Comfort Ikechukwu
06/10/26
[illegible]

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO. FHC/ABJ/CS/2346/2026

BETWEEN

OGBUKE JULIUS ARINZE - PLAINTIFF

AND

1. **EZEH KINGSLEY IFEANYI**
2. **NIGERIA DEMOCRATIC CONGRESS (NDC) - DEFENDANTS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

3RD DEFENDANT'S COUNTER AFFIDAVIT TO THE ORIGINATING SUMMONS

I, Jacob Ayuba, Adult, male, a Nigerian citizen of the Independent National Electoral Commission (INEC), Plot 436, Zambezi Crescent, Maitama District, Abuja do hereby make oath and state as follows, that:

1. I am an Assistant Executive Officer in the Litigation & Prosecution Department of the 3rd Defendant by virtue of which I am conversant with the facts deposed herein.

2. I have the consent and authority of the 3rd Defendant to depose to this Counter Affidavit.

3. I state that the facts deposed herein are within my personal knowledge except where otherwise stated.

4. I have read the Plaintiff's Affidavit in support of the Originating Summons filed in this suit.

6. That paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16 and 17 of the Affidavit in support of the Originating Summons are facts within the knowledge

FEDERAL HIGH COURT
OFFICIAL
SIGN
DATE 6/10/26
ABUJA

of Plaintiffs and they are put to the strictest proof of same and in response to the said paragraphs, I state as follows:

7. I was informed by O. A. Adeyemi, **Esq.** of Counsel in the Litigation & Prosecution Department of the 3rd Defendant on 5th day of October, 2026 while preparing this defence in his office around 10:00am at the Headquarters of the 3rd Defendant which information I verily believed to be true and correct that:

   (a) That on 26th day of February 2026 the 3rd Defendant issued Time Table and Schedule of Activities for 2027 General Elections. A copy of the Time Table and Schedule of Activities for 2027 General Elections is attached and marked **"Exhibit INEC I"**.

   (b) Pursuant to Exhibit INEC 1, the 2nd Defendant and all other Political Parties conducted Primary Elections Nation Wide to nominate Candidates that will bear their flag in the forthcoming 2027 General Elections.

   (c) that in line with the time fixed in Exhibit INEC 1 the 3rd Defendant issued Access Codes to the 2nd Defendant and other Political Parties to submit or upload on the 3rd Defendant's Nomination Portal the details of Candidates duly nominated from validly conducted primary elections.

   (d) That the 3rd Defendant does not nominate, submit or upload Candidates for Political Parties including the 2nd Defendant. It is exclusive preserve of the 2nd Defendant and other Political Parties to nominate their Candidates who must have emerged from a valid Primary Election.

   (e) That the Statutory duties of the 3rd Defendant after the primary election is limited to downloading the uploaded details of the Candidates submitted by political parties on the Nomination Portal, publish the Forms EC9 and list of candidates for the elections as submitted by the political parties.

8. That the Plaintiff has not disclosed any cause of action against the 3rd Defendant in this Suit.

9. That it is in the interest of justice to allow only candidates that emerged from valid conducted primaries contest elections to strengthen internal party democracy.

10. I make this Counter Affidavit in good faith believing same to be true in accordance with the Oaths Act.

DEPONENT

Sworn to at the Registry of the Federal High Court, Abuja.

THIS 6th DAY OF OCTOBER, 2026

BEFORE ME

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA
Date.....

COMMISSIONER FOR OATHS

LATEST. EXHIBIT "INEC 1"

COMMISSIONER FOR OATHS FEDERAL HIGH COURT ABUJA SIGN..... DATE.....

EXHIBIT "INEC 1"

INDEPENDENT NATIONAL ELECTORAL COMMISSION

REVISED TIMETABLE AND SCHEDULE OF ACTIVITIES FOR 2027 GENERAL ELECTION

By virtue of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), tenure of the President, Vice President, Governors and Deputy Governors of States of the Federation (except Anambra, Bayelsa, Edo, Ekiti, Imo, Kogi, Ondo, and Osun States) will expire on the 28th day of May, 2027 while membership of the National and State Assemblies will stand dissolved on the 8th day of June, 2027.

