19/8/2015

IN THE COURT OF APPEAL
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
ON FRIDAY THE 24TH DAY OF JULY, 2015
BEFORE THEIR LORDSHIPS

JOSEPH SHAGBOAR IKYEGH	JUSTICE COURT OF APPEAL
CHINWE EUGENIA IYIZOBA	JUSTICE COURT OF APPEAL
ABIMBOLA O. OBASEKI-ADEJUMO	JUSTICE COURT OF APPEAL

APPEAL No. CA/L/414/2013

BETWEEN:

1. NATIONAL CONSCIENCE PARTY (NCP)
2. MR. YUSUF MICHAEL OMUYA

APPELLANTS

AND

1. NATIONAL ASSEMBLY OF THE FEDERAL REPUBLIC OF NIGERIA
2. THE ATTORNEY GENERAL OF THE FEDERAL REPUBLIC OF NIGERIA
3. THE INDEPENDENT NATIONAL ELECTORAL COMMISSION

RESPONDENTS

JUDGMENT
DELIVERED BY CHINWE EUGENIA IYIZOBA JCA

The 1st Respondent, pursuant to its legislative powers under Sections 4 and 228 (d) of the Constitution of the Federal republic of Nigeria 1999 (as amended) enacted a clause under section 78 (7) (ii) of the Electoral Act empowering

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LAGOS

the 3rd Respondent (INEC) to deregister political parties for failure to win a seat in the 1st Respondent or a State House of Assembly. The Appellants who considered the said clause *ultra vires* the legislative powers of the 1st Respondent instituted this suit on 14/9/11 by Originating Summons claiming as follows:

"(1). A DECLARATION that the provisions of Section 78 (7) (ii) of the Electoral Act 2010, as amended (hereinafter referred to as "the Electoral Act") is inconsistent with Article 10 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990 and Section 40 of the Constitution of the Federal Republic of Nigeria 1999, as amended (hereinafter referred to as "the Constitution") and is ipso facto null and void and of no legal effect having regard to the provision of Section 1(3) of the Constitution.

(2). A DECLARATION that the provisions of paragraph 18(1), (4) & (5) of the first schedule of the Electoral Act, contravene Section 6 (6) (a) & (b) of the Constitution and are therefore null and void and of no legal effect in view of the provisions of section 1 (3) of the Constitution.

(3). A PERPETUAL INJUNCTION restraining the 3rd Defendant from further disbanding or deregistering the 1st plaintiff or any political party in Nigeria for that matter in breach of the provisions of the Constitution.

In the Originating Summons the Appellants sought a determination of the following questions:

1. Whether the provisions of Section 78 (7) (ii) of the Electoral Act is consistent with Article 10 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990 and Section 40 of the Constitution.

2. Whether paragraph 18(1), (4) & (5) of the first schedule of the Electoral Act is consistent with Section 6 (6) (a) & (b) of the Constitution.

The Originating summons was supported by a 19 paragraph affidavit. The 1st Respondent in opposition to the Originating summons filed a 19-paragraph Counter Affidavit. The 2nd Respondent did not file any response to the Originating Summons. The 3rd Respondent on its part in opposition filed a 13-paragraph Counter Affidavit. The parties filed written addresses. The lower Court in its judgment delivered on the 6th of March, 2013 dismissed the suit as lacking in merit. Being dissatisfied with the judgment the Appellant appealed to this court on one original and with the leave of the court to raise fresh issues, 2 additional grounds of appeal. In its appellant's brief, the following issues were set down as calling for determination:-

1. Whether the provisions of section 78(7) (ii) of the Electoral Act is consistent with the provisions of section 40 of the Constitution and Article 10 of the African Charter on Human and Peoples' Rights.

2. Whether the provisions of section 78(7) (ii) of the Electoral Act is consistent with the provision of section 229 of the Constitution.

3. Whether the *ejusdem generis* principle of interpretation of statutes applies to the provisions of section 228(d) of the Constitution and whether the 1st Respondent can exercise legislative powers vis-à-vis political parties beyond the limit of the powers conferred on it under the provisions of Section 228 of the Constitution.

