IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY THE 7TH DAY OF JULY, 2021
BEFORE HIS LORDSHIP, HON. JUSTICE TAIWO O. TAIWO
JUDGE

SUIT NO: FHC/ABJ/CR/303/2021

BETWEEN:
FOLAKEMI ADEOSUN---------- PLAINTIFF

AND

ATTORNEY GENERAL OF THE FEDERATION ------- DEFENDANT

JUDGMENT

By an Originating Summons dated the 11th day of March 2021 and filed same day, the plaintiff seek the determination of the following questions:

1. *Having regards to the combined provisions of* ***sections 106 and 107; section 192(4); sections 177 and 182; sections 65 and 66; section 147(5); and sections 131 and 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution)*** *which respectively prescribe the qualifications and disqualifications*

for the offices of a ***member of the House of assembly of a state; a Commissioner in the State Executive Council; Governor of a State; member of the National Assembly; Minister in the Federal Executive Council and the President of the Federal Republic of Nigeria****, whether any Nigerian citizen is otherwise disqualified from holding any of the offices afore-listed by reason of not participating in the National Youth Service scheme, established by the* ***National Youth Service Corps Act, CAP N84, LFN 2004****.*

2. *Considering the clear provisions of* ***sections 200(1)(a) and 156(1)(a) of the Constitution*** *which stipulate the qualifications for* ***membership of State Executive Bodies and Federal Executive Bodies*** *respectively, whether any Nigerian citizen is disqualified from holding offices as a* ***member or Chairman*** *of any of the said bodies by reason of non-participation in the National Youth Service Corps scheme, established by the* ***National Youth Service Corps Act, CAP N84, LFN 2004.***

3. *Upon the combined reading of the provisions of* ***section 26 of the Constitution of the Federal Republic of Nigeria,***

1979 *(being the Constitution in force in* ***1989)****,* ***sections 25 and 36(8) of the Constitution of the Federal Republic of Nigeria, 1999,*** *and* ***section 6 (1)(b) and (c) of the Interpretation Act,*** *as against* ***section 2(1)(c) of the National Youth Service Corps Act, CAP N84, LFN 2004,*** *whether the plaintiff, being a citizen of the United Kingdom as at 1989, was not ineligible to participate in the National Youth Service Corps Scheme (as at* ***1989),*** *when she graduated from the University of East London, London, United Kingdom,* ***at the age of 22 years****.*

Upon the determination of the following questions, the plaintiff seek the following reliefs from this honourable court:

1. ***A DECLARATION*** *that the plaintiff is under no constitutional disability, disadvantage, prohibition, inhibition or disqualification to hold any of the following offices established by the Constitution, to wit:* ***offices of member of the House of Assembly of a State, a Commissioner in the State Executive Council; Governor of a State; member of the National Assembly; Minister in the Federal Executive Council or the President of the Federal Republic of Nigeria,*** *on the ground that she did not*

participate in the National Youth Service Corps (NYSC) scheme, established by the ***National Youth Service Corps Act, CAP N84, LFN 2004****.*

2. ***A DECLARATION*** *that the plaintiff is not under any constitutional disability, disadvantage, prohibition, inhibition or disqualification to hold any office as* ***member or Chairman of any of the State Executive or Federal Executive bodies established by the Constitution or otherwise****, on the ground that she did not participate in the National Youth Service Corps scheme, established by the* ***National Youth Service Corps Act, CAP N84, LFN 2004.***

3. ***A DECLARATION*** *that the plaintiff cannot be subjected to any penalty, forfeiture or put under any encumbrance in relation to her occupation or assumption of any of the following public offices, created by the Constitution, to wit:* ***membership of the House of Assembly of a State, a Commissioner in the State Executive Council; Governor of a State, member of the National Assembly; Minister in the Federal Executive Council, President of the Federal Republic of Nigeria, membership of any of the***

States or Federal Executive bodies, established by the Constitution or otherwise*, on the ground that she did not participate in the National Youth Service Corps scheme, established by the* ***National Youth Service Corps Act, CAP N84, LFN 2004.***

