

**NOTICE OF APPLICATION FOR ORDER ENFORCING
FUNDAMENTAL RIGHTS (ORDER 2 RULE 1)**

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

SUIT NO. *FHC/ABJ/CS/618/2022*

**IN THE MATTER OF AN APPLICATION BY 'FRANCIS MONEKE FOR AN
ORDER FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS**

AND

IN THE MATTER OF

1. FRANCIS MONEKE



- 1. ALL PROGRESSIVES CONGRESS**
- 2. PEOPLES DEMOCRATIC PARTY**
- 3. INDEPENDENT NATIONAL ELECTORAL COMMISSION**

255
} **RESPONDENTS**

ORIGINATING MOTION

**BROUGHT PURSUANT TO ARTICLE 13 (1) OF THE AFRICAN CHARTER ON
HUMAN AND PEOPLES' RIGHTS (RATIFICATION & ENFORCEMENT) ACT,
CAP. A9, LAWS OF THE FEDERATION OF NIGERIA, 2004, ORDER II, RULES
2 AND 3 OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE)
RULES 2009, AND UNDER THE INHERENT JURISDICTION. OF THE
HONOURABLE COURT**

TAKE NOTICE that the Federal High Court of Nigeria Holden at Abuja will be moved on the _____ day of _____, 2022 by 9 O'clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the applicant for an Order of this Honourable Court enforcing the fundamental rights prayed for by the applicant in terms of the reliefs sought in the Statement accompanying the affidavit in support of this application.

AND Take Notice that on the hearing of this application the said applicant will use the affidavit in support of the application.

Dated this 9th day of May, 2022



Francis Moneke
Ikenna Okoli, SAN, FCI Arb.
Francis Moneke
Emma Ndiyo
**Human Rights and
Empowerment Project Ltd/Gte**
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Surulere, Lagos
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FOR SERVICE ON THE RESPONDENTS:

- 1. 1st Respondent**
APC National Secretariat
40 Blantyre Crescent, Wuse 2
Abuja
- 2. 2nd Respondent**
PDP National Headquarters
Plot 1970 Michael Okpara Street
Wadata Plaza, Wuse 5
Abuja
- 3. 3rd Respondent**
INEC CORPORATE OFFICE
Plot 436 Zambezi Crescent
Maitama District, FCT
Abuja

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AFFIDAVIT IN SUPPORT

I, FRANCIS MONEKE, Nigerian, Male, and Legal Practitioner of 47 Modupe Johnson Crescent, Surulere, Lagos do hereby make oath and state as follows:

1. I am a Human Rights/Public Interest activist and the Executive Director of Human Rights and Empowerment Project Ltd/Gte and I am seized of the facts deposed to herein.
2. I am passionate about the fight against corruption, injustice and bad governance in Nigeria.
3. The 1st and 2nd respondents are political parties registered with the 3rd respondent.
4. The 3rd respondent is a body created by the Constitution of the Federal Republic of Nigeria, 1999, with the responsibility of inter-

alia conducting elections into several offices in the country, registration of voters and registration/regulation of political parties.

5. Recently, the 1st respondent announced that candidates seeking nomination to contest under its umbrella for the office of President of the Federal Republic of Nigeria in the forthcoming 2023 general elections must pay the sum of ₦100,000,000 (One Hundred Million Naira) to purchase the nomination form of the party.
6. In the same manner, the 2nd respondent announced that candidates seeking nomination to contest under its umbrella for the office of President of the Federal Republic of Nigeria in the forthcoming 2023 general elections must pay the sum of ₦40,000,000 (Forty Million Naira) to purchase the nomination form of the party.
7. The 1st and 2nd respondents also fixed various huge amounts of money as fees for the purchase of nomination forms for intending candidates for various elective political offices both at the federal and state levels in the forthcoming general elections.
8. I am very aggrieved with the outrageous price tags for procurement of nomination forms to contest for public offices, which gives the unmistakable impression that public offices in Nigeria are now goldmines that are highly valued in monetary terms and only affordable by the elites, highly rich, even those whose sources of income are suspect and those who have stolen deeply from the commonwealth of Nigerians.
9. The humongous price tags by the 1st and 2nd respondents for purchase of nomination forms to contest for various elective positions is an affirmation by the two political parties of their approval of corruption and looting of public funds by candidates who happen to clinch the office of the presidency or any other political office, because they have expressly given the impression that such offices are for the highest bidder or

investor, who must recoup his or her investment with substantial profit upon assuming the presidency or any other political office.