The 1st Respondent in his brief identified the following two issues for determination:

i. WHETHER the learned trial judge erred in law when he held that the provisions of section 78 (7) (ii) of the Electoral Act 2010 as amended is not unconstitutional.

ii Whether the ejusdem generis principle applies in the interpretation of section 228 (d) of the 1999 Constitution which empowers the 1st Respondent to enact section 78 (7) (ii) of the Electoral Act 2010 (as amended).

The 3rd Respondent adopted the issues formulated by the Appellant. This appeal can be determined under the sole issue:

Whether the provisions of section 78 (7) (ii) of the Electoral Act is constitutional and consistent with the provisions of sections 40, 221- 229 of the Constitution and Article 10 of the African Charter on Human and Peoples' Rights.

APPLLANT'S ARGUMENTS:

Marcus Eyarhono, Esq. learned counsel for the Appellants in his brief submitted that the learned trial judge erred in relying heavily on the proviso to section 40 of the Constitution in holding that the provisions of section 78 (7)(ii) is not inconsistent with section 40 of the Constitution. Counsel submitted that the apex Court has held in a plethora of cases including *AQUA LIMITED V. ONDO STATE SPORTS COUNCIL (1988) N.W.L.R. (Part 91)622 @ 625 ratio 3 and 639 D-G* and *OKULATE V. AWOSANYA (2000) 2 N.W.L.R. (Part 646) 530 @ 555 C* that in order to discover the true meaning of a section of the Constitution, all the provisions of the section must be read together and considered as a whole along with other related and associated sections of the Constitution. Learned counsel submitted that the draftsmen of the Constitution, never intended the proviso to section 40 of the Constitution to operate alone, but in conjunction

with other related provisions of the Constitution, such as the provisions of sections 222 and 228 of the Constitution on restriction on formation of political parties and the powers of the 1st Respondent with respect to political parties, respectively. He submitted that a combined reading of the provisions of sections 40 and 221 - 229 of the Constitution renders the provisions of section 78(7)(ii) of the Electoral Act inconsistent with the Constitution, and therefore null and void, having regard to the provisions of section 1(3) of the Constitution.

On whether the provisions of section 78(7) (ii) of the Electoral Act is consistent with Section 229 of the Constitution Learned counsel called attention to the last paragraph of page 13 of the lower court's judgment at page 193-194 of the Record of Appeal and submitted that the term, "Political Party" is defined in section 229 of the Constitution, as including any association whose activities include canvassing for votes in support of a candidate for election to the office of the President, Vice President, Governor, Deputy Governor or membership of a legislative house or of a local government council. He contended that the definition contains the condition of eligibility of a registered political party to continue to function as a political party and that the issue has thus been settled by the Constitution. He cited ***INEC V. MUSA (supra) @158 C-E*** Learned counsel submitted that by the provisions of section 78(7)(ii) of the Electoral Act, the National Assembly simply attempted a redefinition of the term, "Political Party" by making winning a seat in it, or a State House of Assembly, a condition political parties must fulfill in order to continue to function as political parties. He argued that the term, "Political Party", having been defined by the Constitution, cannot be redefined by the 1st Respondent in view of the provisions of section 1(3) of the Constitution. Counsel further submitted that the provisions of section 229 of the Constitution renders the provisions

of section 78(7)(ii) of the Electoral Act inconsistent with the Constitution, and therefore null and void in view of the supremacy of the Constitution as contained in section 1 of the Constitution. Learned counsel relying on the case of ***EHUWA V. O.S.I.E.C. (2006) 18 N.W.L.R. (Pt. 1012) 544 @ 595 A-C.*** submitted that the *ejusdem generis* principle of interpretation of statute applies to the provisions of section 228(d) of the Constitution, and that by virtue of same, its provisions must be interpreted within the scope and meaning of its preceding paragraphs. Counsel urged the court to note that while the provisions of section 228(a) & (b) of the Constitution are targeted at officers of political parties that may be found wanting there under (and not the political parties themselves), the provisions of section 228(c) is meant to assist and encourage political parties financially. Therefore, the 1st respondent cannot hide under the provisions of section 228(d) of the Constitution to enact the provisions of section 78(7) (ii) of the Electoral Act which is inconsistent with the letters and spirit of the preceding paragraphs to the said provisions of section 228(d) of the Constitution.

