THE COURTS AND INTERNAL DEMOCRACY IN POLITICAL PARTIES

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In Nigeria, the biggest and most constant headache that confronts the legal adviser of any political party in Nigeria is the non-observance of internal democracy by the party hierarchy. In the Nigerian political landscape, until recently, internal democracy is a mere tag that only existed in the imagination of politicians. In this vein, any electoral position within the structure of a political party is a subject of conferment without any consideration of the electability of the beneficiaries of the conferment. In other words, only those that the political kingmakers consider worthy are conferred with the "honour" of being the party's candidates; the process of engaging a method that includes the members of the party in the decision making generally and nomination of the flag bearers of the party is considered alien by both the party oligarchy and their suitors. Without mincing words, minority will have both their way and say. The few occasions where the majority get to have their say (when purported primary elections are held), the minority still retain the ultimate power of having their way by superimposing their decisions on the outcome of such internal elections. Internal democracy is slaughtered on the altar of imposition.

By my calling as a legal practitioner, I have the hallowed responsibility of ensuring the observance of rule of law and the tenets of democracy. My duty here extends to political institutions, particularly, with regard to compliance with the applicable laws and the rules of the game. This easily brings to mind the sacred words of the Chief Justice of Nigeria, Hon. Justice W. S. N. Onnoghen, GCON at the Call to Bar Ceremonies

held on July 13, 2017. His Lordship, in his speech, admonished thus:

> "*As legal practitioners, you cannot close your eyes to the social, political and economic problems of our time, therefore you have a duty to help rescue our society from pervasive lawlessness, corruption and anti-social activities.*"

It is, therefore, not in doubt that it is immoral for a legal practitioner to close his eyes to political parties' lawlessness. Rescuing internal democracy from the hands of political oppressors and the jaws of imposition falls with the ministerial function of every legal practitioner.

At this juncture, it must be noted that internal democracy transcends the internal affairs of a political party. This is because the Nigerian legal framework duly recognizes it and commands compliance with it. In this regard, section 228(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) confers on the National Assembly the power to make laws providing for:

> ***"…guidelines and rules to ensure internal democracy, within political parties, including making laws for the conduct of party primaries, party congresses and party convention…."***

It was in the exercise of this power that the National Assembly enacted section 87 of the Electoral Act, 2010 (as amended). It clearly set out the guidelines, rules and steps that a political party must follow in the nomination of its candidates for elections. Here, section 87(1) of the Act is instructive, clear and unambiguous. It provides thus:

> "*A political party seeking to nominate candidates for election under this Act* ***shall hold primaries for aspirants to all elective positions***" [Emphasis mine]

Section 87 of the Act is so elaborate that it states the types of primaries that a political party may adopt (direct or indirect) and the procedural steps a political party must follow where it adopts either of the two types of primary election in case of each election mentioned therein. Emphasising the purpose of section 87 of the Act, in PDP v. Sylvia [2012] 13 NWLR (part 1316) 85 at 148, paras. A-B, Chukwuma-Eneh, JSC opined thus:

> "*The clear object the provisions of section 87 is intended to achieve besides the inculcation of internal democracy in the affairs of political parties in this country moreso in the conduct of their party primaries includes thus making them transparent and providing level playing ground for their contestants in party primaries….*"

Equally important is the fact that the constitution of political parties contains the procedure for the nomination of candidates and voting at congresses and party conventions. In this respect, the constitution of the political party sets out how the party's primary elections are to be conducted in a manner that institutionalises internal democracy. An example that easily comes to mind is Article 20 of the Constitution of the All Progressives Congress (as amended), the political party in which I am the legal adviser. A look at the provisions of the said Article 20 makes it clear that candidates of the party can only emerge through a democratic path. In case of indirect primaries, the delegates that will vote at the primary election must have been democratically elected by members of the party from the various wards contained in particular constituency at

congress. Even where an aspirant is unopposed, democratic principles still have to be followed to ensure that the unopposed aspirant is not a product of imposition. Without a doubt, the party constitution has entrenched internal democracy and eschewed imposition of candidates by the "powerful" minority.

