

## THE JUDICIARY, ONDO STATE PDP IMBROGLIO AND MERCHANTS OF MISINFORMATION

### A. INTRODUCTION:

*“Nothing in all the world is more dangerous than sincere ignorance and conscientious stupidity.”* –MARTIN LUTHER KING, JUNIOR

As a new year 2017 rolls in, it brings in new hope of reform and improvement in every facet of national life this year.

The need for fundamental reform in the country based on a proper restructuring that disembowels the forces of reaction has never been more urgent.

The fight against corruption, itself a symptom of the backward system operating in Nigeria, will continue to be a flailing in the air unless fundamental reform takes place.

The merchants of misinformation would prefer to retain the status quo of mediocrity and ignorance, which supports their undeserved privileges, contrived awards and self-aggrandizements by deception and misinformation.

The reform or revolution Nigeria needs requires that ignorance be overpowered whenever those with knowledge are confronted.

The Gubernatorial election in Ondo State has come and gone with the old year but the misinformation and misconceived opinions concerning the events of November 2016 remain as potential fodder for even greater crisis in the future unless dealt with now.

This article is necessitated by the need to bring relevant information concerning that episode onto the public record in order that the sincere onlooker might not consider silence as acquiescence in the misinformation that has pervaded the public domain over the matter and (having no basis for rejecting the error which currently boldly struts the socio-political terrain) thus become the fountain for further dissemination of sincere ignorance and stupidity.

### B. THE FACTS AND ISSUES:

It is for this and the unjustified mischaracterization of certain persons involved in the matter as villains that I have decided to set out the facts and issues involved in the Ondo State PDP imbroglio as follows for the public record:

#### B.1. THE ORIGIN OF DISPUTE IN ONDO STATE PDP:

1. On the 2<sup>nd</sup> of October 2014, Governor Olusegun Mimiko and his (erstwhile Labour Party domiciled) political structure in Ondo State defected to the Peoples Democratic Party.
2. Some have speculated that the return of Mimiko to PDP at this time was in consideration for the support he had enjoyed from President Goodluck Jonathan for his re-election as Governor of Ondo State in 2014 and part of the pay-back plan for the re-election of President Jonathan in 2015.
3. That return to the PDP was marked by an event that was considered to be a coup d'état against the elected leadership of the PDP in Ondo State, sparking the internal contradictions that culminated in the November 2016 imbroglio.
4. In one fell swoop, following the Mimiko return, the old PDP structure which had struggled with the Labour Party in 2014 for the Governorship of Ondo State (with Olusola Oke as its candidate) and been beaten into second position (by the Labour Party with Segun Mimiko as its candidate) was summarily deposed and replaced by the decamping Ondo State Labour Party leadership.
5. The deposed PDP leadership decided to resort to the courts and (based on the provisions of Section 223 and 224 of the Nigerian Constitution) requested that the court declare their deposition a coup d'état, unconstitutional and invalid amongst other reliefs.
6. Section 223 of the said Nigerian Constitution, relied upon by them, states as follows:  
*“(1) The constitution and rules of a political party shall- (a) provide for the periodical election on a democratic basis of the principal officers and members of the executive committee or other governing body of the political party; and (b) ensure that the members of the executive committee or other governing body of the political party reflect the federal character of Nigeria.*  
*(2) For the purposes of this section - (a) the election of the officers or members of the executive committee of a political party shall be deemed to be periodical only if it is made at regular intervals not exceeding four years; and (b) the members of the executive committee or other governing body of the political party shall be deemed to reflect the federal character of Nigeria only if the members thereof belong to different states not being less in number than two-thirds of all the states of the Federation and the Federal Capital Territory, Abuja.”*

#### B.2. THE FIRST ISSUE IN CONTENTION:

7. The deposed leadership of the PDP was aware that there were two schools of thought concerning the issue they had presented to the court:
8. Some within the legal profession (including judges) have taken the position that any issue concerning the leadership of a political party should be regarded as an internal affair of a Political party and therefore outside judicial jurisdiction (i.e. non-justiciable).
9. Others, including this writer, have maintained that anything done by or in a Political party that could affect our social order, as structured by the

Constitution of the Federal Republic of Nigeria 1999, ought not to be left out of the oversight of the judiciary.