10. That many highly qualified Nigerians who would have loved to serve the country as president or in other elective political offices and give their best for the progress, transformation and development of the country are unable to afford these outrageous nomination fee, and are therefore excluded from the opportunity of directly participating freely in the government of their country Nigeria.
11. The unreasonable price tags for nomination forms imposed by the 1st and 2nd respondents effectively ensures that more than 99 percent of Nigerians and the same percentage of their party members are excluded from the opportunity of serving the country and participating directly in the government of Nigeria.
12. The unreasonable price tags are therefore aimed at ensuring that only money bags comprising of less than one percent of Nigerians and the same percentage of the party members are availed the privilege or opportunity to participate directly in the government of Nigeria.
13. I know that neither the Constitution of the Federal Republic of Nigeria, 1999 (as amended) nor the Electoral Act, 2022 imposes financial requirement for any qualified citizen to participate in the government of Nigeria, and there is no law empowering the 1st and 2nd respondents to impose such fees for purchase of nomination forms.
14. I know that such monetization of political offices in Nigeria is a major reason for the pervasive and monumental corruption in public offices, which if not checkmated by this Honourable Court, will perpetuate corruption in public offices.
15. The outlandish cost for purchase of nomination forms discriminates between the haves and the have-nots in Nigeria,

and ensures that only the extremely wealthy citizens can govern or lead this country.

16. The 3rd respondent provides grants for the political parties for running of their internal affairs and they also generate money through donations from their wealthy members and through several other channels including membership fees.
17. I know that elective public offices are meant to be positions of service, which require good spirit of altruism, discipline and sacrifice for the occupants to deliver on the demands of good governance and democratic dividends.
18. It is in the interest of justice that this application be granted.
19. I depose to this affidavit conscientiously and in good faith believing the contents to be true, correct and in accordance with the Oaths Act.


DEPONENT

Sworn to at the Federal High Court Registry, Abuja
this 9th day of May, 2022

BEFORE AND FOR OATHS
COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA
COMMISSIONER FOR OATHS

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2. PEOPLES' DEMOCRATIC PARTY
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION** } **RESPONDENTS**

STATEMENT IN SUPPORT OF APPLICATION

NAME AND DESCRIPTION OF THE APPLICANT

The applicant is Francis Moneke, a Legal Practitioner and Human Rights/Public Interest activist and whose address is No. 47 Modupe Johnson Crescent, Surulere, Lagos State.

RELIEFS SOUGHT

- 1.1** A DECLARATION that the requirement by the 1st and 2nd respondents that members of their parties that wish to contest for the office of the President of the Federal Republic of Nigeria in the forthcoming 2023 general elections should pay ₦100,000,000 and ₦40,000,000 respectively to purchase nomination forms violates Article 13 (1) of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, Cap. A9, LFN, 2004, being also contrary to the provisions of

Section 84 (3) of the Electoral Act, 2022 and the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) relating to qualifications of candidates for elective positions in Nigeria.

- 1.2** A DECLARATION that the act of the 1st and 2nd respondents and other political parties in fixing various amounts of money for the purchase of nomination forms by members of their political parties who wish to contest for various elective positions in the forthcoming 2023 general elections and any other elections violates Article 13 (1) of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, Cap. A9, LFN, 2004, being also contrary to the provisions of Section 84 (3) of the Electoral Act, 2022 and the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) relating to qualifications of candidates for elective positions in Nigeria.
- 1.3** A DECLARATION that the 3rd respondent is obligated to ensure that all political parties in Nigeria comply strictly with the provisions of the Electoral Act and any other law relating to elections and the qualification and participation of Nigerians in such elections.
- 1.4** AN ORDER compelling the 1st and 2nd respondents to forthwith cancel the requirement for the payment of money for the purchase of nomination forms for the office of the President of the Federal Republic of Nigeria or any other elective political office in the forthcoming 2023 general elections or any other elections, and to immediately refund any candidate who has paid any amount whatsoever for the purchase of nomination form.
- 1.5** AN ORDER compelling the 1st and 2nd respondents to avail any member of their political parties who wish to contest for any elective political office in the forthcoming 2023 general elections or any other elections with their nomination form free of charge.