1ST RESPONDENT'S ARGUMENTS:

Alayo Akanbi Esq., who settled the 1st Respondent's brief opened his argument by submitting that this Appeal is hypothetical and amounts to an academic exercise as there appears to be no dispute between the Appellants and the Respondents; there being nothing to show that the 3rd Respondent or the 1st Respondent notified the 1st Appellant of its deregistration. Learned counsel further submitted that the 2nd Respondent in this appeal is not known to the law as 'The Attorney General of the Federal Republic of Nigeria' is not a juristic personality that can be sued. He submitted that Section 150 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) created the office of the Attorney-General of the Federation and not 'The Attorney of the Federal Republic of Nigeria'. He urged the

court to strike out the name of the 2nd Respondent and to dismiss this appeal on those grounds.

On whether the learned trial judge erred in law when he held that the provisions of section 78 (7) (ii) of the Electoral Act 2010 as amended is not unconstitutional learned counsel submitted relying on the case of ***INEC V. MUSA & ORS (2003), SC (Pt. 1) @ 322*** that Section 40 of the 1999 Constitution guarantees the right to join or form political parties and that the same Section in its proviso recognized the power conferred on the 3rd Respondent under the constitution to either accord recognition or deny recognition to political parties. Learned counsel submitted that the proviso empowers the 3rd Respondent to withdraw recognition from some already recognized political parties which do not meet up with the requirements set by the 1st Respondent (the National Assembly). Counsel submitted that the powers of the National Assembly to set such requirements as contained in Section 78 (7) (ii) of the Electoral Act 2010 (as amended) is derived from the provisions of Section 228 (d) and paragraph 15 (i) of Part A of the 3rd schedule of the 1999 Constitution. He further submitted that the requirements for the formation and/or registration of any association as a political party are as provided in Section 222 (a-f) of the constitution and that it is clear from the proviso to Section 40 of the Constitution and several other provisions of the constitution including Section 228 (d) that the political parties must not be left unregulated. He reproduced Section 228 (d) of the 1999 Constitution which provides:

> *"The National Assembly may by law provide:*
> *For the conferment on the Commission (INEC) of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively ensure that*

political parties observe the provisions of this part of this chapter".

Learned counsel submitted that the appellants' counsel had in interpreting the above provision invited this Court to apply the ejusdem generis principle of interpretation. He submitted that this approach may be necessary when the statute is ambiguous and unclear. But that where the wordings of the constitution are clear and unambiguous, those words should and must be given their ordinary meanings without resort to any rules of interpretation which would rather do violence to the spirit and letter of the constitution. He called in aid the case of **AWOLOWO VS. SHAGARI (1979) NSCC 87 AND A.G. BENDEL STATE VS. AGF AND 22 ORS (1981) 10 S.C. 1.** Counsel submitted that the interpretation of Section 228 (d) does not depend on the meaning ascribed to the different specific provisions of Section 228 (a), (b) & (c) of the 1999 Constitution.

Learned counsel submitted that the 1st Respondent is empowered to make laws that specifically cater for the criteria and other requirements for regulating political parties and that the court below was right in holding that the provision of section 78 (7) (ii) of the Electoral Act 2010 as amended is constitutional. He urged us to so hold.

3RD RESPONDENT'S ARGUMENTS:

The 3rd Respondent's brief was settled by A.F. Lawal Esq., and Bolanle Babajide (Mrs.). Therein, they submitted that Section 78 (7) (ii) of the Electoral Act (as amended) empowers the Commission to de-register a Political Party on the following grounds:

i) Breach of any of the requirement for registration

ii) For failure to win Presidential or Governorship elections or a seat in the National or State Assembly elections.