10. The deposed PDP leadership was therefore advised that the Nigerian Constitution unequivocally forbids and proscribes coup d'état as a means or method of establishing political leadership in this country and that the provisions of Section 223, concerning how the leadership of a political party may be changed, are to give effect to that clear intention and desire of the Nigerian peoples.
11. The deposed officers were further advised that just as the Nigerian judiciary has the jurisdiction to intervene to enforce the constitution against a bunch of armed soldiers who might decide to take over at Aso villa in Abuja contrary to the constitution, so it has the jurisdiction to intervene when such illegality occurs in any of the political parties, which by the democratic structure laid out in the Constitution, are the incubators of political office holders at every level of governance in Nigeria and the platform on which those seeking political office in Nigeria may contest democratically as permitted by the Electoral Act.

B.3. THE FIRST RESORT TO THE FEDERAL HIGH COURT:

12. The deposed leadership of the PDP in Ondo State, under the chairmanship of Mr. Ebenezer Alabi, therefore approached the Federal High Court complaining, in effect, that there had been a coup d'état with regard to the change of leadership of the PDP in Ondo State, contrary to the provisions of the Nigerian 1999 Constitution.
13. The Ebenezer Alabi Ondo State PDP Executive Committee (Exco) commenced the action in 2014 as Suit No. FHC/ABJ/CS/826/2014 at the Abuja Division of the Federal High Court complaining that their unlawful deposition was in order to exclude them from performing their role in the process of nominating the PDP's candidates for the 2015 general elections.
14. The Federal High Court delivered judgment in the action on the 28<sup>th</sup> of November 2014 and ordered as follows *inter alia*: ***“AN ORDER OF PERPETUAL INJUNCTION is made restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from relating with the 3<sup>rd</sup> Respondent or the National Working Committee of the 3<sup>rd</sup> Respondent in respect of candidates into membership of Ondo State House of Assembly, Federal House of Representatives and the Senate of the Federal Republic of Nigeria.”***
15. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents referred to in that order were the Chairman of the Independent National Electoral Commission (INEC) and INEC itself whilst the 3<sup>rd</sup> Respondent was the PDP.
16. That judgment was not appealed against.

B.4. THE ATTEMPT TO SETTLE A LEGAL PROBLEM POLITICALLY:

17. However, soon after that judgment, Mr. Ebenezer Alabi and three other officers of the party (reportedly prevailed upon by the Mimiko faction)

resigned and the Clement Faboyede led group immediately claimed that the resignations brought the tenure of the entire members of the PDP Ondo State Executive Committee to an end and therefore again claimed to be their replacement.

18. Apparently, according to the clients, the Mimiko faction had been wrongly advised that the legal obstacle posed by the judgment of the court in Suit No. FHC/ABJ/CS/826/2014 could be overcome politically by having the officers of the PDP resign en masse and then replacing them, without elections, with the Faboyede group.
19. This doomed strategy started to fail when only the Chairman and three officers agreed to resign whilst the others resolved to appoint replacements for them.
20. The rump of the Ondo State PDP Exco, after the four resignations, resisted the Faboyede led imposition on the basis that only the PDP State Exco was permitted by the PDP Constitution to appoint replacements for any member of the Exco that resigned, that the Chairman and the three other officers who resigned were not the entire State Exco but mere members thereof who could only be replaced by appointments made by the remaining members of the Exco.
21. Article 47(6) of the PDP constitution relied upon by them for this contention states as follows: ***“Where a vacancy occurs in any of the offices of the Party, the Executive Committee at the appropriate level shall appoint another person from the area or zone where the officer originated from, pending the conduct of election to fill the vacancy”***

