is posted, what grade he is employed into and how he is disciplined and/or removed from office. He who hires has the right to fire with good reason or no reason at all.

On the issue of ensuring compliance with the laws promulgated by the Legislature, the Constitution provides in Section 150 that the Attorney General of the Federation is the Chief Law Officer of the Federation. It makes him the Chief custodian of the Constitution to ensure that the laws passed by the Legislature are complied with.

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● The Legislature can carry out the duty of investigation by virtue of Section 88 of the Constitution for the purpose of making laws for good governance etc.


The Judiciary has the powers as conferred by the Constitution, once a case has been decided by a Court of competent jurisdiction, the only remedy open to a dissatisfied litigant is to go on appeal.

The Executive and/or the Legislature is not an appeal Court provided for by the Constitution. It cannot sit on review of any decision of the Court. This is how the separation of powers works.

Consequently, I hereby answer all the questions in the affirmative and grant all the reliefs as prayed.



HON.JUSTICE B.F.M NYAKO
JUDGE
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