Learned counsel then submitted that forming a political party is a fundamental Right of any citizen but winning elections by any political party is a pre-requisite for the continued existence of any such political party registered with the Independent National Electoral Commission (INEC) as provided in section 78 (7) (ii) of the Electoral Act 2010 (as amended). Learned counsel set out Section 40 of the CFRN and submitted that the lower Court was right that Section 78 (7) (ii) of the Electoral Act 2010 (as amended) is consistent with section 40 of the 1999 Constitution (as amended). He also relied on ***INEC VS. Balarabe Musa & Others (2003) 1 SC PT. 1 P. 118.***

On whether the provisions of section 78(7) (ii) of the Electoral Act is consistent with Section 229 of the Constitution learned counsel submitted that the provision in Section 229 of the Constitution is very clear and unambiguous. Political parties must canvass for votes for their candidates to win elections. He submitted that Section 78 (7) (ii) of the Electoral Act 2010 (as amended) which requires every political party to win at least a seat in the National or State Assembly or be de-registered is consistent with Section 229 of the Constitution.

RESOLUTION :

I shall first consider the objection of the 1st Respondent that this Appeal is hypothetical and academic; and that the 2nd Respondent in this appeal is not known to law. The Appellant did not file a reply brief and so did not react to the objections.

On the first objection, the contention of the 1st Respondent is that the appeal is hypothetical and academic as there appears to be no dispute between the Appellants and the Respondents as neither the 3rd Respondent nor the 1st Respondent notified the 1st Appellant that it would be deregistered. This contention is with respect unsupportable. This appeal relates to the construction of the provisions of the Constitution of the FRN. An act was passed by the National Assembly which could if implemented affect the fortunes of the 1st Respondent. The 1st Respondent has the right to challenge its constitutionality even if no step has been taken to deregister it. Such a case cannot be said to be hypothetical or academic. In *Plateau State v. A.G., Federation (2006) 3 NWLR (Pt. 967) 346 @ 419 G-H,* Tobi J.S.C. defined a hypothetical or academic suit thus:

> *"A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity.....*
>
> *A suit is hypothetical if it is imaginary and not based on real facts. A suit is hypothetical if it looks like a "mirage" to deceive the defendant and the court as to the reality of the cause of action. A suit is hypothetical if it is a semblance of the actuality of the cause of action or relief sought."*

From the above definition, this appeal is far from being academic or hypothetical. The 1st Appellant is concerned as it surely has a right to be that the law passed by the 1st Respondent is unconstitutional. It was then a very live issue which is actionable and which the court is competent to decide. Kutigi JSC in the case of *Plateau State v. A.G., Federation (Supra)* opined that issues relating to the interpretation of the Constitution which is a living document are serious issues and cannot be regarded as

academic, speculative or hypothetical. This objection is consequently without merit.

The second objection is that the 2nd Respondent in this appeal is not known to the law as 'The Attorney General of the Federal Republic of Nigeria' is not a juristic personality that can be sued. It is true that Section 150 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) created the office and termed it the Attorney-General of the Federation. With due respect to learned counsel while it is desirable that the Appellant ought to have sued "the A.G of the Federation", suing the "A.G of the Federal Republic of Nigeria" is not such error as should lead to the dismissal of the appeal. Section 318 of the Constitution (Part IV Interpretation) provides that "Federation" means the Federal Republic of Nigeria. The terms consequently mean the same. It cannot therefore be said that a non juristic person was sued. No miscarriage of justice has occurred by the misnomer (if it can be called a misnomer). The proper parties are before the court and no one has been deceived. See *Ajadi v. Ajibola (2004) 16 NWLR (PT. 898) 91; Nkoku v. U.A.C. Foods (1999) 12 NWLR (pt. 638) 557; Bell v. Mohammed (2008) LPELR-3865(CA).* There is also no merit in this objection.

On whether the provisions of section 78 (7) (ii) of the Electoral Act is consistent with the provisions of section 40 of the Constitution, the appellant is right as has been held by the apex court in numerous cases that in order to properly construe a section of the Constitution, all the provisions of the section must be read together and considered as a whole along with other related and associated sections of the Constitution. In the case of *AQUA LIMITED V. ONDO STATE SPORTS COUNCIL (1988) N.W.L.R. (Pt.91) 622 @ 625 and 639 D-G* the Supreme Court observed:

"In construing the provisions of the Constitution conferring any rights, it is not only mandatory to consider the Section as a whole, it is useful to consider also related and associated sections to discover the meaning of the Section".

