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Chapter 1 : Creating a More â€˜Justâ€™ Order - The International Politics of Judicial Intervention

The International Politics of Judicial Intervention will be of interest to students and scholars of International Relations, Human Rights and International Law.

Political parties are generally considered to be voluntary associations. Being voluntary associations, they are deemed supreme over their affairs. The conduct of such affairs is not usually subject to the jurisdiction of the court. But it does seem that there are instances where the conduct of political parties becomes amenable to judicial supervision. The courts have not succeeded in clearly delineating such circumstances if at all they exist. This paper therefore sets out to examine the organizational autonomy of political parties with a view to ascertain whether the courts in practical terms exercise any jurisdiction over political parties. This is best determined by the amenability of political parties to judicial decisions affecting them. Numerous views have been expressed on what constitutes the internal or domestic affair of a political party, and whether such domestic or intra party affairs are justiciable or can be subject to intervention by the Courts. Fortunately judicial authorities are available to provide a road-map in guiding the mission to ascertain the dichotomy between the domestic or internal affairs of a political party necessary to preclude the transactions that will entitle an aggrieved member to seek redress in the Court [1]. The view that political parties are supreme over their affairs and should therefore not be tempered with was adopted in the case of Onuoha v. The third defendant who also participated in the Primaries alleged irregularities in the election process. The party therefore appointed a panel to investigate the allegation where the contestants were given opportunity to be heard. The Court granted the claims of the plaintiff. The Supreme Court unanimously affirmed the decision of the Court of Appeal on the ground that the matter falls under political question not subject to judicial review. C [3] summed it up as follows: The matter in controversy in the appeal is whether a court has jurisdiction to entertain a claim whereby it can compel a political party to sponsor one candidate in preference for another candidate of the self-same political party. If a court could do this, it would in effect be managing the political party for the members thereof. The issue of who should be a candidate of a given political party at any election is clearly a political one, to be determined by the rules and constitution of the said party. Peoples Redemption Party; [5] where the applicant, a state governor, and a member of the above party, together with eight other governors, had been attending joint meetings in various parts of the country to discuss common problems. His party objected to these meetings and passed a resolution forbidding the applicant from attending. The applicant applied under Section 42 of the Constitution of Nigeria [6] for an order to quash the resolution as constituting an infringement on his fundamental rights as contained in the Constitution. The court dismissed the application saying in effect that it had no jurisdiction to entertain the application at all. It is my view that it is still open for the applicant to attend any meeting he may wish and no one may stop him. But, so far as the party is concerned, it is to have the right to discipline its members. As a voluntary association it has the right to lay down its decisions even when they are unreasonable. They should be obeyed or the member in disobedience is entitled to quit. The party is in its own right supreme over its own affairs It is pertinent to observe that the court did not adopt the supremacy of a party over conduct of its affairs as completely precluding judicial intervention in the above case. The primary of Jigawa was to hold in Dutse, Jigawa State. A committee with chief Nnoruka as the Chairman, Hajiya Nihibi as a member and Arc Joseph as secretary conducted the screening and primary election in Kano in which the first defendant did not take part. Only the appellant did and was declared the winner by the committee. Meanwhile, another primary election was conducted in Dutse in which the 1st defendant participated and the appellant did not. The 1st defendant was also declared as the winner. ANPP recognized the last primary election and the appellant brought an action challenging the recognition in Court. The High Court after holding in favour of the plaintiff advised the Supreme Court to re-amend its position on the internal affairs of the political parties. The Court of appeal allowed the appeal against the judgement of the lower Court. An appeal to the Supreme Court was dismissed.