B.5. THE SECOND ISSUE IN CONTENTION:

22. The remaining members of the Ondo State PDP Exco therefore contended that Clement Faboyede and the three members of his group (who had now scaled down to claim that they were replacements for Ebenezer Alabi and the three other “resignees”) could not validly replace the resigned officers unless they were appointed by the remaining officers in the State Exco who had not resigned and certainly could not purport to be a replacement for officers who had not resigned.
23. The remaining members of the Exco (complying with the provisions of Article 47(6) of the PDP constitution set out above) finally rejected the idea of appointing Faboyede and the other three and instead appointed Dr. Olu Ogunye and three other PDP stalwarts as the replacement for Ebenezer Alabi and the three other resigned officers.
24. The reconstituted PDP Ondo State Executive Committee, now under the Chairmanship of Dr. Olu Ogunye, finding that they were completely ignored by the National Leadership of the PDP and INEC (in preference for the Clement Faboyede group) then decided to approach the Federal High Court as a follow up to the previous judgment to have the court determine whether it was democratic for replacements for resigned officers in the PDP State Exco to be imposed from without, when the Party Constitution made that the preserve of the State Exco itself.

B.5. THE SECOND RESORT TO THE FEDERAL HIGH COURT

25. This question was raised before the Federal High Court, Abuja Division in Suit No. FHC/ABJ/CS/1006/2014, by the reconstituted Exco under the leadership of Dr. Olu Ogunye (himself named as 1<sup>st</sup> Plaintiff)
26. On the 18<sup>th</sup> of December 2014 the Federal High Court made an interim order in favour of the Plaintiffs *inter alia* as follows: **a. “That an order of interim injunction is hereby made restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants from parading themselves as Chairman, Publicity Secretary, Auditor, Assistant Legal Adviser and Youth Leader respectively and/or performing any functions pending the hearing of the Motion on Notice”**  
**b. “That AN ORDER OF INTERIM INJUNCTION is hereby made mandating the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants to relate immediately with the Plaintiffs in respect to the conduct of primaries and election to the offices of Ondo State House of Assembly, House of Representatives and the Senate and the affairs of the Peoples democratic Party in Ondo State pending the hearing of Motion on Notice”**
27. Clement Faboyede and his three colleagues (who claimed to have replaced Ebenezer Alabi and the four officers who had resigned) were the 1<sup>st</sup> to 4<sup>th</sup> Defendants whilst the Peoples Democratic Party (PDP), Alhaji Ahmed Muazu (then National Chairman PDP), Prof. Wale Oladipo (National Secretary PDP) and Independent National Electoral Commission (INEC) were respectively the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants referred to in that order.
28. The Ogunye led Ondo State PDP Exco subsequently reported to the court that INEC had refused to obey the order and had proceeded to process a list of candidates for the PDP for the 2015 general elections forwarded by the Clement Faboyede group through the then compliant National Leadership.

B.6. THE PDP CANDIDATES THEMSELVES REACT:

29. Contemporaneously, a group (led by Chief Benson Akingboye), which claimed to consist of the authentic candidates of the PDP for the 2015 general elections as nominated at the primaries conducted by the Ogunye Exco (as ordered by the National Executive Committee of the PDP) started to agitate against what they considered an injustice since they had bought nomination forms from the Party’s National Headquarters, been screened for primaries, contested in the primaries they considered to be the lawful one based on the judgment and order of the court only to find that they had been rejected by the National Leadership of the Party and INEC.

B.6. THE THIRD ISSUE IN CONTENTION:

30. They contended that the Ogunye faction was the only lawful leadership for the PDP in Ondo State by reason of the judgment in Suit No.

FHC/ABJ/CS/826/2014 and the interim order in Suit No. FHC/ABJ/CS/1006/2014.