Based on the foregoing, it would be reasonable to assume that when it comes to nomination of candidates for elections, the legal adviser of a political party could go to sleep knowing that the legal framework would hold sway. However, it is common knowledge that this is rarely the case. The fact is that any legal adviser that urges compliance with the legal framework and adherence to internal democracy easily finds himself to be a lone voice. He is considered a rebel that is deserving of being ostracized from the decision-making and deliberation within the party structure.

Despite the foregoing, it gladdens my heart to say that the Supreme Court, under the leadership of the current Chief Justice of Nigeria, the Hon. Chief Justice Onnoghen, has taken the courageous step of ensuring that the political oligarchy do not succeed in casting internal democracy into the refuse bin. Now, political parties are faced with the fact that the erosion of internal democracy will not go unpunished. A case worthy of consideration is the very recent and yet to be reported decision of the Supreme Court in ***Mato v. Hembe & 2 Ors. SC.733/2016 (delivered on 23rd day of June, 2017), amongst others***.

Before delving into the recent landmark decisions of the Supreme Court on this issue, it is necessary to note that the Supreme Court has always made pronouncements on the importance of internal democracy and the need for political parties to obey their own constitutions as well as the

jurisdiction of the courts to intervene in this regard. In the case of ***Shinkafi v. Yari [2016] 1 SC (Part II) 1 at 31, line 13 to line 23***, the Supreme Court held thus:

> *"… it is now trite that where a political party conducts its primary and a dissatisfied contestant at the primary election complains about its conduct of the primaries, the Courts have jurisdiction by virtue of the provision of* ***Section 87(9) of the Electoral Act 2010 (as amended)*** *to examine if the conduct of the primary was in accordance with the party's Constitution and Guidelines. The reason is that in the conduct of its primaries, the Courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its Constitution."*

The Supreme Court made a similar stance in ***Tarzoor v. Ioraer [2016] 3 NWLR (Part 1500) 463 at 529, para. G***. In the leading judgment of ***Rhodes-Vivour, JSC*** in ***PDP v. Sylvia (supra) at 125, paras. D-E***, the Supreme Court held thus:

> *"…where the political party conducts its primary and a dissatisfied contestant at the primary complains about the conduct of the primaries the courts have jurisdiction by virtue of the provisions of section 87 (9) of the Electoral Act to examine if the conduct of the primary elections was conducted in accordance with the parties constitution and Guidelines. This is so because in the conduct of its primaries the courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its own constitution."*

Also, pertinent is the hallowed warning of the Supreme Court in the case of ***C.P.C. v. Ombugadu [2013] 18 NWLR (Part 1385) 66 at 129 to 130, paras. F-E*** where ***Ngwuta, JSC*** held thus:

> "*An army is greater than the numerical strength of its soldiers. In the same vein, a political party is greater than the numerical strength of its membership just like a country, for instance, Nigeria, is greater than the totality of its citizens. It follows that in the case of a political party, such as the 1st appellant herein, the interest of an individual member or a group of members or a group of members within the party, irrespective of the place of such member or a group in the hierarchy of the party, must yield place to the interest of the party.* ***It is the greed, borne of inordinate ambition to own, control and manipulate their own political parties by individuals and groups therein and the expected reaction by other party members that result to the internal wrangling and want of internal democracy that constitute the bane of political parties in Nigeria.***
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> *….*
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> *…It is apparent that a few powerful elements therein hijack the parties and arrogated to themselves right to sell elective and appointive positions to the party member who can afford same….*
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> *There is a popular saying that politics is a dirty game. I do not share this view. It is the players who are dirty and they inflict their filth on their members and, by implication on the society.* ***Politicians must learn to play the game of politics***

in strict compliance with its rules of organised society." [Emphasis ours]