Pursuant to Sections 76(2), 116 (2), 132 (2) and 178 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), elections to the said offices shall hold not earlier than One Hundred and Fifty (150) days and not later than Thirty (30) days before the expiration of the term of office of the last holder of that office.

Whereas section 28(1) of the now repealed Electoral Act, 2022 required the Commission to issue a Notice of Election not later than Three Hundred and Sixty (360) days before the date fixed for the election, and having issued same on 13th February, 2026;

And whereas the said statutory timeline has been revised pursuant to the enactment of the Electoral Act, 2026, which now requires that the Notice of Election be issued not later than Three Hundred (300) days before the date of the election,

And whereas the Commission has, in strict compliance with the provisions of the Electoral Act, 2026, issued the requisite Notice of Election and has accordingly adjusted the Timetable and Schedule of Activities to align fully with the extant statutory framework;

Now therefore, in exercise of the powers conferred on the Commission by the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Electoral Act, 2026, and all other powers enabling it in that behalf, and in accordance with the revised statutory timelines, the Commission hereby issues this Revised Timetable and Schedule of Activities for the 2027 General Election.

S/N	ACTIVITY	DATE	REMARK
1	Notice of Election	13th February, 2026	Section 28(1) of the Electoral Act, 2026 provides not later than 300 days before the election
2	Submission of Political Parties' Register of Members to the Commission	Commencement date 1st April, 2026 End 21st April, 2026	Section 77(4) of the Electoral Act, 2026 provides not later than 21 days to the conduct of party primaries.
3	Conduct of Party Primaries, including resolution of disputes arising from the Primaries.	Commencement date 23rd April, 2026 End 30th May, 2026	To enable Political Parties democratically nominate candidates for the election as required by Section 84 of the Electoral Act, 2026

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CERTIFIED TRUE COPY

25 SEP 2026

TOMI ADESINA

SIGN.....

COMMISSIONER FOR OATHS FEDERAL HIGH COURT ABUJA SIGN..... Date.....

4	Submission of Forms EC9 and EC9A, 9B, 9C, 9D & 9E online (Nomination Portal).	**Presidential & National Assembly** 9.00AM 27th June, 2026 - 6.00PM 11th July, 2026 **Governorship & State Houses of Assembly** 9.00AM 18th July, 2026 - 6.00PM 8th August, 2026	Section 29(1) of the Electoral Act, 2026 provides for not later than 120 days before the election. EC9 (Personal Particulars of Candidates). EC9A, 9B, 9C, 9D & 9E (Names /List of Nominated Candidates). Access code for the submission of nomination forms shall be available for collection from 26th June, 2026 at the Commission's Headquarters.
5	Publication of Personal Particulars of candidates (EC9) by the Commission.	**Presidential & National Assembly** 1st August, 2026 **Governorship & State Houses of Assembly** 29th August, 2026	Section 29(3) of the Electoral Act, 2026 provides for the publication of Form EC9 within 21 days of receipt.
6	Commencement of Campaign by Political Parties in public.	**Presidential & National Assembly** 19th August, 2026 **Governorship & State Houses of Assembly** 9th September, 2026	Section 98(1) of the Electoral Act, 2026 provides that campaign in public by every political party shall commence 150 days before polling day and end 24 hours prior to that day.
7	Last day for withdrawal by candidate(s)/replacement of withdrawn candidate(s) by Political Parties.	**Presidential & National Assembly** 22nd August, 2026 **Governorship & State Houses of Assembly** 19th September, 2026	Section 31 of the Electoral Act, 2026 provides not later than 90 days to the election.
8	Last day for submission of Nomination forms (EC13A, 13B, 13C, 13D & 13E) by Political Parties.	**Presidential & National Assembly** 29th August, 2026 **Governorship & State Houses of Assembly** 26th September, 2026	To enable Political parties comply with Section 30(1) of the Electoral Act, 2026.