B.7. THE THIRD RESORT TO THE FEDERAL HIGH COURT:

31. On this basis they commenced an action at the Federal High Court, Lagos division, as Suit No. FHC/L/CS/37/2015 seeking, along with 6 other reliefs, the following:  
*“A declaration that by the combined effect of section 223 of the 1999 Constitution of the Federal Republic of Nigeria as amended and section 86 of the Electoral Act 2010 as amended and having regard to the judgment of this Honourable Court delivered in Suit No. FHC/ABJ/CS/826/2014 on the 29<sup>th</sup> November 2014, which recognised the Ebenezer Alabi, led Executive Committee of the 2<sup>nd</sup> Defendant in Ondo state as the authentic Executive Committee [Exco] of the party in Ondo state and the order of the court in Suit No. FHC/ABJ/1006/2014 Made on the 18<sup>th</sup> of December 2014 requiring the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to relate to the succeeding Executive Committee led by Dr. Olu ogunye, following the resignation of some of the members of the Alabi led Executive Committee, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are obliged to accept and process for Ondo state only the list of candidates that emerged from the primary election conducted to elect the party’s flag bearers for the 2015 General elections by the Ondo state Exco under the chairmanship of Dr. Olu Ogunye the successor of Mr. Ebenezer Alabi.”*
32. On the 5<sup>th</sup> of April 2016 the Federal High Court delivered a judgment granting only the declaration set out above and striking out the 6 other reliefs claimed as academic.

B.8. THE ASHES RESIST THE EMERGENCE OF THE PHEONIX

33. Following the defeat of the PDP at the national elections in May 2015 and the allegations of corruption and financial profligacy against many of the Parties leading figures, the Party went into a tail spin with mass defections to the All Peoples Congress and the resignation of its erstwhile National Chairman, Adamu Mu’azu.
34. As a natural reaction, some attempt at an internal re-awakening began with Gulak’s quixotic litigation almost producing a political solution, until the PDP Governors seeing this as an affront to their authority and influence over the National politics of the Party intercepted the move and declared Senator Ali Modu Sherriff the new National Chairman of the PDP.
35. Upon further consultation and apparently better advise, Senator Sheriff submitted himself to the National Executive Committee to be appointed as a replacement for Adamu Mu’Azuz in accordance with the provisions of Article 47 (6) of the Constitution of the Party on the 16<sup>th</sup> of February 2016.
36. The conduct of congresses from ward to national level of the PDP was ordered in May 2016 by the National Executive Committee of the PDP (then under the undisputed leadership of Senator Ali Modu Sherriff)

whereupon States congresses to elect new party leaders at State level were conducted on the 10<sup>th</sup> of May 2016 by the recognized leadership of the PDP at the States level.

37. Mr. Biyi Poroye and his colleagues (apparently) emerged, from the State Congress conducted by the Olu Ogonye Exco, as the new leaders of the PDP in Ondo State on the 10<sup>th</sup> of May 2016 and received letters from the National Executive Committee (NEC) signed by Senator Ali Modu Sherrif and Professor Wale Oladipo (as National Chairman and National Secretary respectively) on the 12<sup>th</sup> of May 2016 recognising them as such and authorizing them to conduct primaries on behalf of the PDP National Executive Committee for candidates of the PDP in upcoming elections and forward the names of nominees to the INEC.
38. It is now a part of Nigerian political history that hostilities erupted on the 21<sup>st</sup> of May 2016 between the National Executive Committee (NEC) of the PDP and some Governors of the PDP, resulting in the “removal” of the entire National Executive Committee of the PDP and its replacement by a Caretaker Committee headed by Senators Makarfi and Ben Obi.