It is now trite to give due consideration to the impactful decision of the Supreme Court in ***Mato v. Hembe (supra)***. In that case, ***Onnoghen, CJN*** held that holding a primary election in a manner contrary to the Electoral Act, 2010 (as amended) and the constitution of the political party will render such primary election null and void. At page 37 to 40 of His Lordship's judgment, His Lordship held thus:

> "*The facts deposed to in paragraphs 3 and 4 of the affidavit in support of the Originating Summons show that the said primary election was held at HAF HAVEN HOTEL, MAKURDI quite outside the headquarters of the Federal Constituency. So, apart from the irregularities catalogued in exhibits 4 and 2 reproduced above,* ***the holding of the primary was contrary to the Electoral Act 2010 (as amended) and the constitution of the 2nd defendant.***
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> *Section 87(4) of the Electoral Act, 2010 (as amended) provides:-*
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> *'A Political Party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outlined below-*
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> *(c) in the case of nomination to the position of senatorial candidate, House of Representatives and Head of Assembly, a political party shall, where they intend to sponsor candidates-*
>
> *(i) hold special congress in the Senatorial District, Federal Constituency and State Assembly respectively, with delegates voting for each of the aspirants in designated centres in specified dates'*

As a corollary to the above provision, article 14.11 of the 2nd defendant's Constitution provides that every member shall assemble at their respective Federal Constituency Headquarters and voting shall be by secrete ballot. A combined reading of these two provisions reveals that it is mandatory for the political parties to hold their congresses for the purpose of selecting their candidates in the headquarters of the Constituency. ***As was pointed out by the learned counsel for appellant in their written address, the Electoral Act and the 2nd respondent's constitution make detailed provisions for the way and manner by which primary elections are to be conducted. This is to ensure a level playing field for all aspirants. Any contravention of the Act and the Constitution of the Party in this regard would be regarded as a ploy to negate the principle of due process of law enshrined therein.***

It is trite that where a statute provides for a means of doing a thing, no other means or manner shall be permitted. Both the Electoral Act and the Constitution of the 2nd defendant make it mandatory that primaries be conducted in the headquarters of the Constituency. ***The failure to comply with these provisions makes the entire exercise null and void…***

The truth must be told and that is, that the 1st and 2nd defendants did not respect the provisions of the Electoral Act and the constitution of the 2nd defendant in the conduct of the primaries. This court has decided in quite a number of cases that political parties must obey their own constitutions as the court will not allow them to act arbitrarily or as they like….

From all I have endeavoured to say above, it is crystal clear that the primaries which produced the 1st defendant

was frought (sic) with manifold irregularities aside the fact that he was not even qualified to contest same." [Emphasis mine]

Beyond doubt, by this singular pronouncement, His Lordship seeks to enthrone internal democracy in the affairs of political parties. In the same vein, ***Kekere-Ekun, JSC*** asserted that where political parties appear to violate the principles of internal democracy, the courts will not hesitate to whip them into line by wielding the big stick. In ***Mato v. Hembe (supra) at page 2-3 of His Lordship's judgment, Kekere-Ekun, JSC*** held thus:

"*This case, in my view is a clear example of the mischief sought to be tackled by section 87(9) of the Electoral Act, 2010 as amended. While it is true that the courts will not interfere in the internal affairs of a political party nor its choice of candidate, Section 87(9) of the Electoral Act ensures that in making their choice of candidates for elective office political parties do not stray beyond the confines of the Electoral Act or their own electoral guidelines.* ***The section seeks to curb the impunity with which political parties hitherto acted without regard to the democratic norms they profess to practice.*** *As stated by my learned brother in the lead judgment, this court in a plethora of cases has asserted the fact that political parties must obey their own constitutions and guidelines and* ***where necessary (as provided by law) the courts will intervene and wield the big stick to prevent arbitrariness.*** *The only way our democratic dispensation can work effectively is where every aspirant for political office, who is qualified to contest an election, is given an even playing field.* ***The failure of internal democracy within our political parties right from the grassroots***

level eventually leads to instability in the entire political system. The failure of internal democracy is one of the reasons why the courts' dockets are congested with pre-election disputes*. In Ugwu vs. Ararume (2007) 12 NWLR (Pt. 1048) 376 @ 514 D-E, this court per Mahmud Mohammed, JSC (as he then was) admonished:*

