A CRITIQUE OF JUDICIAL NON INTERFERENCE IN THE INTERNAL/DOMESTIC AFFAIRS OF POLITICAL PARTIES: PEOPLES' DEMOCRATIC PARTY V SYLVA[1] IN PERSPECTIVE

BY

DR. FRANCIS M. KWEDE*

Introduction

Generally, political parties play a very vital role in the development and sustenance of democracy. In most African countries, and particularly Nigeria, political parties even play greater role in the fledgling democratic process. This is so because most legal regimes relating to election have no provision for independent candidacy. Political parties therefore provide the only platform for people with political ambition to actualise their ambition.

To support the above assertion, Section 221 of the Nigerian constitution (as amended) provides that "No association, other than a political party, shall canvass for votes for any candidate at any election". Section 222 on the other hand further provides that no association by whatever name called shall function as a political party unless

(a) The names and addresses of its national officers are registered with the Independent National Electoral Commission.[2]

From the foregoing therefore, political parties have so much power to wield in shaping Nigeria's political culture and electoral process.

That political parties perform very useful functions particularly in a liberal democracy cannot be over emphasized. Ujo is of the view that:

> On of such functions is that of national integration. He asserts further that even if a political party does not form a government, it may still have an important role to play in the political system as an agent of national Integration. Individuals, who identify themselves with national party, identify with the entire political system.[3]

It should be pointed out that political parties in Nigeria often times adopt anti democratic means to produce party flag bearers. This singular conduct usually rubs up on the entire political environment, creating disenchantment and determination by those bruised in the process to brood vengeance. This has had debilitating effect on Nigeria's democracy effectively taking off aground.

Most of the political parties have very beautiful provisions in the

---

[1] (2012) All FWLR (Pt.637) 606 SC

* Dr. Francis M Kwede is a Lecturer in the Department of Public Law, Faculty of Law, University of Jos.

[2] The Independent National Electoral Commission is the body charged with the responsibility of organizing, supervising and conducting election in all National Elective offices. It is created by section 153(f) of the 1999 Constitution (as amended)

[3] Ujo A.A. Understanding political parties in Nigeria, Klamidas Communications Ltd, Kaduna, 2000 p. 14

constitutions relating to the emergence of party flag bearers. It is worth noting that these provisions are observed more in breach than anything else. It is common ground that most of the party executives simply hand pick those they think they will be able "to control". The party primaries are therefore usually but subterfuge and a sham thus leaving many aspirants and particularly their supporters feeling badly bruised. This no doubt results in political disquiet and litigation for those who choose to be civil enough and yet for others, they brood venom. This is one of the causes of several political crises that have engulfed Nigeria. The case under review bears the overbearing nature of political parties.

History of non-judicial intervention in internal affairs of a political party in Nigeria

Generally speaking, it would appear that the equivalent of the rule of judicial non interference in the affairs of organisations was first enunciated in the rule in **Foss** v. **Harbottle**[4]. In Nigeria, since the decision of the apex court in the case of Onuoha V. Okafor[5] on judicial non interference in the internal affairs of political parties, the courts have stuck to this decision not minding the relevant provisions of the law and the changes in the political environment which has increasingly become driven by political touts and desperation to acquire political power as a weapon to show case superiority to political adversaries.

The case of Onuoha v. Okafor was predicated on the provisions of section 83 (2) Electoral Act, 1982 which provides that:

(2) Where there is doubt as to whether a candidate is sponsored by a political party, the commission shall resolve same by consulting the leader of the political party concerned.

With the greatest respect to my lords, the Supreme Justices, this provision is clear and unambiguous. In interpreting the above provision in Onuaha v. Okafor, the Supreme Court held that:

> The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. In other words, this is a domestic issue and not one as would be justiciable in a court of law. This is because the power and the right to *nominate* and *sponsor* a candidate to an election are vested in a political and the exercise of this right is the domestic affair of the party...