4. ***A DECLARATION*** *that the plaintiff, being a United Kingdom Citizen as at 1989 when she graduated from the University of East London, London, United Kingdom,* ***at the age of 22 years,*** *was ineligible to participate in the National Youth Service Corps Scheme, established by the* ***National Youth Service Corps Act, CAP N84, LFN 2004****.*

The application is supported by an affidavit of 13 paragraphs deposed to by one **Emeke Ananyi**, legal practitioner in the office of Wole Olanipekun & Co on the 11th day of March 2021. Two (2) Exhibits marked as **EXHIBIT 1** and **EXHIBIT 2** respectively are attached to the affidavit . Also in support is a written address dated same day wherein learned Senior Advocate of Nigeria Chief **Wole Olanipekun** who appeared for the plaintiff, adopted the three (3) questions for determination as listed above.

Conversely, the defendant filed a Memorandum of Conditional Appearance dated the 26th of June, 2021, signed by T.A.Gazali, Senior Advocate of Nigeria and counsel to the defendant. A Five (5)

paragraph counter affidavit deposed to by one **Atu Friday**, a litigation Officer in the chambers of the Attorney General of the Federation dated the 22nd day of June 2021 was filed same day. A sole exhibit was Attached and marked as **EXHIBIT AGF 1**. Also filed is a written address dated same day wherein the learned Senior Advocate of Nigeria appearing for the defendant, **T.A Gazali** Esq formulated and argued a sole issue for determination to wit;

Whether the plaintiff is entitled to the reliefs sought against the defendant

Also filed by the plaintiff is a Reply/Rejoinder to the defendant's written address dated the 22nd day of June 2021 but filed on the 23rd day of June 2021. Above represents a summary of the processes filed.

On the 23rd day of June 2021 when the matter came up for hearing, the learned Senior Advocate of Nigeria for the plaintiff,Chief **Wole Olanipekun** and the learned Senior Advocate of Nigeria **T.A Gazali Esq.** for the defendant adopted their processes, adumbrated on same and urged the Court to resolve the issues in favor of the parties that they represent.

In brief, the fact of this case is that sometime in 2018, while the plaintiff was serving as the Minister of Finance of the Federal Republic of Nigeria, it was being paraded in the public space that

she did not participate in the NYSC scheme and as such ought to have been disqualified from holding the office. It was further alleged that the said insinuations have remained unabated, thereby, consistently putting the plaintiff at disadvantageous positions in the pursuit of her career, both within and outside the country. This has, therefore, necessitated the plaintiff to file this action.

In urging the court to grant the application, the learned senior counsel for the plaintiff contended that there is nothing in any of the provisions of the 1999 Constitution which requires or mandates compulsory participation in the National Youth Service Corps as a prerequisite for qualifying in any political appointment or positions. It is a Constitutional misconception to conclude that for a person to serve as Minister at the Federal Level, he or she ought to have participated in the NYSC Scheme and obtained a discharge certificate. It was contended that the plaintiff having been born in London, United Kingdom in 1967 as deposed to in paragraph 8 (ii) of her sworn affidavit, is a United Kingdom Citizen and that the plaintiff retained her United Kingdom Citizenship as demanded by **section 28 of the 1979 Constitution**; which translated to the fact that she lost her Nigerian citizenship, immediately she attained the age of 21 years, in 1988. It was thus argued that at that point

in time, she lost the privilege or right accruing to a Nigerian citizen and could not have discharged or performed any duty expected of a Nigerian citizen, including participation and service in the NYSC scheme. In addition, she could not also procure or hold a Nigerian passport, as she was not entitled to one. The learned senior Counsel submitted further that the plaintiff did not regain her Nigerian citizenship and rights accruing thereto, until the 1999 Constitution came into force and that the 1999 Constitution repealed the 1979 Constitution, through the instrumentality of Constitution of the Federal Republic of Nigeria (Promulgation) Decree **No 24 of 1999.**

