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## Case Comment: Peoples Democratic Party (PDP) & Ors. vs Biobara - Many Faces of the Supreme Court of Nigeria: A Review of the Bayelsa Gubernatorial Election Judgement

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### INTRODUCTION

The circumstances of the case were that the 2nd respondent, David Lyon was nominated by the All Progressive Congress (APC) to run for governor of Bayelsa State in Nigeria. He chose the first respondent to be his running mate. The APC provided the names, personal information, and particulars of the 1st respondent and other respondents to INEC in accordance with section 31 (1)<sup>1</sup> of the Electoral Act (EA) which were legally sworn to by the respondents in accordance with section 31 (5)<sup>2</sup> of the EA. Peoples' Democratic Party (PDP) which was the appellant filed a suit in the Federal High Court, alleging that the material contained therein was fraudulent. They sought the court to disqualify the 1st respondent under section 31 (6)<sup>3</sup> of the EA. They claimed that the 1st respondent's name on his sworn INEC Form C F001 was BiobarakumaDegi - Eremienyo; his name on his school-leaving

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<sup>1</sup> Electoral Act, 2011, s 31(1)

<sup>2</sup> Electoral Act, 2011, s 31(5)

<sup>3</sup> Electoral Act, 2011, s 31(6)

certificate issued in 1978 was DegiBiobragha; in his affidavit of correction and confirmation of name sworn on August 9, 2018, he stated that his correct name was BiobarakumaDegi; his WAEC/GCE in 1984 bears the name AdegBrokumo. In another affidavit of name regularization, he claimed that while retaking the WASC examination, the alphabet 'A' was unintentionally added to his surname, resulting in the following: "BiobakuwaWanagbaAdegi," which was captured in the certificate he acquired.

The appellant requested that the court determine that the 1st respondent had supplied false information to the Independent National Electoral Commission because of his several names (INEC). On November 12, 2019, the Federal High Court ruled that "the suit disclosed no reasonable cause of action; that the suit should not be heard on originating summons because various affidavits exchanged were seriously in conflict; and that the 1st respondent provided false information about his name," disqualifying him as the APC governorship candidate's running mate.

On November 13, 2019, the APC filed two notices of appeal with the Court of Appeal. The appeal was upheld by the Appeal Court, which ruled as follows:

*That the suit did not disclose any reasonable cause of action to warrant the disqualification of the 1st respondent; that the originating process was not appropriate for the instant case; that the allegation that the 1st respondent provided false information to INEC in his form is an allegation of perjury that must be proven beyond a reasonable doubt, and that it was not proven beyond a reasonable doubt in civil proceedings where averments alleging crime are severable; and that the originating<sup>4</sup> process was He who affirms bears the burden of proof, not the person who denies.<sup>5</sup>*

## **ISSUE OF JOINT TICKET AND SUPREME COURT DECISION**

As a result of the difficulties raised in the preceding pages, the question of the Governor's combined ticket with his Deputy comes to the fore. The Deputy Governor's ticket complements the Governor's ticket, which is the major candidate in an election, as a truism or

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<sup>4</sup> *Action Congress of Nigeria v Nyako* (2012) LCN/3908 (SC)

<sup>5</sup> *Nwobodo v Onoh* (1984) 1 SCNLR 32

axiomatic. Disqualifying the Deputy Governor while allowing the Governor to continue in office is untenable. In the case of *Balewa v Mu'azu*,<sup>6</sup> the running mate of Bauchi State Governor (Mu'azu) was adjudicated upon by the Supreme Court in 1999 for producing a forged certificate. The election was declared null and void, and a new election was ordered. In the case of *PDP v INEC*,<sup>7</sup> Atiku Abubakar had already won<sup>8</sup> the governorship election in Adamawa State with Boni Haruna as his running mate when he was chosen as a running mate by President Olusegun Obasanjo in 1999. According to the Supreme Court, Haruna should take the office because they won on a combined ticket and they both own the win. They were both qualified and competent, neither of the two legs was faulty or broken. The only situation<sup>9</sup> the court had to deal with in the case was the Governor's failure to elect to take office, and the court interpreted the term "die" in section 37(1) of Decree No. 3 of 1999 to include "disappearance," "non-availability," and other similar terms, allowing the Deputy to fill the Governor's shoes. In 2007, the Supreme Court removed<sup>10</sup> Governor Omehia of Rivers State but kept his Deputy Ikuru. The case of late Audu, the APC governorship candidate in Kogi State, whose election was deemed inconclusive by INEC in 2015, comes to mind. Even though they ran on the same ticket, James Faleke was unable to inherit Audu's votes in the stated election. His hopes were shattered when the APC picked a new gubernatorial candidate due to the election being ruled inconclusive. It was a strange legal jurisprudence that neither the 1999 Constitution nor the EA anticipated.<sup>11</sup>

In 2019, the same Supreme Court penalised David Lyon of the APC for the faults of the Deputy Governor because they ran on the same ticket. It is apt to say that the Governor is the only proprietor of the ticket and that his running partner is merely there to support him. The Supreme Court's many faces were on display in these opinions. It is commonly stated that a combined ticket of candidates cannot be separated in law after the candidates have been

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<sup>6</sup> *Balewa v Mu'azu* (1999) 7 NWLR (Pt. 609) 124

<sup>7</sup> *PDP v INEC* (1999) 11 NWLR (Pt. 626) 200

<sup>8</sup> Joseph Onyekwere, 'Controversial Supreme Court Judgments Redirect Public Attention to its Image' (*The Guardian*, 25 February 2020) <<https://guardian.ng/features/law/controversial-supreme-court-judgments-redirect-public-attention-to-its-image/>> accessed 23 February 2022