- 1.6 AN ORDER directing the 3rd respondent to refuse to recognise, for any election in Nigeria to be conducted by the 3rd respondent, any political party that is in violation of the law by levying fees for the purchase of nomination forms.
- 1.7 And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances.

GROUND UPON WHICH THE RELIEFS ARE SOUGHT

- 1.1 The act of the 1st and 2nd respondents in putting huge price tags for the procurement of nomination forms by Nigerians and members of their political parties who wish to contest for various elective political offices in the forthcoming 2023 general elections and elections generally, amount to a gross violation of Article 13 of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, Cap. A9, LFN, 2004, which guarantees the right of every Nigerian to free access to participate directly in the government of the country.
- 1.2 Article 13 of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, Cap. A9, LFN, 2004, is affirmed by the provision of Section 84 (3) of the Electoral Act, 2022, which provides that *"a political party shall not impose nomination qualification or disqualification criteria, measures or conditions on any aspirant or candidate for any election in its constitution, guidelines, or rules for nomination of candidates for election, except as prescribed under sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution."*
- 1.3 The relevant sections of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) clearly outlined the criteria for qualification to contest for various elective political offices in Nigeria either at the Federal or State level, and nothing in those provisions require payment of nomination fees

by candidates or authorises political parties to levy any fees on aspirants for procurement of nomination forms.

Dated this 9th day of May, 2022


✓ Ikenna Okoli, SAN, FCI Arb.
✓ Francis Moneke
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Empowerment Project Ltd/Gte
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**WRITTEN ADDRESS IN SUPPORT OF APPLICANT'S APPLICATION
FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS**

1. INTRODUCTION

The applicant brought this application in public interest seeking for enforcement of the fundamental right to free access to direct participation in the government of one's country guaranteed under Article 13 of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, Cap. A9, LFN, 2004 and pursuant to Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Order II, Rules 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, and under the inherent jurisdiction of the Honourable Court, and the applicant prays for the following reliefs:

- a. A DECLARATION that the requirement by the 1st and 2nd respondents that members of their parties that wish to contest for the office of the President of the Federal Republic of Nigeria in the forthcoming 2023 general elections should pay ₦100,000,000 and ₦40,000,000 respectively to purchase nomination forms violates Article 13 (1) of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, Cap. A9, LFN, 2004, being also contrary to the provisions of Section 84 (3) of the Electoral Act, 2022 and the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) relating to qualifications of candidates for elective positions in Nigeria.
- b. A DECLARATION that the act of the 1st and 2nd respondents and other political parties in fixing various amounts of money for the purchase of nomination forms by members of their political parties who wish to contest for various elective positions in the forthcoming 2023 general elections and any other elections violates Article 13 of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, Cap. A9, LFN, 2004, being also contrary to the provisions of Section 84 (3) of the Electoral Act, 2022 and the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) relating to qualifications of candidates for elective positions in Nigeria.
- c. A DECLARATION that the 3rd respondent is obligated to ensure that all political parties in Nigeria comply strictly with the provisions of the Electoral Act and any other law relating to elections and the qualification and participation of Nigerians in such elections.
- d. AN ORDER compelling the 1st and 2nd respondents to forthwith cancel the requirement for the payment of money for the purchase of nomination forms for the office of the President of the Federal Republic of Nigeria or any other elective political office in the forthcoming 2023 general elections or any other elections, and to immediately refund any candidate who has paid any amount whatsoever for the purchase of nomination form.