For the respondent, it was contended that any graduate in employment in Nigeria is expected to have provided his employer with a discharge/exemption certificate prior to obtaining the job as obligated by the provisions of Section 12 of the NYSC Act, the failure which that person ought not to be employed. The learned senior Counsel submitted further that in view of the provisions of Section 147 (5) and 192 (4) of the 1999 Constitution, the minimum qualification required for a Commissioner/Minister of the Federal Republic of Nigeria is school leaving certificate. It was also the submission of the learned Counsel for the defendant that the provisions of the Constitution takes precedent over that of the

NYSC Act. The learned senior counsel for the defendant also submitted that despite the fact that the plaintiff is a graduate, the Constitution does not require her to present her first degree certificate or any other certificate including the NYSC certificate to be appointed as a Minister of the Government of the Federation. Therefore, the Ministerial appointment of the plaintiff was not illegal neither was it unconstitutional even without presenting the NYSC certificate. These are submissions of counsels in brief.

I must commend the very lucid submissions of the learned senior counsels for the parties before the court. Their submissions are very illuminating and they are both ad indem on virtually all the Constitutional issues submitted for interpretation by the senior learned counsel for the plaintiff. There are certain issues I need to quickly address before going forward in deciding this matter. The learned senior counsel for the defendant has conversed at paragraphs 5.04 and 5.05 that the plaintiff has established no cause of action against the Government of the Federation. This submission is in itself, is a veil challenge to the jurisdiction of this court because if there is no cause of action, then the court acts in vain. A cause of action is a combination of facts and circumstances giving rise to the right to file a claim in court for a remedy. It includes all things which are necessary to give a right of action and every material fact which

has to be proved to entitle the plaintiff to succeed. A cause of action normally arises as soon as the combination of facts giving a right to complain accrues or happens. See Okafor v Bende Divisional Union, Jos Branch (2017) 5 NWLR pt.1559 pg.385; Mulima v Usman (2014) 16 NWLR pt.1432 pg.160.

The law is trite that when determining whether a cause of action is disclosed, the court is to confine itself to the writ of summons and statement of claim but in this case to the originating summons and the affidavit in support of same. See Mulima v Usman (supra); Okafor v Bende Divisional Union, Jos Branch (supra) and Seven Up Bottling Company v Abiola & Sons (2001) 13 NWLR pt.730 pg.469; Abubakar v Michelin Motors Services Ltd (No1) (2020) 12 NWLR pt.1739 pg.555 to mention just a few in a long line of cases. The cause of action or to put it more succinctly, the complaint of the plaintiff can be gleaned from paragraph 10(i) to (vii) in the affidavit in support of the originating summons deposed to on behalf of the plaintiff by Emeke Ananyi. I do not think it is necessary to reproduce this paragraph as all processes in this court forms part of the records. However, it will suffice to state that the furore generated by the fact that she did not participate in the NYSC scheme, leading to her resignation, though voluntarily, as a Minister in the Government of Nigeria and the effect of the issue of her non participation in the

NYSC scheme even after her exit from government nationally and internationally is the reason for this suit. She no doubt wants to set the records straight so that the issue will be laid to rest once and for all, not only for now but in the future.

The issues before the court are Constitutional in nature and the interpretation thereof, of certain sections affecting the plaintiff for which she has approached the court to interpret in view of her complaint. She is seeking declaratory reliefs if the court agrees with her. I am of the well considered view that the courts should not shy away from finding solutions to constitutional questions within the constitution itself and any other subsidiary legislation, especially when approached to so do by anyone aggrieved or interested in any matter for which guidance is needed. The point must be made clear that the plaintiff has a constitutional and legal right to approach this court. After all the maxim Ubi Jus Ibi remedium ie where there is a right, there is always a remedy, is so fundamental to the administration of justice that where there is no remedy provided either by common law or statute, the courts have been urged to create one. See Omoyinmin v Ogunji (2008) 3 NWLR pt.1075 pg.471. The very notorious legal principle is that wherever the law gives a right, it also gives a remedy. Conversely, wherever , a plaintiff is claiming a remedy, that remedy must be joined to a legal

right. The court must ensure that the rights bestowed on a citizen are protected and protecting the rights of an individual includes providing them with avenue to remedy wrong done to them to prevent their losing their rights. See Opia v INEC (2014) 7 NWLR pt.1407 pg.431, PPA v Saraki (2007) 17 NWLR pt.1064 pg.453 and Bello v AG, Oyo State (1985) 5 NWLR pt. 45 pg.828. I find and I hold that the plaintiff has a cause of action.