Also, in the case of ***OKULATE V. AWOSANYA (2000) 2 N.W.L.R.(Part 646) 530 @ 555 C,*** the Supreme Court held:

"There is no doubt that it is settled law that when interpreting the provisions of the Constitution, all its provisions must be read together".

Section 78(7a) of the Electoral Act 2010 provides

"The Commission shall have power to de-register political parties on the following grounds:

(i) Breach of any of the requirements of registration; and

(ii) For failure to win presidential or Governorship election or a seat in the National or State Assembly election."

Section 40 of the Constitution of the Federal Republic of Nigeria 1999 provides:

"Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition."

Part III D of the Constitution from Sections 221 to 229 made provisions relating to Political Parties. Section 228 (d) provides that the National Assembly may by law provide for the conferment on the Commission of other

powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that the political parties observe the provisions of this part of this chapter.

All the above provisions of the Constitution must be read together in order to ascertain their true import. Most importantly, the Constitution is the *fons et origo* of our legal system. It is supreme and any law emanating from any source in Nigeria must derive its validity from the Constitution. The legislative power of the National Assembly cannot be exercised inconsistently with the provisions of the Constitution. Where that happens, such law is invalid to the extent of the inconsistency. ***INEC V. MUSA (SUPRA).*** On whether Section 78(7ii) of the Electoral Act is inconsistent with Section 40 of the Constitution; section 40 of the Constitution allows every person the right to assemble and associate with any other person in order to inter alia form or belong to any political party for the protection of his interest. But the proviso to the section exempts the action of INEC in respect of political associations which are not accorded recognition. As far as recognition, non recognition or de-registration of political parties for reasons allowed by the Constitution or laws permitted under the Constitution are concerned, there can be no inconsistency with Section 40 of the Constitution because of its proviso. But Section 78(7ii) of the Electoral Act deals with the power of INEC to de-register parties for failure to win presidential or Governorship election or a seat in the National or State Assembly election. If such power is not given directly or indirectly by any section of the Constitution, then that provision of the Electoral Act is unconstitutional, null and void. In ***INEC V. MUSA (SUPRA) @ 231 F-H,*** the SC held:

> *"The provisions of Chapter iv of the Constitution in which section 40 is a part are sacrosanct ... Since section 40 vests in every person the right to freely associate with other persons and*

belong to any political party, an Act of the National Assembly ... ambitiously trying to take away the rights guaranteed in the section cannot stand".

The issue raised in this appeal has more or less been determined by the Supreme Court in the case of ***INEC v. MUSA (SUPRA)*** which I have already referred to severally. There, the Supreme Court considered whether the National Assembly and INEC had the power to enact an Act and Guidelines regarding registration of political parties which are inconsistent with the provisions of the Constitution. The answer it gave is of course an emphatic No! The Court at page 157 D-G once again declared the supremacy of the constitution in the following notable pronouncements:

"The Constitution is supreme, and the validity of any provision will be tested by the following interrelated propositions, that is:-

(a) All powers, legislative, executive and judicial must ultimately be traced to the Constitution;

(b) The legislative power of the Legislature cannot be exercised inconsistently with the Constitution. Where it is so exercised, it is invalid to the extent of such inconsistency;

(c) Where the constitution has enacted exhaustively in respect of any situation, conduct or subject, a body that claims to legislate in addition to what the Constitution has enacted must show that it has derived the legislative authority to do so from the Constitution;

(d) Where the Constitution sets the condition for doing a thing no legislation of the National Assembly or of a State House of Assembly can alter those conditions in any way, directly or indirectly, unless the Constitution

itself as an attribute of its supremacy expressly so authorises."

