



M. J. Nuoma & Partners LLP
Trial Attorneys & Transaction Advisors

Newsletter

CA/PH/EP/SHA/01/2023 & CA/PH/EP/SHA/2023

CHIEF MACDONALD IGBADIWEI & ANOR

v.

INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS

Consequences Of The Petitioners' Failure
To Formally File An Application For
Issuance Of Pre-hearing Notice In Election
Petitions Is Fatal To The Petition



We are delighted to have represented **Hon. Selekaye Victor Ben**; winner of the House of Assembly Election in Southern Ijaw Constituency IV, Bayelsa State before the National and State House of Assembly Election Petition Tribunal in Bayelsa State, and also at the Court of Appeal, Port-Harcourt Division successfully.

The Petitioners challenged the lawful return of Our Client before the Trial Tribunal on grounds of non-compliance with the provisions of the Electoral Act, 2022 and that our client was not duly elected and returned by majority of lawful votes cast pursuant to Section 134(1)(a) & (c) of the Electoral Act, 2022.

However, after the close of pleadings, the Petitioners failed to formally file their application for the issuance of pre-hearing notice on all parties in line with Paragraph 18(1) of the First Schedule to the Electoral Act, 2022 to properly activate the jurisdiction of the Tribunal to proceed to pre-hearing. The Petitioners merely dumped the said application on the Tribunal without paying the prescribed filing fees for the said application in accordance with the Appendix to the Federal High Court (Civil Procedure) Rules 2019 which prescribed the sum of N500.00 (Five Hundred Naira Only) for letters within the 7days prescribed but only made their payment after the expiration of the statutory period.

Consequently, via a Motion on Notice in line with Paragraph 18(3) of the First Schedule to the Electoral Act, 2022, we sought the dismissal of the Petition for being abandoned on the basis that the Petitioners only did not properly apply for the issuance of pre-hearing notice on all parties after the statutory seven days provided by paragraph 18(1) of the First Schedule to the Electoral Act, 2022 had elapsed as payment of prescribed fees begets filing.

The Petitioners also failed to file a Counter-Affidavit to our Motion seeking to dismiss the Petition for being abandoned

within three days as prescribed by the specific provision of Paragraph 18(3) of the First Schedule to the Electoral Act, 2022 as interpreted by the decision in ACN v. NOMIYE ACN & ANOR V. NOMIYE & ORS (2011) LPELR-3590(CA), while erroneously contending that they had seven days by virtue of the general provision of paragraph 47(4) of the First Schedule to the Electoral Act, 2022 that regulates other forms of Motions.

In resolving the two legal issues identified above, the Tribunal in a bench ruling agreed with our position that the Petitioners only had three days to file a Counter-affidavit in response to our Motion seeking to dismiss the Petition and not seven days because where there is a conflict between a specific and a general provision, the former will prevail.

The Tribunal further held that the Petition was deemed abandoned on the basis that the payment of the prescribed fees for the said application for issuance of pre-hearing notice on all parties was done outside the time provided by Paragraph 18(1) of the First Schedule to the Electoral Act, 2022, and accordingly dismissed the Petition in line with Paragraph 18(4) of the First Schedule to the Electoral Act, 2022.

Dissatisfied with the decision of the Tribunal, the Petitioners approached the Court of Appeal sitting in Port-Harcourt on the basis that their right to a fair hearing was purportedly breached by the Tribunal and that the payment of prescribed filing fees for an application for the issuance of pre-hearing notice is not mandatory.

We vehemently challenged this position in our Respondent's Brief and contended that the Petitioners' right to a fair hearing was never breached and the

payment of filing fees for every process that goes to the Court's file is mandatory.

On the 20th day of July 2023, the Court of Appeal in a well-considered Judgment, agreed with our position, upheld the two rulings of the Tribunal, and dismissed the Appeal for being abandoned, hence, unmeritorious, and indeed misconceived.

Given the above, Our Client remains the lawful winner of the House of Assembly elections conducted in Southern Ijaw Constituency IV, Bayelsa State, and shall enjoy an uninterrupted four year tenure as a Lawmaker in the Bayelsa State House of Assembly.

Our Election litigation team that handled this matter was ably led by our Managing Partner; M.J Numa, SAN, with, Julius Iyekoroghe Esq Emmanuel C. Sogo, Esq.

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