- e. AN ORDER compelling the 1st and 2nd respondents to avail any member of their political parties who wish to contest for any elective political office in the forthcoming 2023 general elections or any other elections with their nomination forms free of charge.
- f. AN ORDER directing the 3rd respondent to refuse to recognise, for any election in Nigeria to be conducted by the 3rd respondent, any political party that is in violation of the law by levying fees for the purchase of nomination forms.
- g. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances.

1.01 The Application is supported by a Statement and a 19-paragraph affidavit setting out the facts upon which the application is made.

1.02 We shall rely on the statement in support of the application and all the paragraphs of the affidavit.

2. **SUMMARY OF MATERIAL FACTS**

The facts of this case are as stated in the affidavit in support of the application.

3. **ISSUE FOR DETERMINATION**

Is the applicant entitled to the reliefs sought in this application?

4. **ARGUMENT**

4.01 Article 13 (1) of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, Cap. A9, LFN, 2004 guarantees the right to free access of citizens to the direct participation in the government of Nigeria. It provides as follows:

*"Every citizen shall have the right to participate **freely** in the government of his country, either **directly** or through freely chosen representatives in accordance with the provisions of the law."*

- 4.02 We humbly submit that the above provision secures the right of every Nigerian who is qualified in accordance with the relevant law and the Constitution, to participate freely in the government of Nigeria either directly or through elected representatives.
- 4.03 Article 13 (1) of the African Charter set out above makes reference to free participation "*in accordance with the provisions of the law.*" The relevant law here, which is the Electoral Act, 2022 reinforces the right enshrined under Article 13 (1) where it provides under Section 84 (3) that: "*a political party shall not impose nomination qualification or disqualification criteria, measures or conditions on any aspirant or candidate for any election in its constitution, guidelines, or rules for nomination of candidates for election, except as prescribed under sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution.*"
- 4.04 We humbly submit that the outrageous fees fixed by the 1st and 2nd respondents for purchase of nomination forms by aspirants for various political offices in respect of the forthcoming 2023 general elections, fly directly in the face of the right guaranteed under Article 13 (1) of the African Charter. The fees are also at cross-purpose with Section 84 (3) of the Electoral Act, 2022, the obvious intendment of which is to underscore and reinforce the right to free participation in the government of Nigeria once an intending aspirant scales the qualification criteria stipulated under Sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- 4.05 In ***Nnaike v. A.G. Enugu State***¹ the Court of Appeal considered whether Section 152 (1) of the Local Government Law of Enugu State, which provides that a person contesting for chairmanship or councillorship must make a pecuniary deposit, is in breach of the right guaranteed by Article 13 of the African Charter. And the Court held, per **Helen**

¹[2017] LPELR-43443 (CA)

Ogunwumiju, JCA (as she then was) that: "the provisions on pecuniary deposits in the Enugu State Local Government Law will only ensure that only the rich and wealthy will participate in any election into a local government council in the State. This is contrary to the ideals of freedom, equality and justice enshrined under Section 17(1) & (2)(a) of the Constitution....In my humble opinion the provisions of Section 152(1)(f) & (g) of the Local Government Law cannot stand. At the risk of repetition, the poor in a local government area in Enugu State may not have the means or resources to contest or to be voted into any elective office in the local government council. Voting will be restricted to only the rich and wealthy in the local government area who are able to pay the fees. The Appellant has the right to freely participate in the local government election upon satisfying the conditions precedent set out in the Local Government Law of Enugu State that are not inconsistent with the provisions of the Constitution. That right cannot be inhibited through payment of non-refundable deposits of money or pecuniary deposits as fixed by the Enugu State Local Government Law." (Underlining for emphasis.)

- 4.06 The above decision of the Court of Appeal very eloquently and trenchantly captures and underscores the point that any form of pecuniary impediment or requirement imposed on intending aspirants for elective political offices as a precondition for participation in the election, over and above the basic qualification criteria stipulated by the Constitution, is a violation of the right to free participation in the government of the country, which is guaranteed by Article 13 (1) of the African Charter.
- 4.07 We humbly submit, that on the basis of the foregoing decision of the Court of Appeal, the imposition of fees by the 1st and 2nd respondents for procurement of nomination forms by aspirants for elective political offices in the coming 2023 general elections or any other elections constitutes a

gross violation of the right to free direct participation in the government of Nigeria.