Following from the above, the National Assembly which derives its legislative power from the Constitution cannot legislate outside or beyond the Constitution. It can only do what it is empowered to do by the Constitution. Section 228(d) provides that the National Assembly may by law provide for the conferment on the Commission of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that the political parties **observe the provisions of this part of this chapter.** Does this provision empower the National Assembly to pass the law in Section 78(7ii) empowering INEC to de-register a party for failure to win presidential or Governorship election or a seat in the National or State Assembly election. This "part of this chapter" in Section 228(d) means sections 221 to 229 of the Constitution (Part 111 D of Chapter VI of the Constitution). The extent to which the 1st Respondent may make laws for the monitoring and regulation of political parties is as provided in those sections. The provision of section 228(d) is clear and unambiguous. It is not necessary to fall back on any rules of construction including the *ejusdem generis* rule to decipher the true meaning of the Section. In the case of ***EHUWA V. O.S.I.E.C. (2006) 18 N.W.L.R. (Pt. 1012) 544 @ 588 F-H,*** the SC observed:

> *"The proper approach to the interpretation of clear words of a statute is to follow them in their simple, grammatical and ordinary meaning rather than look further because that is what prima facie gives them their most reliable meaning. This is generally also true of construction of constitutional provisions if they are clear and unambiguous even when it is necessary to give*

them a liberal or broad interpretation. Fawehinmi v. I.G.P. (2002) 7 NWLR (Pt. 767) 606."

Nothing in sections 221-229 of the Constitution which are the sections envisaged in 228(d) make it a requirement that a political party must win a seat in the National or State Assembly in order to continue to be recognised as a political party. Further, Section 229 of the Constitution defines a "political party" for purposes of that part of the Constitution. It means any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice-President, Governor, Deputy Governor, or membership of a legislative house or a local government council. The definition did not include winning seats but just canvassing for votes. In the last paragraph of page 13 of the lower court's judgment at page 193-194 of the Record of Appeal, the lower Court held:

> *"I do not agree with learned counsel for the plaintiffs that the only condition that political parties need to fulfill in order to continue to function as political parties are the conditions contained in the definition of the term political party in section 229 of the 1999 Constitution which is to canvass for votes in support of a candidate for election to any of the elective offices stated therein. The political parties in my view should do more than what is required of them under section 229 of the Constitution and win a seat in any of the elective offices in the election conducted by INEC"*

No doubt it is desirable as opined by the learned trial court that political parties should do more than just canvass for votes as advocated in section 229; that they should in addition win at least a seat in the legislature. But

the appellant correctly stated the law that it is not one of the conditions of eligibility for a registered political party to continue to function as a political party in the Constitution. Again, in ***INEC V. MUSA (supra) @158 C-E,*** the apex Court held:

> *"... where the Constitution has covered the field as to the law governing any conduct, the provision of the Constitution is the authority statement of the law on the subject ... where the Constitution has provided exhaustively for any situation and on any subject, a legislative authority that claims to legislate in addition to what the Constitution has enacted must show that, and how, it has derived its legislative authority to do so from the Constitution itself".*

Neither Section 228(d) nor indeed any other section of the Constitution can be interpreted to have given the 1st Respondent the power to enact Section 78(7ii) of the Electoral Act. Learned counsel for the 1st Respondent in his brief of argument quoted the following passage from ***INEC v. MUSA (Supra) @ 125*** as authority for his contention that Section 78(7ii) of the Electoral Act is constitutional:

> ***"The National Assembly has power by virtue of Section 228 (d) of the Constitution, to confer by law powers on INEC as may appear to it to be necessary or desirable for*** *the purpose of enabling the Commission more effectively to ensure that political parties observe the provision of sections 221 -229 of the Constitution which deal with political parties, and by virtue of item 56 of the Executive Legislative List,* ***to legislate for the regulation of political parties.*** *INEC has direct power*

granted by the constitution to register political parties. Any enactment of the National Assembly referable to this purpose cannot be held invalid. By the same reasoning and guideline any regulation made by the Commission that carries into execution the same purpose cannot be unconstitutional." Underlining is ours for emphasis.