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25 SEP 2026
TOMI ADESINA
ACLO
SIGN.....

9	Publication of final list of nominated candidates by the Commission.	**Presidential & National Assembly** 12th September, 2026 **Governorship & State Houses of Assembly** 10th October, 2026	Section 32(1) of the Electoral Act, 2026 provides at least 60 days before the day of election.
10	Last day for submission of names of Polling Agents to the Electoral Officer of the Local Government Area by Political Parties.	**Presidential & National Assembly** 10th December, 2026 **Governorship & State Houses of Assembly** 6th January, 2027	Section 43(1) of the Electoral Act, 2026 provides for not later than 14 days before the election.
11	Publication of the official Register of Voters by the Commission.	15th December, 2026	Section 10(4) & 44(b) of the Electoral Act, 2026
12	Publication of Notice of Poll by the Commission.	29th December, 2026	Section 44(a) of the Electoral Act, 2026 provides for not later than 14 days before the election.
13	Last day for campaigns by Political Parties.	**Presidential & National Assembly** 14th January, 2027 **Governorship & State Houses of Assembly** 4th February, 2027	Section 98(1) of the Electoral Act, 2026 provides that campaign in public by every political party shall commence 150 days before polling day and end 24 hours prior to that day.
14	Date of Election	**Presidential & National Assembly** 16th January, 2027 **Governorship & State Houses of Assembly** 6th February, 2027	Sections 76 (1) & (2), 116 (1) & (2), 132 (1) & (2) and 178 (1) & (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) empower the Commission to appoint dates for Presidential, Governorship, National Assembly and State House of Assembly elections not earlier than 150 days and not later than 30 days before the expiration of the term of office of the last holder/before the House stands dissolved.

Professor Joash O. Amupitan, SAN
Chairman, Independent National Electoral Commission

CERTIFIED TRUE COPY
INEC HQTRS ABUJA
25 SEP 2026
TOMI ADESINA
ACLO
SIGN.....

Dated this 26th day of February, 2026

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO. FHC/ABJ/CS/2346/2026

BETWEEN

OGBUKE JULIUS ARINZE - PLAINTIFF

AND

1. **EZEH KINGSLEY IFEANYI**
2. **NIGERIA DEMOCRATIC CONGRESS (NDC) - DEFENDANTS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

3RD DEFENDANT'S WRITTEN ADDRESS IN SUPPORT OF THE COUNTER AFFIDAVIT

1.0 **INTRODUCTION**

1.1 By an Originating Summons filed by the Plaintiff on the 27th September 2026 and prays this Honourable Court for determination of Four (4) questions and seeks for Nine (9) declaratory and injunctive reliefs.

1.2 The Originating Summons is supported by a 17-paragraphs Affidavit deposed to by one **Comfort Ikechukwu, the Secretary to the Law firm of the Counsel to the Plaintiff** in this Suit.

2.0 **FACTS RELEVANT TO THE CASE**

2.1 The Plaintiff by the facts deposed to in the Affidavit Support of the Originating Summons claimed that he lawfully emerged as the winner of the validly conducted primary election of the 2nd Defendant into the Udi/Ezeagu Federal Constituency of Enugu State for the 2027 General Election.

2.2 The Plaintiff further averred that after duly submitting his details in the Form EC 9 as candidate nominated for the said constituency to the 2nd Defendant. The 3rd published the details of the 1st Defendant as the candidate of

Udi/Ezeagu Federal Constituency of Enugu State for the 2027 General Election

2.3 Worthy of note is the fact that the 3rd Defendant does not nominate, submit or upload Candidates for Political Parties including the 2nd Defendant. It is exclusive preserve of the 2nd Defendant and other Political Parties to nominate their Candidates who must have emerged from a valid Primary Election.