C [8] put it thus: Okafor [9] , the trial High Court had no jurisdiction to entertain the matter. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. In other words, it is a domestic issue and not such as would be justiciable in a court of law. This is so because the power and the right to nominate and sponsor a candidate to an election are vested in a political party and the exercise of this right is the domestic affair of the party Per Kalgo, J. C [10] further remarked as follows: The right to sponsor a candidate by a party is not a legal right but a domestic right of the party which cannot be questioned in a court of law. The political party qua political organisation has discretion in the matter, a discretion which is unfettered; in the sense that a court of law has no jurisdiction to question its exercise one way or the other. The moment a court goes into such a domestic affair of the party, it has involved itself in nominating a particular candidate, a jurisdiction which a court cannot exercise. While a court of law has the jurisdiction to declare a particular candidate as the winner of an election, a court of law cannot be involved in the domestic affair of nomination of a candidate or candidates in primaries. The Court in trying to justify the rationale for the principle of law that court cannot be involved in the domestic affairs of the political party was of the firm view that since persons have freely given consent to be bound by the rules and regulation of the political party, they should be left alone to be governed by such rules and regulations. In other words, persons have freely mortgaged their consciences to a situation; a court of law should not intervene. Now, the case of Onuoha v. Okafor supra was brought to the attention of the trial Judge. Regrettably, for reasons best known to him, he chose to ignore it and proceeded to decide as follows: It is the constitutional responsibility of the concern party to campaign for their chosen, candidates but where as in this case the party had encouraged and permitted an individual to strive toward the realization of his constitutional right as a citizen to vote and be voted for through the acceptance of prescription fee, processed nomination forms, and to further screen him for that purpose to stand for the election and win, yet the political party is allowed to turn its back against all the obvious solid grounds that entitles him to be the candidate of the party now for the post he is seeking, my view is dishonest and fraudulent, and contravenes item 15 5 of the Constitutionâ€¦ The purported recognition of the 1st defendant by ANPP is illegal going by the evidence before the court. He concluded his judgment thus: The conduct of the learned trial Judge I. Bello is to say the least most unfortunate. This court is the highest and final court of appeal in Nigeria. Its decisions bind every court, authority or person in Nigeria. By the doctrine of stare decisis, the courts below are bound to follow the decisions of the Supreme Court. The doctrine is a sina qua non for certainty to the practice and application of law. Although the decision of the Court is based on the position of the law at the point the judgment was delivered, the position was self inflicted by the judiciary as there was no law which precluded the court from entertaining such a matter having to do with internal affairs of the political parties. This is a good example of judicial self-limitation [12]. However, in Ugwu v. Ararume [13] there was a radical turning point of judicial approach to matters relating to the internal affairs of the political parties. Matters Arising - Tobi Soniyi Appeal set aside the decision of the trial Court and allowed the appeal on the ground that the trial Court failed to consider all aspects of section 34 1 and 2 [14] and that the trial Court decision does not meet the justice of the case. The Court relied on section 34 2 [15] which provides that any party wishing to change its candidate must give cogent and verifiable reason for doing so in going to the conclusion that where a party fails to give any reason or reasons which are cogent and verifiable, the aggrieved person has a legal right to seek redress in a competent court of law by virtue of section 6 of the Constitution. In , with the decision of the Supreme Court above and the decision in Rt. The Court noted that this must be so because it is not unusual in this country for a person who seeks to challenge some decisions of political parties to be expelled from the party. There seems to be merit in this latter position. Because it would be completely absurd to allow a party to make and enforce unreasonable decisions on the basis that it is supreme over its own affairs. But the issue of unreasonableness puts the court in the difficult position of determining what is unreasonable in the rules of a party. With the advent of the Electoral Act , the Supreme Court and other courts in Nigeria had the opportunity to pronounce on this contentious issue arising from the internal disputes of political parties by establishing the limited

circumstance court can intervene in internal or domestic affairs of political parties in Nigeria. The foregoing came to test in the recent case of Wushishi v. In that case the appellant was a card carrying member of the 2nd respondent The APC who desired to contest nomination of the party as the gubernatorial candidate for Niger State Governorship Election of He made the necessary payments for the expression of interest and nomination form. Consequently, the appellant instituted an action in Federal High Court, Minna for his wrongful exclusion from the primaries. The Court of Appeal and the Supreme Court affirmed the trial court decision respectively and thereby dismissed the appeal. The nomination or sponsorship of a candidate for election is a political matter within the sole discretion or power of the political party, an internal affair which is not a matter for the public domain being a pre-election matter, and therefore domestic. A person who has not so contested has no legroom to invoke the jurisdiction of the court. A person cannot approach the court to complain that a political party prevented him from participating in the primaries of the party since sponsorship of candidates by political parties for an election is the prerogative of the political parties concerned and the court lacks jurisdiction to interfere in such a matter which is an internal affair of the political party. In the instant case, the appellant fell in the category of those who were excluded from contesting the primaries and the court could not entertain the action. The trial court and the Court of Appeal were right to decline jurisdiction. By virtue of judicial precedent, the current position therefore is that, the nomination and sponsorship of a candidate at an election is a matter within the internal affairs of a political party and therefore not justiciable, except in the limited circumstance as provided in section 87 9 of the Electoral Act as amended , where a co-aspirant alleges that the relevant guidelines of the political party or the provisions of the Electoral Act were not complied with in the conduct of party primaries. Experience from Nigeria reveals that declarations of the court in matters affecting political parties are honored more in the breach than observance. This has left party members squarely at the mercy of their party. Given the above consideration it is understandable why the courts shy away from actions involving political parties. More often than not, judgments of the court are simply pyrrhic victories- in that the person who got judgment against the party is not in a position to enforce it. To think that most judicial decisions affecting political parties end this way, leads to the inevitable conclusion that judicial intervention on the activities of political parties is somehow mythical. It is therefore submitted that the courts have the power to intervene in the activities of political parties beyond the scope of nomination and sponsorship [22]. It would be completely absurd to allow a party to make and enforce unreasonable decisions on the basis that it is supreme over its own affairs. It is arguable that there has been no law which expressly barred the courts from reviewing matters that bordered on internal affairs of political parties. This is a self-restraint measure by the court because the courts are of the view the matters are political in nature and therefore not fit for judicial intervention. B, Hons Ekpoma , B. L Legal Practitioner at Samuel O. A-E [11] Bello, J. Turaki Supra [12] This submission has also been posited by Shamrahayu, A.