Stemming from my holding is that the proper person to be made a defendant in issues bordering on the interpretation of the constitution is the defendant in this suit, the Honorable Attorney General of the Federation. I appreciate the submissions of the learned counsels before the court on this point most especially the learned senior counsel for the defendant who stated the correct position of the law at paragraphs 4.03, 4.04,4.05, and 4.06 of his written address which he adopted as his oral submissions and in agreement with the submissions of the learned counsel for the plaintiff. I want to also point out the fact that it is not in dispute that the Federal Government did not withdraw the appointment of the plaintiff nor ask her to resign. However, the action of the plaintiff do not prevent her from asking the court to determine the issues for determination and thereby making the Honorable Attorney General of the Federation a defendant in this suit. The defendant is the Chief

legal officer and thus an important personality in suits filed for the purpose of knowing the mind of the court with respect to any enactment including the Constitution of the Federal Republic of Nigeria and other subsidiary legislations.

Another issue which I want to touch in passing is on the point that the counter affidavit of the defendant has not frontally confronted the affidavit in support of the application filed by the plaintiff. I am of the well considered view, that the issues before the court are very straightforward and there is no need, really for any verbose counter affidavit. The law is trite that it is not in all cases that a counter affidavit must be filed or should meet the averments of the plaintiff word for word. It could be argued that when one party relies on evidence to support or establish a claim by a sworn affidavit and the evidence remains unchallenged in the absence of a counter affidavit on any point raised, the remedy ought to be granted. See Globe Fishing Industries Ltd v Chief Folarin Coker (1990) 11 SCNJ 56; In re Odutola (2002) FWLR pt.119 pg.1624 and Iyamo v FMBN (1999) 13 NWLR pt.634 pg.178. I am also of the well considered view that in issues of law as in this case , a counter affidavit is not important. I therefore find and hold that the counter affidavit of the defendant as filed suffices. The submissions of the senior learned counsel are also enough for the consideration of the court on the issues before it.

I have stated above the issues for determination in this suit. I must state the obvious, that the learned senior counsels before the court vide their written submissions have simplified my intervention for me. Both of them have agreed on the position of the law on the issues put forward by the plaintiff for this court to decide. There appears to be no divergent view on the interpretation of the various sections of the Constitution and the National Youth Service Act Cap N 84 LFN 2004 vis a vis the case of the plaintiff and the reliefs she seeks from the court. If am permitted, I may just concur with the submissions of the learned counsels before me in order not to waste time, but I will not. I think it is important to note the conclusion of the learned counsel for the defendant at paragraphs 5.01 and 5.02 of his adopted written submissions. There is need for me to reproduce same to show that the position of the Honorable Attorney General of the Federation is the same as that conversed by Chief Wole Olanipekun SAN for the Plaintiff. The paragraphs states thus:

5.01" My Lord, we humbly submit that the Federal Government having understood the position of the law as regards the requirement of appointing a Minister and particularly the position of law as regards the Plaintiff's Citizenship took no steps to remove her as Minister of Finance in 2018 despite the uproar in the public space as regards the Plaintiffs's failure to undergo the National Youth

Service Scheme. The plaintiff resigned the position of Minister of Finance on her own free will".

