

IN THE HIGH COURT OF JUSTICE  
OSUN STATE OF NIGERIA  
IN THE OSOGBO JUDICIAL DIVISION  
HOLDEN AT OSOGBO

BEFORE HIS LORDSHIP HON. JUSTICE M.O. AWE – JUDGE

TODAY THE 5<sup>TH</sup> DAY OF OCTOBER, 2023

BETWEEN:

SUIT NO. HOS/M.71/2023

1. ABUBAKAR BASIT OLALEKAN

PLAINTIFFS

2. OYESOWO DAVID TOBI

AND

1. INCORPORATED TRUSTEES OF OSUN  
STATE UNIVERSITY ALUMNI ASSOCIATION

2. BOARD OF TRUSTEES OSUN STATE  
UNIVERSITY ALUMNI ASSOCIATION

DEFENDANTS

JUDGMENT

The plaintiffs by their Originating Summons dated 12<sup>th</sup> May, 2023 and filed at the Registry of this Honourable Court same day, have commenced this suit praying the Court for the determination of the following questions:



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1. Whether the Purported Petition dated the 9<sup>th</sup> day of March, 2023 written against the 1<sup>st</sup> Plaintiff and the National Executive Council (NEC) of Osun State University Alumni Association is incompetent on the ground that the said petition failed to meet the requirements of the provisions of the constitution of Osun State University Alumni Association (As Amended).
2. Whether by the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) the 2<sup>nd</sup> Plaintiff's Fundamental Right to fair hearing was breached having not been included in the purported Petition dated the 9<sup>th</sup> day of March, 2023, having not been served with the purported petition and having not been invited to defend himself before the purported Uniosun Disciplinary Panel Committee set up by the Defendants before being suspended?.
3. Whether by the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) the non service of the purported petition dated the 9<sup>th</sup> day of March, 2023 on other members of the National Executive Council (NEC) and their non invitation to defend themselves before the Uniosun Disciplinary Panel Committee set up by the 2<sup>nd</sup> Defendant before being suspended amount to breach of their Fundamental Right to fair hearing.
4. Whether the suspension of the Plaintiffs and the National Executive Council (NEC) by the 2<sup>nd</sup> Defendant is ultra vires, null and void on the ground that there was no basis to have suspended the Plaintiffs and the National Executive Council (NEC) and on the ground that the 2<sup>nd</sup> Defendant lacks the constitutional power to do so and having set up the purported disciplinary panel in flagrant disregard to the constitution of Osun State University Alumni Association (As Amended)?.

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5. Whether the purported disciplinary report is null and void/non-existent having been tainted with irregularity and having been done ultra vires to the constitution of Osun State University Alumni Association (As Amended)?.
6. Whether the Disciplinary Panel Committee set up by the 2<sup>nd</sup> Defendant is duly constituted?.
7. Whether the 2<sup>nd</sup> Defendant is duly constituted in line the provisions of the constitution of Osun State University Alumni Association (As Amended)?.
8. Whether the 2<sup>nd</sup> Defendant as constituted is entitled to retain its position as trustees having conducted its affairs in utter disregard to the constitution of Osun State University Alumni Association which it swore to uphold?.
9. Whether the Plaintiffs are entitled to all the Reliefs sought?.

The following Reliefs are also claimed by the said Plaintiffs upon the determination of those questions; that is:

1. A DECLARATION that by the provisions of the constitution of Osun State University Alumni Association (As Amended), the Petition dated the 9<sup>th</sup> day of March, 2023 written against the Plaintiffs and the National Executive Council (NEC) of Osun State University Alumni Association is incompetent on the ground that the said petition ought to have been signed by 25 members of the Association before being presented to the Defendants.
2. A DECLARATION that by the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) the 2<sup>nd</sup> Plaintiff's Fundamental Right to fair hearing was breached having not been included in the purported Petition, having not been served and having not been invited to defend himself before the purported Uniosun Disciplinary Panel Committee set up by the Defendants before being suspended?.