The quotation does not support the contention of the 1st Respondent. In the above passage, it was specifically stated that the National Assembly has power by virtue of Section 228 (d) of the Constitution, to confer by law powers on INEC as may appear to it to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe **the provisions of sections 221 -229 of the Constitution.** I reiterate once more that there is nothing in sections 221 - 229 of the Constitution prescribing that the continued existence of a recognised political party depended on its ability to win at the least a seat in the National or State Assembly. There is no quarrel with Section 78(7i) which empowers the Commission to de-register a political party on the ground of breach of any of the requirements for registration. But de-registration under Section 78(7ii) for failure to win at least a seat in the National or State Assembly is a different ball game. There is no constitutional backing for the provision. The Respondents' argument is that the power to enact the law is given by Section 228(d). But from the wording of Section 228(d), it is not in doubt that the power given is to enable the commission more effectively to ensure that the political parties observe the provisions of this part of this chapter. The sections in that part of the chapter are sections 221-229. There is nothing in any of those sections that a political party must win at least a seat in the National or State Assembly for its continued

existence. I agree with learned counsel for the Appellants that the way and manner political parties are to be regulated and the extent to which the 1st Respondent may make laws for the monitoring and regulation of political parties, are as provided in section 222-229 of the Constitution, and that the provisions of section 78(7) (ii) is not consistent with these provisions. In ***INEC V. MUSA (SUPRA) @ 160 C-E***, the Supreme Court held:

> *"There is no doubt that the Independent National Electoral Commission has power to register political parties and the National Assembly can legislate in regard to the exercise of those powers. Where, however, in the exercise of its legislative power to make laws to provide for the registration, monitoring and regulation of political parties, the National Assembly purports to decree conditions of eligibility of an association to function as a political party, it would have acted outside its legislative authority as stated in the Constitution".*

Clearly, the National Assembly here decreed conditions of eligibility of a registered political party to continue functioning as a political party outside the provisions of the Constitution. A right conferred by the Constitution cannot be taken away by any other statutory provision except by the Constitution itself. Section 78(7ii) of the Electoral Act is inconsistent with the provisions of the Constitution. ***INEC v MUSA (SUPRA); A.G. ABIA STATE V A.G. FEDERATION (2002) 6 NWLR (PT. 763) 264***. It is null and void.

In the final result, I hold that this appeal has merit. It is hereby allowed. The judgment of Abang J of the Federal High Court Lagos delivered on the 6th day of March 2013 is hereby set aside. In its place, Reliefs 1 and

3 of the originating summons dated 14/9/11 are granted as prayed. I make no order as to costs.

CHINWE EUGENIA IYIZOBA
JUSTICE COURT OF APPEAL

COUNSEL:

ALAYO AKANBI ESQ., for the 1ST RESPONDENT.

APPELLANTS, 2ND AND 3RD RESPONDENTS not represented.

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Date.....19/8/2015
NOSA OMOSIGHO
HIGHER EXECUTIVE OFFICER II
COURT OF APPEAL
LAGOS

CA/L/414/2013

JOSEPH SHAGBAOR IKYEGH, J.C.A.

I had the honour of reading in advance the judgment prepared by my learned brother, **Chinwe Eugenia Iyizoba, J.C.A.**, in which I concur with nothing extra to add.

JOSEPH SHAGBAOR IKYEGH
JUSTICE, COURT OF APPEAL

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Sign.....
Date.....
19/8/2015
NOSA OMOSIGHO
HIGHER EXECUTIVE OFFICER
COURT OF APPEAL
LAGOS

CA/L/414/2013

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO

I have read earlier in draft the judgment delivered by my learned brother **CHINWE EUGENIA IYIZOBA, JCA** and I am in total agreement with his lucid reasoning contained therein and the conclusion arrived thereat.

My Learned brother has carefully treated the issues canvassed in the appeal in such an eloquent manner that I have nothing useful to add.

I adopt the reasoning and conclusion contained in the lead judgment to hold that this appeal is meritorious and it is hereby allowed. I abide by the consequential orders made therein.

ABIMBOLA OSARUGUE OBASEKI - ADEJUMO
JUSTICE COURT OF APPEAL

C.T.C — ₦1,000.00
CR2 0105193397 Pd

COURT OF APPEAL Cashier's Office Date 19/08/15 LAGOS NIGERIA

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Date.....19/8/2015

NOSA OMOSIGHO
HIGHER EXECUTIVE OFFICER II
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