This decision has become Nigeria's *locus classicus* in this area of

[4] (1843) 2 Ha. 461 . It needs to be pointed out here that even the rule in this case admits of exceptions. See for instance the exceptions listed in Orojo J.O *Nigerian Company Law And Practice*, Sweet and Maxwell, London, 1976, pp 309-313. It is also in the pursuit of the need to address abuse of "Corporate Form" that pervaded companies and other organisations under the common law as is the case in **Salomon V Salamon** (1897)AC, 22 that the doctrine of "Corporate Veil" had to be removed. Under this rule, it has often been supposed that a veil is cast over the personality of a limited liability company through which the courts cannot see, presently, the courts can and do pull off the mask to see what is really behind it.See R V Secratary of State for Transport ex parte, Factortame Ltd. (No.3) (1992)QB, 680,Jones V Lipman(1962)1All ER.422.

[5] (1983)2 SCNLR, 244, (1983)14NSCC,494.

Law and the apex court has held firmly unto it in spite of several provisions in the Law permitting a paradigm shift.

Facts in Sylva's Case

It is necessary to recount the facts of the case. There is no doubt that the 1st Respondent in this case is a member of the Peoples Democratic Party (PDP)[6], having won an election under its banner and served as the governor of Bayelsa State, Nigeria, from 2007 to 2012. The election which saw the 1st respondent in this case Timipre Sylva become governor of Bayelsa state in 2007 was successfully challenged in court, leading to a re-run election. The 1st respondent herein won the re-run election. Accordingly, he took a fresh oath of office[7]. He was therefore surprised at the Independent National Electoral Commission's (INEC) declaration that the gubernatorial election for Bayelsa state would hold in April 2011. He therefore went to court to challenge such declaration. The 1st respondent believed that having taken a fresh oath of office, his tenure started to run from then. The court entered judgment in his favour stating that his tenure would end on May, 28th, 2012 as against May, 28 2011. Preparatory to the election in 2011, the Constitution of Nigeria and the Electoral Act 2010 (as amended) require political parties to organize party primaries from which flag bearers would emerge[8]. The parties are required by law to submit those who successfully emerge from the party primaries to the Independent National Electoral Commission (INEC)[9].

Following the above stated requirement of law, while the 1st respondent's suit was still pending in court, the PDP conducted party primary for the gubernatorial seat of Bayelsa state in which the 1st respondent participated and emerged as its flag bearer. His name was accordingly forwarded to the INEC.

Following the judgment of the court in favour of the 1st respondent, INEC cancelled the election it had earlier fixed for April, 2011 and waited for 2012 when the 1st respondent's tenure would end in May.

Preparatory to the 2012 election, The PDP screened the candidates and conducted yet another primary for the gubernatorial seat of Bayelsa state jettisoning the one earlier conducted in 2011 which the 1st respondent emerged as its flag bearer. The 1st respondent again headed to court to challenge this fresh primary election, as according to him, the primary election which had earlier been conducted and which he emerged as the party flag bearer still held sway. Notwithstanding that he was contesting

[6] PDP is one of the registered political parties in Nigeria. It has been the ruling political party in Nigeria since Nigerian return to democracy in 1999.

[7] By section 185 of the 1999 Constitution(as amended), a person elected to the office of the governor of a state shall not begin to discharge the functions of that office until he has taken and subscribed the Oath of Allegiance and Oath of office. Section 80 (2) (a) of the same Constitution requires a governor to vacate his office at the expiration of four years from the date he first took the Oath of office.

[8] See section 177(1) of the 1999 Constitution (as amended) and section 87(1), (4)(b) and (9) of he Electoral Act.

[9] See section 85 and 86 of the Electoral Act, 2010 (a)

the conduct of the fresh primary election; he nonetheless appeared before the screening committee *under protest.* He was however screened and cleared. He was accordingly issued a clearance certificate and a summary of report of the screening exercise.

Surprisingly, the PDP and the INEC published the names of candidates for the primary election and excluded his name. This was to set in motion the chain of events that followed. He wrote to both the PDP and the INEC protesting. Contrary the electoral guidelines, the Gubernatorial Screening Appeal Panel invited him to appear before them. Upon appearing before the panel, he was confronted with an anonymous petition challenging his candidature on security grounds. He responded and was accordingly cleared.