2.4 In response to the Suit, 3rd Defendant filed a 10 Paragraphs Affidavit emphatically stating that the Statutory duties of the 3rd Defendant after the conduct of primary election is limited to downloading the uploaded details of the Candidates submitted by political parties, publish the Forms EC9 and list of candidates for the elections as submitted by the political parties.

3.0 ISSUE FOR DETERMINATION

3.1 It is respectfully submitted that having regard to the facts as deposed to in the Affidavit in support of the Originating Summons the 3rd Defendant raises a lone issue for determination, to wit:

Whether the Plaintiff is entitled to the reliefs sought?

4.0 ARGUMENT ON THE LONE ISSUE

4.1 Whether the Plaintiff is entitled to the reliefs sought?

4.2 My lord, it is submitted straightaway that the answer to this question is in the negative. Surely, the Plaintiff is not entitled to the reliefs sought in this Suit. The burden of proof is placed on the Plaintiff who claims the reliefs in the Originating Summons, See **Emenike vs. PDP (2012) 12 NWLR (Pt.1315) 556 @ Pp. 589-590 paras H-B.**

4.3 It is trite law that he who asserts must prove. **Section 133 of the Evidence Act, 2011** provides:

"133 (1) In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgement of the court would be given

if no evidence were pronounced on either side, regard being had to any presumption that may arise on the pleadings.

(2) If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively until all the issues in the pleadings have been dealt with"

See the cases of: **Dikwa v. Modu (1993) 3 NWLR (PL.280) 183, Okonkwo v. Okagbue (1994) 9 NWLR (Pt. 368) Pg. 301, 325-326 and Ebo v. Egbu (1994) 5 NWLR (Pt.347) Pg. 703, 718**

4.4 My Lord, the claims of the Plaintiff in the instant case are declaratory in nature, a hurdle the Plaintiff must cross to be entitled to the reliefs claimed is, its case succeeds on its strength even in the face of admissions (which is not the case here). Declaratory orders are not granted as matter of cause or even based on admissions. The principles upon which declaratory reliefs are granted have been eloquently stipulated in plethora of judicial authorities. See **Luke v. R.S.H. & P.D.A.(2023) 3 NWLR (Pt. 1871) 221 at 251-252 paras C-D & H-A(SC)** and **Ojiayan v. Ani. Dev. Ent. Ltd. (2024) 4 NWLR (Pt. 1929) 381, at 403, paras G-H (CA)**

4.5 My noble lord, we submit most humbly that it is trite law that declaratory reliefs are not grantable even on admission, or the weakness of the defence, if any. The Plaintiffs is not relieved from its legal and evidential onus to prove its case or assertions with credible evidence in line with our extant laws and we urge your lordship to so hold. We refer your lordship to the cases of **Omisore v. Aregbesola (2015)15 NWLR (Pt.1482) 205 @ P.322, paras. D-E (SC); Seamarine Int'l Ltd v. Ayetoro Bay Agency (2016) 4 NWLR (Pt. 1502) P. 313 at Pp. 343 - 344, paras. F-A.**

4.6 The burden of proving a fact rests on the party who asserts the affirmative of an issue and not a party who denies it or who asserts the negative. A negative assertion cannot be proved. In **Danjuma vs. Garba (2021) LPELR- 57105 CA.** The Court of Appeal held that:

"I am of the view that the trial Court erred in law by placing a legal burden of the 1st defendant which it should not have been saddled with. This takes me to the decision in Olorundare's case which I had hitherto referred to in this judgment. Although Sections 131-132 of the Evidence Act, places the burden of proving a fact on the one who asserts a fact, this cannot be said of a party who asserts the non-existence as there is nothing for him to assert, save to insist on the non-payment to the Appellant".