#### B.9. THE FOURTH APPROACH TO THE FEDERAL HIGH COURT

39. In the context of the role played by the PDP Governors (particularly Governors Mimiko and Fayose) in the emergence of the “Caretaker Committee” the Biyi Poroye leadership took the threats from their adversaries in Ondo State seriously concerning the plan by the Caretaker Committee to disband or dissolve the existing leadership structure in the Nigerian South West and replace them with the nominees of the two South West PDP Governors.
40. The Biyi Poroye group therefore sought to pre-empt the use of the Caretaker Committee to sideline/dissolve/replace them, as threatened, by again seeking (in concert with other embattled States ExcOs in the Nigerian South West and the PDP South West Zonal Executive Committee) protection for the PDP’s democratic structures at the Federal High Court, in a new action brought as Suit No. FHC/ABJ/CS/395/2016.
41. In this new case, the embattled PDP South Western States ExcOs and the South West Zonal Executive Committee requested that the court constrain the PDP as a party and INEC as regulator, from accepting or recognizing any such undemocratic and malevolent use of the PDP National leadership as constituted by the National Caretaker committee which they considered to be an aberration and illegality.
42. They also claimed that the States ExcOs (in Ondo, Ekiti, Osun, Oyo and Lagos) were the appropriate organs to conduct primaries and other activities of the Party in the respective States and to forward the names of Party nominees from the States to the INEC based on the letters of 12<sup>th</sup>, 13<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> May 2016 written to each of them in this regard by the National Executive Committee.

43. The matter proceeded to judgment delivered on the 29<sup>th</sup> of June 2016 in which the Federal High Court found that the officers of the State ExcOs were democratically elected and would be entitled to a four-year term of office. It also found that the officers of the South West Zonal Exco were still within the term they were elected to at a special congress held in 2014.
44. Based on these findings and the letters of 12<sup>th</sup>, 13<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> May 2016, from the National Executive Committee (delegating to the State Exco the role of conducting primaries and forwarding candidates names to INEC) the court, amongst other reliefs granted, ordered as follows:  
*“AN order is hereby made directing the 1<sup>st</sup> Defendant (INEC) to deal exclusively with the officers of the 2<sup>nd</sup> defendant that emerged from the State congresses of the party conducted on the 10<sup>th</sup> of May 2016 in Ekiti, Ogun, Ondo, Osun, Oyo and Lagos states in the conduct of the 2<sup>nd</sup> Defendant’s events and programmes including (i) the conduct of congresses for the conduct of their successors; (ii) issuing of nomination forms for conduct of party primaries for 2019 general elections to them, acceptance of the completed forms, processing and publication of the list of candidates submitted by them and (iv) the use of only the list of candidates of the Peoples Democratic Party in the respective states that emerged through primaries conducted by the aforesaid officers...”*
- “An order is hereby made restraining the 1<sup>st</sup> Defendant from dealing in any way or manner or otherwise according recognition whatsoever to any person(s) claiming to be officers of the People’s Democratic party in Ekiti, Ogun, Ondo, Osun, Oyo and Lagos States and the South West Zone except the authentic officers of the party recognized by the 2<sup>nd</sup> Defendant in its letters of 9<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> day May, 2016.”*
45. In reliance on this judgment the Biyi Poroye leadership of the PDP in Ondo State, conducted the primary to nominate the candidate of the PDP for the November 26<sup>th</sup> Ondo State Governorship election and having produced Jimoh Ibrahim as that candidate in August 2016, sent his name to INEC.
46. Apparently, Eyitayo Jegede (SAN) had emerged the Mimiko faction’s candidate in September 2016.

#### B.10. THE DISAGREEMENT BETWEEN INEC AND THE POROYE LEADERSHIP

47. INEC refused to process Jimoh Ibrahim’s name as PDP candidate for the election, insisting that the Order of the court requiring it to deal exclusively with the Poroye Exco only mentioned the 2019 general elections and made no specific mention of the 2016 Ondo State Governorship elections, which had dropped out of the normal sequence of the general elections in Nigeria due to the judicial intervention that installed Mimiko as Governor in 2008.
48. The Poroye Exco maintained that the Order specified that INEC should deal exclusively with the Poroye leadership in Ondo State *“in the conduct*

*of the (PDP's) events and programmes*" in Ondo State "*including*" the 3 items mentioned specifically in that order and not excluding other events and programmes.