5.02 " While by virtue of the relevant provisions of the 1979 Constitution and the NYSC Act, the Plaintiff could not have been deemed eligible for participation in the National Youth Service Scheme in 1989 when she graduated at the age of 22, she nonetheless falls into the category of persons entitled to an exemption certificate upon the restoration of her Nigerian citizenship by the 1999 Constitution, when she was already 30 years old." This is the position of the senior learned counsel for the plaintiff put briefly by Mr T. A. Gazali SAN.

As much as I would have loved to concur as aforesaid, I cannot as the judex. What I will not do is to reproduce the sections of the Constitution of the Federal Republic of Nigeria, the NYSC Act or any legislation already contained in the written addresses of learned counsels. I am enjoined to take judicial notice of all laws by virtue of my calling. In PDP v Saror & Ors (2012) LPELR-14287(CA), the Court of Appeal per Nwodo JCA (of blessed memory) held inter alia that the duty of the judge is to give meaning to the words of a Constitution that best reflects the purpose and intendment of the Constitution. Where the words used in a provision are clear and unambiguous, it should be ascribed its ordinary and grammatical

meaning. In the case of CPC & anor v Admiral Nyako & anor (2011) LPELR-23009(SC), Dahiru Musdapher , CJN (of blessed memory) held thus:" Every legal document including the Constitution has a purpose without which it is meaningless. This purpose, or ratio legit, is made up of objectives , the goals , the interests , the values , the policy and the function that by law it is designed to actualise. It is the duty of the Judge to give meaning of the words that best realizes its purpose and intent and intendment". It has also been held in many judicial decisions, some of which are captured in the written submissions of the learned counsels before this court that where the words of the Constitution or Statute are plain, clear and unambiguous, they must be given their natural, ordinary meanings as there is nothing, in effect to be interpreted. In that case, the words must be given their plain/ natural meaning, as there is nothing to interpret." I also refer to the case of Attorney General, Bendel State v Attorney General of the Federation (1981) 10 SC. Pg.1 and the principles aptly reproduced at paragraph 4.11 in the written submissions of the learned counsel for the defendant.

Sections 106 and 107, 192(4); 177 and 182; 65 and 66; 147(5); 131 and 137 of the Constitution prescribe the qualifications and disqualifications for the offices of a member of the House of Assembly of a State; a Commissioner in the State Executive Council;

Governor of a State; Member of the National Assembly; Minister in the Federal Executive Council and the President of the Federal Republic of Nigeria. From my reading of all these provisions of the Constitution of the Federal Republic of Nigeria, there is no ambiguity whatsoever and the wordings are very clear. There is no where in the provisions where any Nigerian including the Plaintiff, who is one by virtue of Section 25(1) (C) of the Constitution, is disqualified from holding the offices under the said provisions by reason of not participating in the National Youth Service Scheme under the NYSC Act LFN.

The Constitution of the Federal Republic of Nigeria is Supreme by virtue of Section 1(1) and it is trite law that if any law is inconsistent with the Constitution , the law shall to the extent of the inconsistency be void while the Constitution shall prevail. See Governor of Ekiti State v Olubunmo (2017) 3 NWLR pt. 1551 pg.1; Kayili v Yikbuk (2015) 7 NWLR pt.1457 pg.26 and Governor of Oyo State v Oba Ololade Afolayan(1995) 8 NWLR pt.413 pg.292. Sections 200(1)(a) and 156(1)(a) of the Constitution is also clear to the effect that no Nigerian citizen including the plaintiff is disqualified from holding offices in State and Federal Executive bodies by reason of non participation in the National Youth Service Scheme. The plaintiff herein was appointed as Minister by the President and Commander

in Chief of the Armed Forces and was duly confirmed by the Senate by virtue of Section 147(1) of the Constitution. Section 147(5) of the Constitution states thus: " No person shall be appointed as a Minister of the Government of the Federation unless he is qualified for election as a Member of the House of Representatives". It therefore means that the criteria or the qualifications the plaintiff had to meet to be appointed is the same as anyone who is qualified for election as a member of the House of Representatives. The only difference is that, while the President appointed her, members of the House of Representatives must stand for election and be duly elected. Sections 65 and 66 stipulates the yardstick for qualification and disqualification for the House of Representatives. Again in these sections, participation or non participation in the National Youth Service Scheme is not one of those grounds for qualifications or disqualification of any Nigerian, including the plaintiff for appointment as a Minister or Commissioner in the Federal or State Executive Bodies.