4.7 My lord, appreciating the case of the Plaintiff, as deposed to in its Affidavit in support of the Originating Summons, the Plaintiff claimed that he lawfully emerged as the winner of the validly conducted primary election of the 2nd Defendant into the Udi/Ezeagu Federal Constituency of Enugu State for the 2027 General Election. The Plaintiff further averred that after duly submitting his details in the Form EC 9 as candidate nominated for the said constituency to the 2nd Defendant. The 3rd published the details of the 1st Defendant as the candidate of Udi/Ezeagu Federal Constituency of Enugu State for the 2027 General Election. In response to the Suit, 3rd Defendant filed a 10 Paragraphs Affidavit emphatically stating that the Statutory duties of the 3rd Defendant after the conduct of primary election is limited to downloading the uploaded details of the Candidates submitted by political parties, publish the Forms EC9 and list of candidates for the elections as submitted by the political parties.

4.8 My Lord, the purported facts as deposed to in their Affidavits in support of the Originating Summons are not sacrosanct, they are subject to consideration/evaluation by this Honourable Court even where they are not challenged. In the case of **Adeniyi v. Tina George Ind. Ltd. (2019) 16 NWLR (Pt. 1699) 560 at 587-588 paras A-A** where the Supreme Court held:

> *"One of the first complaints of the appellants is that the application was unopposed and therefore the court ought to have accepted and acted on the unchallenged averments. While it is generally well settled that unopposed averments in an affidavit will be deemed admitted, it is also trite that the court has a duty to evaluate the unopposed averments and determine whether, as they stand, they justify the grant of the relief sought. The mere fact that averments are not denied does not mean that the court must accept them without more. The averments, even if accepted by the court, must be*

cogent and credible. If the court is not so satisfied, the application will be refused. In Neka B.B.B. Manufacturing Co. Ltd. v. A.C.B. Ltd. (2004) 2 NWLR (Pt.858) 521 @ 550-551 F-A, this court held, per Pats-Acholonu, JSC:

"I am familiar with the case of Odulaja v. Haddad(1973) 1 ANLR 191 to the effect that an evidence not challenged by the party that had the opportunity to do so should ordinarily be believe and accorded credibility. I believe that such holding rests on the premise that such evidence is capable of being believed if not challenged. In other words, when the evidence is weak in content as not to assist the court or is manifestly unreasonable or is devoid of any substance as not to help to resolve the matter in issue it will be safe to ignore it as it does not attain the standard of credibility. Although it is the general rule that un contradicted evidence from which reasonable people can draw but one conclusion may not ordinarily be rejected by the court but must be accepted as true, it is also true to say that the court is not in all the circumstances bound to accept as true testimony an evidence that is un contradicted where it is willfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case." (Italic mine)

See also: Obasanjo Farms (Nig.) Ltd. v. Muhammad (2016)LPELR-40199 (CA) @ 41-42 A-D; R-Benkay (Nig.) Ltd. v. Cadbury(Nig.) Ltd. (2012) 9 NWLR (Pt.1306) 596; Gonzee (Nig.) Ltd. v.NERDC (2005) 13 NWLR (Pt. 943) 634 @ 638 @ 650 D.

4.9 It follows therefore that this Honourabble Court is entitled to evaluate the averments in the supporting affidavit to satisfy itself that the Plaintiffs is entitled to the reliefs sought by it.

4.10 My Lord, is urged to discountenance the argument of the Plaintiff and the cases cited which are inapposite its case. This case succeeds only if the facts deposed to in the affidavit in support are reliable.

5.0 CONCLUSION

5.1My Lord is urged to hold that the case of the Plaintiff is bereft of any substance. That it is in the interest of justice to allow only candidates that emerged from valid conducted primaries contest elections to strengthen internal party democracy.

DATED THIS ...12..... DAY OF OCTOBER, 2026.

Femi

Sulayman O. Ibrahim, SAN
Adeyemi O.A. , Esq.(Sign)
Dr. Kingsley Magbuin, Esq.
Hassan Aminu, Esq.
Counsel to the 3rd Defendant, INEC Headquarters,
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FOR SERVICE ON:

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