49. They argued that this phraseology did not exclude the primaries for the elections in 2016.
50. They argued that the primaries for the 2016 Ondo State election was a PDP "*event and programme*" in Ondo state as envisaged by the judgment.
51. They contended that the word "**including**" (preceding the 3 specifically mentioned events and programmes) means that those listed items are but species of events and programmes of the PDP in Ondo State in respect of which INEC must deal with the Poroye Leadership "**exclusively**".
52. The Poroye Leadership therefore maintained that the primaries conducted by them for the PDP candidate for the 2016 Ondo State Governorship election clearly fell within the contemplation of the effect of the word "**including**".

#### B.11. ENFORCEMENT OF THE JUDGMENT AGAINST INEC

53. The Poroye leadership, unable to persuade INEC to comply, therefore returned to the Federal High Court to enforce the judgment against INEC by an application in which they prayed the court to require INEC to obey the judgment orders by accepting the PDP candidate that emerged from their primary for the November 2016 Ondo State Governorship election.
54. This post judgment application, for enforcement of the judgment in the terms sought, was preceded (as required by law) by the service on INEC of forms 48 and 49 of the Judgment Enforcement Procedure Rules. No one else was served with forms 48 and 49.
55. Knowledgeable lawyers and judges will realize that the procedure for enforcement of judgments by the Sheriff and Civil Process Act and the Judgment Enforcement Procedure Rules made under it, are very strict and you cannot proceed against someone who has not been served with Forms 48 and 49.
56. The PDP was named as respondent in that application only because it was already a party to the substantive claim and it instructed its lawyers to support the application.
57. The enforcement order sought was granted on the 14<sup>th</sup> of October 2016 requiring INEC to comply with the order made in the judgment of 29<sup>th</sup> June 2016 by accepting and processing only the name forwarded by the Poroye led PDP Ondo State Exco. It was made in the following terms as requested by the Applicants: "*That INEC the 1<sup>st</sup> Respondent/Alleged Contemnor shall accept and process for the purpose of its functions and activities in organization and conduct of Ondo State Governorship election only the nomination of Barrister Jimoh Ibrahim who emerged from primary election conducted by the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Creditors/Applicants on 29<sup>th</sup> August, 2016 as the candidate of the PDP in the said Ondo State Governorship election to take place in November 2016.*"

#### B.12. THE STORM IN THE TEACUP

58. As soon as INEC announced that it was going to obey the order and post Jimoh Ibrahim's name as the PDP candidate for the November 2016 Ondo State Governorship election, a propaganda storm broke out which was orchestrated by the Mimiko faction.
59. That propaganda war waged through the media, at town hall meetings and rallies contended that the court order resulting in the posting of Jimoh Ibrahim's name as the PDP candidate was obtained by fraud. That the lawyers involved had breached their professional ethics and the judge had participated in the fraud.
60. Petitions were addressed to the National Judicial Council against the judge and threats made against the lawyers.
61. Protests by commissioned thugs on the streets of Akure (the Ondo State Capital) were videoed and widely published on print, electronic and online media.
62. Pressure was then brought on the Nigerian President to intervene to force INEC to disobey the court order under the threat that law and order in Ondo State will completely break down if that was not done.
63. The President wisely advised that the courts be allowed to resolve the issues.
64. The NJC returned a verdict rejecting the petition against the judge having found that he did nothing wrong.
65. Applications were filed by Senators Ahmed Makarfi and Ben Obi (on behalf of the Caretaker Committee) for leave to appeal as interested parties against the Judgment of 29<sup>th</sup> June 2016 and by Eytayo Jegede SAN (as the Mimiko faction's PDP candidate) for leave to appeal as an interested party against the Enforcement Order made on the 14<sup>th</sup> of October 2016.