<sup>9</sup> *Ibid*

<sup>10</sup> *Amaechi v INEC* (2008) 5 NWLR (Pt 1080) 227

<sup>11</sup> Election Act, 2011, ss, 27, 33, 36, 39 and 40

returned elected.<sup>12</sup> Section 187<sup>13</sup> of the Constitution allows for a combined ticket. Whether the governorship candidate and his running mate succeed or fail together is a foregone conclusion. In terms of the 2019 gubernatorial race, their fates are interwoven. Section 31(5) of the EA 2010 (as amended) provides that an individual who has reasonable grounds to believe that any information given by a candidate or any document submitted by that candidate is false may file a lawsuit against that person in a State or Federal High Court, seeking a declaration that the information contained in the affidavit is false. The Court has the authority under section 31 (6) of the EA to disqualify a candidate if the court discovers that the information provided is fraudulent. In compliance with section 187 (1) (2)<sup>14</sup> of the Constitution, which permits a joint candidanship, the PDP's candidate challenged Mr. DegiEremienyo's credentials, and by extension the qualification of the APC governorship candidate based on constitutional provisions. Based on a common reading of section 187 (1) (2) of the Constitution and section 31 (5) (6) of the EA, the Supreme Court specifically decided that the APC governorship candidate and his running mate were deemed not to be candidates during the governorship election held in Bayelsa State.

Deducible from the above is that in November 2019, the duo were *ab initio* not qualified to stand for the said election. The decision reflects the principle of law elucidated in *McFoy v UAC*<sup>15</sup> that nothing can be built on nothing and expect it to stand. The duo was *ab initio* ineligible to run for the election as evidenced by the fact that they were not qualified to run in the first place. If the Supreme Court had upheld the APC candidate's election despite the party's deputy governorship candidate's lack of qualifications, it would simply be perpetuating injustice. As it is a combined ticket, the invalidation of one has an effect on the other and results in the nullification of the other. After Bayelsa State Governor Diri of the Peoples' Democratic Party (PDP) was sworn in. On Thursday, February 15, 2020, the APC filed a judicial review in the Supreme Court claiming that the apex court misinterpreted the Federal High Court's decision. That the Supreme Court erroneously and inadvertently stated in its

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<sup>12</sup> *Ibid*

<sup>13</sup> Constitution of India, 1950, art.181

<sup>14</sup> Constitution of India, 1950, art.181(1) (2)

<sup>15</sup> *Mcfoy v UAC* (1961) 3 All ER 1169

February 13, 2020 judgment that, even though the Supreme Court consequently disqualified the applicant governorship candidate; even though the trial court made no such order to grant the express order sought by the plaintiff therein praying for his disqualification; the Supreme Court lacked the jurisdiction to do so. They also criticized INEC's interpretation of the Court's jurisdiction in declaring the PDP the election winner and issuing Diri a certificate of return after withdrawing the same from David Lyon of the APC. As a result, the APC urged the Court to overturn its decision, asking INEC to announce the candidate with the most votes as the winner of the governorship race. The Supreme Court ruled on February 26, 2020, that the appellants' motion to review the governorship election judgment in Bayelsa was vexatious, frivolous, and an abuse of the court process. The apex Court awarded ₦10,000,000:00 (ten million nairas) costs to each of APC's lawyers, claiming that the suit brought on their behalf lacked merit and was thus rejected. As a result, the Court maintained the decision and denied the APC's request for a review of the February 13, 2020 decision.

Suffice to state unambiguously, that the Supreme Court has the authority to issue orders that are consequential, incidental, or substantial<sup>16</sup>. When it comes to reviewing a judgment, it is common knowledge that once a court issues a decision, it becomes *functus officio*<sup>17</sup> and cannot change it unless there is a statutory provision allowing it to do so.<sup>18</sup> Judicial review has three purposes; First, it ensures that justice is achieved by overturning erroneous decisions made by lower courts. Second, lower courts have an incentive to accurately interpret the law since their decisions may be overturned by appellate courts, which keep track of lower courts' performance. Third, legal disputes are investigated and resolved in order to provide Courts and citizens with potential direction. The highest court's principal concern is this third duty, and it normally agrees to hear appeals only at her discretion. The Supreme Court has the power to overturn its own decisions. The right to review must be granted by statute, either explicitly or implicitly. Nothing prevents a court from correcting a mistake in a ruling if it was made by mistake and its existence would result in a miscarriage of justice. A legal challenge is a serious subject. The authority of review is only revoked in exceptional circumstances. Review

<sup>16</sup> *Emehor v Okowa* (2016) 11 NWLR (Pt. 1522) 51

<sup>17</sup> *Statoil (Nig.) Ltd v Inducon (Nig.) Ltd* (2014) 9 NWLR, (Pt. 1411) 43

<sup>18</sup> *A.A Ahmed & Co v AIB Ltd* (2001) FWLR (Pt. 39) 1556

is not permitted unless there is a clear omission, mistake, or error. Though the Supreme Court has inherent powers to set aside its decisions<sup>19</sup>, this inherent capacity cannot be transferred to an appellate jurisdiction as if the case before it were an appeal in order to revive or reorganize the appeal. The Supreme Court has the power to overturn a consequential order issued on the basis of a faulty legal interpretation.

## CONCLUSION

The Supreme Court should endeavour to make appropriate explanations when a review or deviation from a previous decision is required. The Supreme Court is an *alter ego*, an apex Court, whose decisions are binding on all. It should remain relevant and safeguard her independence, as well as serve as a model and light of hope for the development of our legal system and citizenry.

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<sup>19</sup> *Emekalhedioha v Hope Uzodinma* (2019) SC1462/2019