The plaintiff was born in London, United Kingdom as a result of which she became Citizen of the U.K. She studied in the UK from the primary school up till the University level when she graduated at the age of 22 in 1989. I refer to paragraph 8 of the affidavit in support of the plaintiff's originating summons. She was a citizen of the

United Kingdom when she graduated from the University at the age of 22. If she was a citizen of Nigeria and she graduated outside the country at the age of 22years, she would have been eligible for National Youth Service. But the fact on ground is that she was a citizen of the United Kingdom. From the time she graduated and moved to Nigeria sometime in 2003, she was already 36years old. She was a one time Commissioner for Finance in Ogun State between 2011 to 2015 and was appointed Minister of Finance in 2015 till sometime in 2018. See paragraph 9 of the affidavit in support of the originating summons. It is my finding, which finding was not challenged that by the time she moved back to Nigeria in 2003, she was not eligible under the NYSC Act to serve in the National Youth Service Scheme. In fact it would have been a criminal offence if she had participated in the NYSC under any guise. She is thus by law estopped from participation in the scheme. She had also been self employed and was not in the employment of anyone, agency or government and therefore she did not have to present a certificate of discharge as a prerequisite for employment. In any case, I have already determined from the facts before me that she was over the age limit for participation in the National Youth Service Scheme by the time she moved back to Nigeria.

I have looked at Section 26 of the 1979 Constitution which was in force in 1989 when the plaintiff graduated. The section was reproduced at paragraph 6.1 in the address of Chief Wole Olanipekun SAN. That section has been repealed in that it does not form part of the extant 1999 Constitution of the Federal Republic of Nigeria(as amended). Therefore Nigerian citizens are those persons stated in Section 25(1)(c) of the 1999 Constitution. I have stated it before and it is conceded by the learned counsel for the defendant that the plaintiff is a citizen of Nigeria by virtue of Section 25(1)(c) of the 1999 Constitution. From my reading and understanding of the sections of the Constitution, it is my finding that the plaintiff not being a citizen of Nigeria in 1989 when she graduated from the University of East London, London, United Kingdom, was not eligible to participate in the National Youth Service Scheme. I so hold.

I have answered all the questions from my findings above in the positive and in favour of the plaintiff. For the avoidance of doubt, participation in the National Youth Service Scheme is not a yardstick to be elected into any of the legislative houses, be in the States or the National Assembly, ditto for Ministerial appointment despite the National Youth Service Corp Act being an integral part of the Constitution by virtue of Section 315(5) of the Constitution. I take solace in the decisions of the superior courts cited in the written

addresses of the learned senior counsels that mandatory requirement of NYSC discharge certificate is not a requirement for qualification to contest or be a member of the House of Representatives.

I have resolved the issues for determination in favour of the plaintiff. The reliefs are declaratory in nature. Same is not automatically granted except the party seeking declaratory reliefs like the plaintiff herein has proved his/ her entitlement to the declaratory reliefs. In other words, whether the burden of proof has been discharged by the plaintiff even on admission by the defendant is of no moment. See Okereke v Umahi (2016) 11 NWLR pt.1524 pg.438. I have looked at the evidence before the court moreso when the issues are to interpret the constitution in order to determine the legal rights of the plaintiffs. I see nothing before me to the contrary to hold that the plaintiff has not proved her entitlement to the reliefs upon the court having resolved the issues for determination in her favour. I am of the well considered view that to deny the plaintiff the reliefs will not do justice to her and her reasons for approaching this court. I therefore grant all the reliefs, all of which I have set out at the opening of this judgement in favour of the Plaintiff. This is the judgement of the court.

HON. JUSTICE TAIWO O. TAIWO

JUDGE

7/07/2021