#### B.13. THE BASES OF THE ACCUSATION OF FRAUD AND THE RESPONSE THERETO:

66. THE FIRST BASIS FOR THE ALLEGATION OF FRAUD IS THAT, SINCE NEITHER JIMOH IBRAHIM NOR EYTAYO JEGEDE WERE PARTIES TO THE PROCEEDINGS BEFORE THE COURT, NO ORDER TO THE BENEFIT OF THE FORMER OR THE DETRIMENT OF THE LATTER OUGHT TO HAVE BEEN MADE:
67. THE RESPONSE TO THIS BY THE PLAINTIFFS WENT AS FOLLOWS:
68. Neither Jimoh Ibrahim (candidate of the Poroye leadership) nor Eytayo Jegede (the candidate of the Faboyede group) was party to the main action in which judgment was given on the 29<sup>th</sup> of June, nor could they have been, because neither of them had emerged as candidates of their respective factions at that time. Jimoh Ibrahim according to the records emerged on the 29<sup>th</sup> of August whilst Eytayo Jegede emerged in September 2016 at least 2 -3 months after the judgment was delivered.

69. Neither of them could therefore have been in the sight of the orders made in the judgment of 29<sup>th</sup> June 2016
70. Consequently, neither of them was or could therefore be a party to the judgment enforcement proceedings based on forms 48 and 49 of the judgment enforcement procedure Rules (served only on INEC) because they were not parties to the action in which judgment was given and were not therefore capable of being parties to the committal proceedings made exclusively against a party to the action alleged to be in disobedience to the judgment of the court given against it.
71. Furthermore, because Committal proceedings are quasi criminal proceedings only persons against whom accusations of contempt are made can be targets of such proceedings. Even the PDP, which was a Defendant to the main action, was not a target of the Committal proceedings and was not named in the application as an "Alleged Contemnor".
72. The PDP was only named as a Respondent in the application because it was already a party to the main suit. This was why the PDP was at liberty to support the application as it did through its written address filed by its lawyer, Godswill Mrakpror Esq.
73. In the circumstance, the idea that Eyitayo Jegede SAN, from nowhere, ought to have been made a party by the judge, because obedience by INEC would affect him, is strange to law.
74. The analogy was made concerning an order of reparation by a criminal court affecting stolen property in respect of which payment had been made innocently to the thief by a third party. Would the judge be obliged to join the third party as an accused person though no accusation of wrongdoing was made against him before he could require the convicted thief to return the property to the owner?
75. Similarly, would it be a fraud for the Judge to make such an order unless the owner of the property who would benefit from the order was a party to the criminal proceedings.
76. The benefit to Jimoh Ibrahim was but a bye-product of obedience by INEC of a court order made before Jimoh Ibrahim ever emerged as the likely beneficiary of that order.
77. Similarly, the detriment suffered by Eyitayo Jegede SAN was but a bye-product of obedience by INEC of a court order made before Eyitayo Jegede (SAN) ever emerged as the candidate of the Mimiko group.
78. The obedience of the order made on the 29<sup>th</sup> of June 2016 by INEC would have benefitted anyone who was presented (under the authority of the judgment of 29<sup>th</sup> June 2016) to INEC as the PDP candidate as nominated at the primary conducted by the Poroye leadership. It would also automatically have affected anyone else whose candidature was adverse to the terms of the judgment.
79. Even if the judge was wrong to insist that his judgment covered the November 2016 Ondo State election (and that is yet to be seen since the matter is still subject of an appeal before the Supreme Court) was that sufficient reason to label him a fraud?