By an originating summons, the 1st respondent sought the intervention of the court seeking declaratory and injunctive reliefs against the appellants. The affidavit supporting the originating summons is so revealing and has succinctly brought out the facts. For instance the 1st respondent stated as follows:

1. That "exhibit L" (This clearance certificate) has not been set aside nor withdrawn till date as the appeal members were satisfied with his explanation before them.
2. That he has severally demanded before now both orally and in writing, for the reason for the 2nd and 3rd defendants' failure to publish his name as an aspirant in the scheduled gubernatorial primary but no explanation has been given by the 2nd defendant...
3. That the failure to publish his name as one of the aspirants of the Bayelsa state governorship primary election is calculated to exclude him from the designed primary election billed to take place in Bayelsa state on 19 November,2011 as the delegates will not recognise him as an aspirant.
4. That his personal enquiry reveals that it was the "national working committee" of the PDP, the 1st defendant herein chaired by the 2nd defendant that initially decided that "my name should not be published as an aspirant for fear of winning the primary election again."
5. That the National Executive Committee (NEC) of the PDP, the 2nd defendant herein, through its screening or screening appeal never disqualified him from the primary election now scheduled 19 November, 2011.
6. That under the Peoples' Democratic Party's constitution, the defendant is bound by the decision of the screening appeal panel and the national executive committee.

Needless, to say from the facts of the case, up to the time of primary and gubernatorial elections were held, the 1st respondent was not given any reason in writing for being excluded from participating in the election. Of course it bears no repetition to say at this point that

Sierake Dickson is now the executive governor of Bayelsa state, having emerged victorious from the political manoeuvres that are reminiscent of party politics in Nigeria.

Suffice it to say that Nigerian law reports are replete with cases of the plight of people who have one way or the other suffered deliberate exclusion from participation in elections because of the high handedness of political parties.[10]

It is this key role of the political parties in the emergence of party flag bearers and the near "supportive" decisions of the courts and particularly the apex court - the Supreme Court, which we seek to, x-ray here. In this exercise, we seek to recommend that the time has come for the courts to deprecate the conduct of Nigerian political parties and to depart from the time honoured principle of "non-justiciability of the internal affairs of political parties." This departure should be an exception to the rule of "non justiciability of the internal affairs of political parties." as envisaged in the legal parlance that "to every general rule there is an exception."

While it is admitted that democratic rules should have universal applicability, yet we should not also shy away from the fact that every democracy should chart a particular convenient course because of its very peculiar environment and operators.

The Supreme Court's Decisions on the Subject Matter

In the case under review, the Supreme Court, after reviewing various judicial cases and statutory provisions of the Nigerian Constitution and the Electoral Act, 2010 (as amended) held that:

> The right to nominate or sponsor a candidate by a political party is a domestic right of the party .A political matter within the sole discretion of the party. A member of the party has no legal right to be nominated/ sponsored by his party. *A court thus has no jurisdiction to determine who a political party should sponsor. Nomination or sponsorship of a candidate for election is a political matter solely within the discretion of the party*, and this is so because the sponsorship or nomination of a candidate is a pre-primary election affair of the party....the provision of section 87(9) (supra) in my view ,has not derogated from the established principle of non-justiciability of a party's wide discretionary power in choosing one of its members for elective office, particularly so in this case as regards the governorship position for Bayelsa state in the April, 2012 election.

In a recent similar recent case of Emenike V. P.D.P[11] bordering on

[10] See for instance cases like Okafor V Onuoha (1983)14, NSCC 494 ,Dahatu V Turaki (2003)FWLR,(Pt.174)247

[11] (2012)12 NWLR (Pt.1315) 556 at 596,589-599.

the nomination of candidates by a political party, the Supreme Court of Nigeria also had this to say:

> The question of the nomination of candidates for elective offices from members by a political party is governed by the rules, guidelines and constitution of the political party concerned as a matter of internal affairs of the party *concerned therefore its a question which is non justiciable in a court of law. .. A member who is aggrieved has no cause of action which can raise any question onto the rights and obligations of the member determinable by a court of law* (emphasis supplied).

Interestingly, the Supreme Court further observed in the same case that

> that the appeal; has *raised a pervading question that has lately featured in most election matters of this nature in this court...* in most cases as in the instant one, an aspirant would allege the violation of the party's internal rules, guidelines and constitution and even the spirit and letter of the Electoral Act, 2010 (as amended) in the selection, nomination and adoption of candidates for elective offices.