> *'My lords if we want to instill sanity into our human affairs, if we want to entrench unpolluted democracy in our body polity, the naked truth must permeate through the blood, nerve and brain of each and everyone of us. Although credit may not always have its rightful place in politics, we should try to blend the two so as to attain a fair, just and egalitarian society where no one is oppressed. Let us call a spade a spade!'*

I am in entire agreement with my learned brother, that in the circumstances of this case it was crystal clear that not only were there irregularities in the primary election that produced the 1st respondent, the 2nd respondent failed to follow its own guidelines in the selection of its candidate. I agree that in the eyes of the law the plaintiff/appellant was the only candidate of the 2nd defendant/2nd respondent as found by the report of the 2nd defendant's Appeals Committee."

At page 4 of ***Eko, JSC's*** judgment in Mato v. Hembe, His Lordship did not mince words in calling the 1st Respondent an impostor.

Another very recent decision of the Supreme Court is between Alhaji Shuaibu Isa Lau v. Sen. Sani Abubakar Danladi regarding

the Taraba North Senatorial District (delivered on June 23, 2017). The Punch Newspaper, under the caption: *Harsh verdicts await unqualified candidates, S'Court tells political parties*, quoted, Augie JSC thus:

> *"This is a hard and very bitter lesson for political parties to learn. They may have chosen candidates or eminent personalities they want to present as candidates to INEC, but they have to play by the rules.*
> *"The chosen candidates must comply with requirements of the law; they must abide by the provisions of the Electoral Act, which creates a level playing field for all aspirants who seek to contest elections.*
> *"So, the political parties and their candidates must obey the rules."*[1]

I need not say more. Ordinarily, this ought to sound a death knell on the untoward practice of imposition of candidates contrary to the provisions of the applicable laws and the party's constitution. However, it appears that party oligarchy appears to enjoy turning a deaf ear.

In the recent decision of the High Court of Lagos State ***(per Okuwobi, J.) in Suit No. ID/1838/GCM/2017: Hakkem Abolaji Saka v. All Progressives Congress & Anor. (delivered on July 7, 2017)***, the court did not hesitate to nullify the nomination of a candidate without the conduct of primary election in accordance with the stipulation of the Lagos State Independent Electoral Commission Law and the Constitution of All Progressives Congress. Consequently, the Court, *inter alia*, made an order restraining the Lagos State Independent Electoral

[1]See the online version of The Punch Newspaper <http://punchng.com/harsh-verdicts-await-unqualified-candidates-scourt-tells-political-parties/> last visited on July 14, 2017.

Commission from recognising, relying on or using any list of chairmanship candidates submitted by All Progressives Congress for the forthcoming Local Government elections in Odi-Olowo Local Council Development Area.

Without a doubt, the foregoing is commendable as it shows that parties do not have to get to the Supreme Court before the judiciary wields the figurative big stick where a political party jettisons internal democracy in the conduct of its affairs. This is, particularly, instructive because the elements behind imposition always rely on the fact that it would take years before the matter would be decided by the Supreme Court in the course of which their imposed candidate would have enjoyed a substantial portion of the tenure of office. The good news however now is that, not only are pre-election cases on fast track now, impostors are now sanctioned by both removal and restitution of illegally gotten dues. With the proactive pronouncement of High Court of Lagos State, the erosion of internal democracy will be nipped in the bud and good things will not suffer irreparable injury before salvation comes.

Good governance is the desire of every sane society. In order for any society to have good governance, there must be good leadership. For there to be good leadership in a democratic setting, internal democracy must be effectively and effectually practised. One can only hope that political parties see the writing on the wall and behave accordingly.

In conclusion, I believe the role of Courts in contemporary times in the strengthening of internal democracy is not only commendable but proactive. It is only hoped that more of our courts will see the wisdom in this approach and political parties learn the art of respect for the rule of law.