80. THE SECOND REASON ADVANCED FOR THE ALLEGATION OF FRAUD WAS THAT THE LAWYERS INVOLVED ACTED IN BREACH OF THEIR PROFESSIONAL ETHICS
81. THE RESPONSE OF THE PLAINTIFFS TO THIS WENT AS FOLLOWS:
82. This accusation was made though there was no basis for it beyond a typographic error in the Originating Summons and the fact that a counsel alleged to be a member of the legal team for the Applicant held the brief of PDP's counsel in the Enforcement proceedings in which the PDP's Counsel had independently filed processes urging the court to grant the Applicant's prayers against INEC.
83. Firstly, the signature of the counsel to the Plaintiff in the Originating Summons, Dr. Alex Iziyon SAN, had cured the error in the narrative portion of the Originating Summons, which mistakenly indicated that a different counsel, Olagoke Fakunle SAN, had issued the Originating Summons.
84. Iziyon SAN had explained over and over (and by sworn affidavit) at the Court of Appeal when this was raised, that it was an error and he was the one who prepared and filed the Originating Summons. He explained that the Originating Summons might have been copied from a soft copy of one used when his firm had worked with Fakunle SAN in the past, as lawyers are wont to do.
85. These explanations were not contradicted or even contested by anyone but confirmed by Fakunle SAN himself who stated that he did not participate in the preparation of the case and when he was instructed to lead the team for PDP he did not notice that his name appeared in the narrative in the Originating Summons.
86. In any event PDP had by its National Executive Committee instructed its counsel not to oppose the action and no breach of professional ethics could by any stretch of imagination be established.
87. Secondly, the enforcement proceeding was not adversary between the Applicant and PDP because PDP had filed processes urging the court to grant the Applicant's prayers in the application. There was clearly no conflict in a counsel (at the instance of the PDP and its counsel) holding the brief of the PDP counsel, who were unavoidably absent, for the limited purpose of introducing and adopting the processes that had been earlier filed by the PDP's counsel (even if that counsel was a member of the team of counsel for the Applicants).
88. Only the PDP or its counsel could complain if the counsel that held its counsel's brief had acted contrary to or in excess of instructions. They did not.

### C. CONCLUSION:

In all the above, to puncture the misinformation that has been so pervasive on the matter it must be borne in mind that the Plaintiffs had maintained and continue to maintain that:

- i. The Makarfi/Alimodu Sheriff tussle for the National leadership of the PDP commenced on the 23<sup>rd</sup> of May 2016, almost two weeks after the election of the Poroye leadership in Ondo State and its recognition by the letter from the PDP NEC of 12<sup>th</sup> May 2016.
- ii. The battle for the authentic Ondo State leadership started in 2014 and had been settled by two judgments and one order by 2015.
- iii. The action brought as Suit No. FHC/ABJ/CS/395/2016 was to protect the democratically elected leadership of the PDP in the South West from threatened interference by the leadership of the PDP at the National level.
- iv. The judgment affirming the Poroye leadership of PDP in Ondo State was delivered on the 29<sup>th</sup> of June 2016 long before either Eytayo Jegede or Jimoh Ibrahim emerged as candidates of their respective factions in August and September 2016.
- v. The enforcement application was only necessitated by the failure of INEC to obey a subsisting judgment (which it had not appealed against) of its own volition.
- vi. The post judgment application in which the enforcement order was made was quasi criminal and was only against INEC, which was accused of contempt by reason of its refusal to obey the order of the Court made in its judgment of 29<sup>th</sup> June 2016.
- vii. It would be the strangest thing for any judge to join some other person (against whom no complaint of contempt is made) as a party to contempt proceedings on his own (suo muto) and that is the only way Eytayo Jegede (SAN) or Jimoh Ibrahim (CFR) could have been joined as parties to that quasi-criminal proceeding.
- viii. PDP, as a party to the Enforcement proceeding, supported the application to force INEC to obey the judgment of the court in the Suit No. FHC/ABJ/CS/395/2016 delivered on the 29<sup>th</sup> of June 2016.
- ix. Accusing the trial judge or/and the lawyers of fraud in the context of the true facts set out above was an extreme position, a deception that is clearly unjustified and unjustifiable.
- x. The Supreme Court may never have an opportunity to hear the appeal on the matter since it has now been overtaken by the result of the elections, making it clear that it was all a storm in a teacup.

PRINCE AJIBOLA OLUYEDE