The Supreme Court has often rationalised its basis for judicial non interference in the internal affairs of political parties on the fact that:

> The basic rational behind the principle of law that of law cannot be involved in the domestic affair of a nomination of a candidate or candidates for primaries by a political party is that since parties have freely given their consent to be bound by the rules and regulations of a political party, they should be left alone to be governed by such rules and regulations. In other words, once persons have freely mortgaged their conscience to a situation, a court of law should not interfere...[12]

The apex court has also acknowledged that:

> As a political opportunity, some leaders of some political parties exploited the non interference stance and policy of the courts to undermine internal democracy and impose their preferred candidates on the political parties irrespective of the wishes and feelings of their members.
>
> Additionally, in Onouha's case (supra) the Supreme Court also acknowledged that a situation where a political party encouraged and permitted a person to strive towards the realisation of his constitutional right to vote and be voted into office by allowing such a person to fully participate in all the processes leading to the election including

[12] See Dalhatu V Turaki (supra) at page 27299.

collecting the candidate's money only to turn its back against all the obvious solid grounds that entitles him to be the candidate of the party, smacks of dishonesty and fraudulence on the part of the political party.

Review

With the greatest respect to the apex court, their judgments on this subject have consistently fully acknowledged the fact that the emergence of party flag bearers has consistently had problems. For instance apart from the above, the court has also acknowledged the fact that cases relating to the breach party's internal rules have become recurrent decimals before it and also the fact that political leaders have the propensity to exploit its stance of non interference to their advantage.

This certainly speaks a lot about Nigeria's peculiar political environment and therefore calls for urgent remedial measures and the need for the courts to intervene. The courts cannot keep shying from wielding the big stick in the face of such recurrent, damning spectacles and conduct of some few political cabals. This, to our mind is indicative of one thing and that is that there is something wrong with the political parties in Nigeria in the management of their internal affairs.

Needless to state that the effect of this supreme court's decision is deeply unsettling and disturbing and has far reaching effect on the role that political parties must do to shape and advance Nigeria's fledgling democracy. The apex court needs to remove the "veil" that political parties doth themselves with in the name of "their domestic or internal affairs". If organizations flaunt or do not observe their own rules, guidelines and constitutions, who else can do that for them? The constitutions, rules and guidelines of the political parties constitute a contract between the political parties and each member and a breach of such thereof should not be without a remedy. To allow them to get away with obvious breaches is to set the stage for self help and anarchy. The prize of having people who do not pass through the thresh hold of the political process occupy public office enormous and unquantifiable both on the people and the economy.

It must be pointed out that political parties in developed democracies like the USA,UK, Canada, Israel to mention just a few, do not exhibit such stark abuses and high handedness when it comes to the selection and/or choice of party flag bearers as obtainable in emerging democracies like Nigeria.

From all intents and purposes, Nigerian courts have to balance the need to allow a political party to run its affairs and the need to promote, advance, protect and that sustain the tenets of democracy. This is more so that Nigeria practices constitutional democracy with great emphasis on constitutionalism and the rule of law. In a constitutional democracy, sovereignty rests in the generality of the people and not in the hands and wishes of a very few political class lording it on others and the political the system with concomitant effect on Political and economic development

generally[13]. Once the political process leading to the emergence of candidates is flawed, at that point sovereignty is lost.

For instance, the Legislature, being mindful of the political environment obtainable in the Nigeria and having the benefit of hindsight, given the fact many of them may have variously passed through the same challenges to get to the National Assembly, for the first time in the history of Nigeria's electoral law made provision in the Electoral Act 2010 (as amended) permitting a candidate who is dissatisfied with the manner any primary election has been conducted, to challenge the overcome of such primary election in a court of law.

By virtue of section 87 (1), 4(b) and 9 of the Electoral Act 2010 (as amended), a political party seeking to nominate candidates for elections under the Act shall hold primaries for aspirants to all elective positions. In the case of nominations to the position of governorship candidate, a political party shall they intend to sponsor candidates:

(i) hold a special congress in the state capital with delegates voting for each aspirant at the congress to be held on a specified date appointed by the National Executive committee (INEC) of the party; and

(ii) The aspirant with the highest number of votes at, the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party for the particular sate.