Chapter 2 : Trans Mountain mega-judicial review highlights the politics of intervention - The Lawyer's Daily

The International Politics of Judicial Intervention will be of interest to students and scholars of International Relations, Human Rights and International Law. Table of Contents Introduction 1.

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With the advent of the Electoral Act , the Supreme Court and other courts in Nigeria had the opportunity to pronounce on this contentious issue arising from the internal disputes of political parties by establishing the limited circumstance court can intervene in internal or domestic affairs of political parties in Nigeria. One provision in the Electoral Act that usually give the court the window to

exercise jurisdiction in political party affairs is section 87 9 of the Electoral Act, as Amended which provides as follows: The foregoing came to test in the recent case of Wushishi v. In that case the appellant was a card carrying member of the 2nd respondent The APC who desired to contest nomination of the party as the gubernatorial candidate for Niger State Governorship Election of He made the necessary payments for the expression of interest and nomination form. Consequently, the appellant instituted an action in Federal High Court, Minna for his wrongful exclusion from the primaries. The Court of Appeal and the Supreme Court affirmed the trial court decision respectively and thereby dismissed the appeal. The Supreme Court [20] remarked thus: The nomination or sponsorship of a candidate for election is a political matter within the sole discretion or power of the political party, an internal affair which is not a matter for the public domain being a pre-election matter, and therefore domestic. A person who has not so contested has no legroom to invoke the jurisdiction of the court. The Supreme Court at P. A person cannot approach the court to complain that a political party prevented him from participating in the primaries of the party since sponsorship of candidates by political parties for an election is the prerogative of the political parties concerned and the court lacks jurisdiction to interfere in such a matter which is an internal affair of the political party. In the instant case, the appellant fell in the category of those who were excluded from contesting the primaries and the court could not entertain the action. The trial court and the Court of Appeal were right to decline jurisdiction. By virtue of judicial precedent, the current position therefore is that, the nomination and sponsorship of a candidate at an election is a matter within the internal affairs of a political party and therefore not justiciable, except in the limited circumstance as provided in section 87 9 of the Electoral Act as amended , where a co-aspirant alleges that the relevant guidelines of the political party or the provisions of the Electoral Act were not complied with in the conduct of party primaries. Experience from Nigeria reveals that declarations of the court in matters affecting political parties are honored more in the breach than observance. This has left party members squarely at the mercy of their party. Given the above consideration it is understandable why the courts shy away from actions involving political parties. More often than not, judgments of the court are simply Pyrrhic victories- in that the person who got judgment against the party is not in a position to enforce it. To think that most judicial decisions affecting political parties end this way, leads to the inevitable conclusion that judicial intervention on the activities of political parties is somehow mythical. It is therefore submitted that the courts have the power to intervene in the activities of political parties beyond the scope of nomination and sponsorship [22]. It would be completely absurd to allow a party to make and enforce unreasonable decisions on the basis that it is supreme over its own affairs. It is arguable that there has been no law which expressly barred the courts from reviewing matters that bordered on internal affairs of political parties. This is a self-restraint measure by the court because the courts are of the view the matters are political in nature and therefore not fit for judicial intervention. A-E 11 Bello, J. Turaki Supra 12 This submission has also been posited by Shamrahayu, A.

Chapter 3 : Judicial Intervention on the Activities of Political Parties in Nigeria - Jerrylawyard

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