- 4.08 We further submit that the outrageous nomination form fees not only exclude or discriminate against up to 99% of Nigerians who cannot afford the fees, but it also effectively ensures that only the rich and wealthy are able to aspire to and occupy elective political offices.
- 4.09 What is more, this unreasonable monetization of political offices in Nigeria is one of the main factors that fuel corruption in Nigeria and perpetuate incompetence, unaccountability and impunity in government, which in turn propagate relentless human suffering, poverty and bad governance in Nigeria.
- 4.10 We submit that the court is empowered, while recognizing a political party's supreme position in determining who will be its candidates in an election, to ensure that the political party must exercise that power without impunity and within the tenets of its constitution and the law. See **Pali v. ABDU**²
- 4.11 In **Nyako v. Ardo**³ it was held that notwithstanding the principle that the court does not interfere with the issue of nomination and sponsorship of candidates, which is within the internal affairs of a political party, the court will however not allow a political party to act arbitrarily or as it likes. The Court of Appeal went on to hold that the court is duty bound to interpret the law as made by the legislature so as to determine whether or not in the exercise of its rights of sponsorship or nomination, a political party has complied with the relevant provisions of the law.
- 4.12 We humbly submit that the 1st and 2nd respondents by levying huge fees for the purchase of nomination forms in the exercise of their power to nominate and sponsor candidates for the 2023 general elections are in gross violation of the

²[2019] LPELR-46342 (SC)

³[2013] LPELR-20848 (CA)

provisions of Article 13 (1) of the African Charter and Section 84 (3) of the Electoral Act, 2022. This honourable Court therefore has the jurisdiction to strike down such nomination form fees that are illegal, unlawful and unconstitutional.

- 4.13 We humbly urge the court therefore to wield the sword of justice and strike down this illegal, unlawful, unconstitutional and unconscionable practice by political parties in Nigeria, especially the 1st and 2nd respondents, of placing huge price tags on nomination forms for elections into elective political public offices.
- 4.14 We submit that the 3rd respondent as the body responsible for the conduct of most elections in Nigeria as set out under the Constitution is under obligation to ensure that all political parties in Nigeria comply strictly with the Electoral Act and any other law relating to elections and the qualification and participation of Nigerians in such elections.
- 4.15 The 3rd respondent in supervising all elections to the offices the President, the Governor, the membership of the Senate, etc should ensure that the parties abide by the Electoral Act and the Constitution and provide a level playing ground for all its members.
- 4.16 We humbly urge this honourable court to resolve the sole issue in favour of the applicant and grant all the reliefs sought in this application.

5. **SUMMARY/CONCLUSION**

- 5.1 The act of the 1st and 2nd respondents in fixing huge fees for purchase of nomination forms by candidates aspiring to contest for various elective political offices in the 2023 general elections violates the right to free participation in the government of the country guaranteed under Article 13 (1) of the African Charter.
- 5.2 Article 13 (1) of the African Charter is further reinforced by Section 84 (3) of the Electoral Act, 2022 which prevents


political parties from imposing conditions for participation on candidates beyond the qualification criteria provided under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

- 5.3 Although the nomination and sponsorship of candidates for election is within the confines of a political party's internal affairs, which ordinarily the court has no jurisdiction over, however where the party's exercise of such power is in violation of its own constitution or any law made by the Legislature, the court has jurisdiction to strike it down.
- 5.4. We humbly urge this honourable Court to grant this application and the reliefs sought.

6. LIST OF AUTHORITIES

- i. NNAIKE V. A.G. ENUGU STATE(2017) LPELR-43443 (CA)
- ii. NYAKO V. ARDO (2013) LPELR-20848 (CA)
- iii. PALI V. ABDU (2019) LPELR-46342 (SC)

Dated this 9th day of May, 2022



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