The proviso to the said section is couched beautifully and can be paraphrased as saying that notwithstanding the provisions of the Act or the rules and regulations of a political party, an aspirant who complains that any of the provisions of the Act and guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court or High Court of a state or the Federal Capital Territory for redress.

The proviso in section 87 is commendable and an effort to depart from the past. To our mind it has no doubt removed the aged long veil with which some political cabal have masqueraded themselves under to perpetrate and perpetuate illegality in the polity and thus have held the political terrain hostage.

In enacting section 87 of the Electoral Act, 2010 (as amended), it would appear that National Assembly was guided and driven by the need to give effect to the provisions of section 6(6) of the 1999 Constitution (as amended) which empowers the courts to exercise judicial powers and which may

> (b) Extend to all matters between persons, or between government authority and to any person in Nigeria and to all actions and proceedings relating thereto for the determination of any question unto the civil rights and obligations of the

[13] See section14 (1)and(2) of the 1999 Constitution (as amended)

person.

If the courts remain naive to the several gimmicks political parties employ and particularly, some power brokers within the parties who see the political parties as nothing but the extension of their personal estates, there is no doubt that instead of the political parties advancing the course of democracy in Nigeria, they will rather rock the boat.

Judicial activism is what the courts are called upon to do at the point of Nigeria's political development. To insist that a person aggrieved by the outcome of the conduct of political parties must show evidence of participation is to our mind, too restrictive an interpretation of the said provisions of section 87(9) of the Electoral Act.

It must be observed that indeed the Justices of the apex court adverted their minds to the novel provisions of section 87 (9) the Electoral Act 2010 (as amended). Their Lordships held that:

> On the facts of this case, however, the 1st respondent lacks the *locus standi* to challenge the immediate party primaries for the gubernatorial election slated forApril,2012 *as he has not taken part in the said party primaries as an aspirant* ***as he has been excluded from the said process by the party****...for a member to institute an action relying on section 87(9)supra, he must have been an aspirant in the sense of one who has fully participated in the said party primary...* (emphasis supplied)

With the greatest respect to the learned Justices of the apex court, this is exactly the point we seek to draw the Lordships attention to. If the court acknowledges that a candidate can be excluded from party primaries, to our mind, this then invites their Lordships to proceed further to interrogate the grounds and/or reasons for such exclusion. It is only then, that in our respectful opinion that the court would not be said to have abdicated its responsibility of being the last hope of the common man.

> Exclusion or [to exclude] has been defined to mean...to **deliberately not include** something in what you are doing or considering...as the act of preventing somebody or something from entering a place or taking part in something...the act of deciding that something is not possible.[14] (Emphasis supplies)

It is deductable from this definition that a person can be lawfully or unlawfully and thus deliberately prevented from participating in any process. It is only natural that any such person prevented from participation in any process should be given reasonable explanation.

Advancing reasons for excluding a candidate has its advantages. First, the reasons advanced for the exclusion, if reasonable will go a long way in making the person so excluded not to harbour ill feelings against anybody within the party and thus promote cohesion and understanding.

Secondly, the mistakes accounting for the exclusion would be

[14] Wehmeier S. (ed) *Oxford Advance Learner's Dictionary* Oxford University Press,(2000) p. 40127

avoided in the future not only by the person so excluded but by other party members. Any inability to advance reasonable explanation for the exclusion leaves the person badly bruised, hanging in the balance with a determination to avenge at the slightest opportunity.

It may be argued that a person so deliberately excluded may seek remedy in damages. In Nigeria, the political parties so behave in a manner that if an aggrieved member takes his party to court to seek damages or for any other reason, such a person suffers pariah treatment from the rest of the party members particularly from the party hierarchy. He is seen as a disloyal member. Therefore once a member loses an opportunity to contest a political position, he is unlikely to want damages. Damages can hardly assuage such deliberateness. The Supreme Court held in the case of Amaechi V INEC[15] "that there was no remedy in the laws or at common law provided for a case of wrong substitution of political candidate who won primaries with a person a person who did not contest primaries at all." Likewise, we think that no remedy would satisfy a person who is unjustly stopped from participating in party primaries in preference for a hand picked candidate

Furthermore, we think that if people get contented with damages, those who get involved in the deliberate act of excluding others in preference to their protégé will be emboldened to do more and thus debilitate democracy in Nigeria.

Additionally, if the courts maintain the stance that for a person to have access to the courts to be able ventilate his grievances when he is excluded, he must have participated in the party primaries, in our respectful opinion defeats the novel provisions of section 87(9) which is intended to address the crass abuses which hitherto obtained leading to the enactment of the said provision.

It is to be further observed that usually what the political parties do is to simply hand pick preferred candidates to the exclusion of all other aspirants and submit to the INEC without organizing the primaries and where they do, they do so in clear breach of the extant regulations. In such circumstance a person who has been excluded from participation at that level does not qualify as an "aspirant" in the context enunciated above.

It thus appears potent to us to suggest that instead of the courts insisting on evidence of participation from the aggrieved person who, apparently has no control over the machinery of the party, the courts should rather insist on evidence of exclusion from the aggrieved party. Rules can be made by the court to require an aggrieved party in such a circumstance to start an action *ex parte* (without putting the other party on notice).This is in order to establish to the court whether in fact from

[15](2008) All FWLR Pt.407 1 at 46., (2008) 5 NWLR (pt.1080) P.227

the evidence filed before it, there is a prima facie case that has been made against the defendant or the political party as the case may be. If a prima facie case of exclusion is established, the substantive action can then commence expeditiously.

Lamenting the practice where political parties simply employ undemocratic practice in the process of the submission of candidates to the INEC and thus over heat the polity, the chairman of the INEC had this to say:

> During the 2011 election, we had cases where we monitored the primaries of parties where we have records of who participated in the democratic primaries and where political parties have sent us names of people who did not participate in those primaries. There were cases where we monitored the primaries and we saw who emerged democratically as number one, two, three but others emerged as the candidates of the parties.[16]

The above, coming from the chairman of the INEC chairman who sees all himself requires that the courts should properly utilise their interpretative powers to stop party leaders who want to institutionalize themselves by constantly imposing their wishes on the majority who speak through their votes. Indeed the apex court was applauded and commended by all and sundry when it gave what a majority of a public considered a novel judgment in the case of Amaechi V INEC (supra) the Supreme Court considering its power under the Supreme Court Act which permits it from time to time to make any order any order necessary from determining the real question in controversy in the appeal and do other things it considers fit and proper in the interest of justice and fair play held that:

> In view of the above provisions, there can be no doubt there is a plenitude of power available to this court to do what the justice of the case deserves. It enables a court to grant consequential reliefs in the interest of justice even where such have not specifically claimed. Having held as i did that the name of Amaechi was not substituted as provided by law,the consequence is that he was the candidate of the PDP...Amaechi must be deemed the candidate that won the election...[17]

This to our mind is so commendable and portends good omen for Nigeria's political development and needs to be sustained in order to deal with what is characteristically becoming the hallmark of party politics in Nigeria. As if the above was not enough, in the same judgment, the apex court held that 'A court must not shy away from submitting itself to the constraining bind

---

[16] Jega A "*I have become the weeping boy of politicians*" "The Nation" Newspaper, Saturday, December 15,Vol.07, No.2298, p.47

[17] See pp. 324-325

of technicalities. I must do justice even if the heavens fall...'

This is certainly a radical reformist stance. We are however left to wonder why we should not have the decision under review take the same radical surgery given that the justice of the case deserves it.

Conclusion

This decision of the Supreme Court, in reality portends danger to democracy and if allowed to stand, it will no doubt foist a state of helplessness not only political aspirants, but majority of the party members who watch their aspirations to be led by persons they believe in being destroyed. This cannot be without attendant consequences on the political environment and economic development. It is humbly submitted that the Supreme Court will need to review this decision at the earliest opportunity. The National Assembly will need to amend the relevant provisions of the Electoral Act 2010 (as amended) and the 1999 Constitution (as amended) to empower INEC to reject such candidates who did not win party primaries but have been imposed on the majority of the party members.