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3. A DECLARATION that the non service of the purported petition dated the 9<sup>th</sup> day of March, 2023 on other members of the National Executive Council (NEC) and their non invitation to defend themselves before the purported Uniosun Disciplinary Panel Committee set up by the 2<sup>nd</sup> Defendant before being suspended amount to breach of their Fundamental Right to fair hearing as ventilated by the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).
4. A DECLARATION that the suspension of the Plaintiffs and the National Executive Council (NEC) by the 2<sup>nd</sup> Defendant is ultra vires, null and avoid on the ground that there was no basis to have suspended the Plaintiffs and the National Executive Council (NEC) and on the ground that the 2<sup>nd</sup> Defendant lacks the constitutional power to do so and having set up the purported disciplinary panel in flagrant disregard to the constitution of Osun State University Alumni Association (As Amended).
5. A DECLARATION that the purported disciplinary report is null void/non-existent having been tainted with irregularity and having been done ultra vires to the constitution of Osun State University Alumni Association (As Amended).
6. A DECLARATION that by the provisions of the constitution of Osun State University Alumni Association (As Amended) the five (5) members Disciplinary Panel Committee set up by the 2<sup>nd</sup> Defendant was not duly constituted on the ground that the said constitution provided for a seven (7) members Disciplinary Panel Committee.
7. A DECLARATION that by the provisions of the constitution of Osun State University Alumni Association (As Amended) the 2<sup>nd</sup> Defendant is not duly constituted on the ground that the seven (7) members that made up of the 2<sup>nd</sup>

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Defendant failed to meet the qualification and requirement stipulated by the constitution of Osun State University Alumni Association (As Amended).

8. AN ORDER of this Honourable Court setting aside the suspension of the Plaintiffs and the National Executive Council (NEC) of Osun State University Alumni Association by the 2<sup>nd</sup> Defendant.
9. AN ORDER of this Honourable Court dissolving/removing the 2<sup>nd</sup> Defendant as trustees of the 1<sup>st</sup> Defendant having conducted its affairs against the spirit of the constitution of Osun State University Alumni Association (As Amended) and having displayed malice in their action against the Plaintiffs and the National Executive Council (NEC) of Osun State University Alumni Association.
10. AN ORDER of this Honourable Court dissolving/removing members of the 2<sup>nd</sup> Defendant as trustees of the 1<sup>st</sup> Defendant having failed to meet the qualification and requirement stipulated by the Osun State University Alumni Association (As Amended).
11. ONE MILLION NAIRA (₦1,000,000.00) as cost of action.
12. Such further or other relief as the Court may deem fit.

In support of the Originating Summons, the Plaintiffs have filed two separate Affidavits. The 1<sup>st</sup> is of 31 paragraphs deposed to by the 1<sup>st</sup> Plaintiffs and having thereto attached five Exhibits. These are:

Exhibit 'A'- Osun State University Alumni Association Amended constitution of 12<sup>th</sup> February, 2021 (hereinafter referred to as Association's constitution).

Exhibit 'B'- A Petition dated 9<sup>th</sup> March, 2023 Written to the Chairman Board of Trustees Osun State University Alumni Association by Mrs Olatomide Famuyide, Rasheed Ajisafe and Mojeed Oyedeji, alleging incessant Financial Misappropriation

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and Breach of Constitutional provisions by members of the UNIOSUN Alumni Association National Executive Council (hereinafter referred to as the Petition).

Exhibit 'C'- official Report of the UNIOSUN DISCIPLINARY COMMITTEE dated 11<sup>th</sup> April, 2023 (hereinafter referred to as the Disciplinary Committee's Report)

Exhibit 'D' – White Paper on the Disciplinary Committee Report dated 13<sup>th</sup> April, 2023 (hereinafter referred to as the "White paper")

Exhibit 'E'- Print Out of the publication made in the Vanguard Newspaper of may 3, 2023 by the Osun State University Alumni Association of the holding of her Emergency Congress.

The 2<sup>nd</sup> Affidavit in Support of the Originating Summons is a 33 paragraphs and sworn to by the 2<sup>nd</sup> Plaintiff in the suit.

In accordance with the Rules of Court, the Written Address of learned Counsel to the Plaintiffs was equally filed along with their processes.

In response to the Plaintiffs' suit, the Defendants filed a joint Counter Affidavit of 84 paragraphs sworn to by Raheem Oluwafunminiyi, a member and secretary to the Board of Trustees of the Osun State University Alumni Association, on 15<sup>th</sup> June, 2023. To the Counter Affidavit was attached Exhibit 'G' which is the same Osun State University Alumni Association's Constitution attached by Plaintiffs as exhibit 'A' while Exhibit 'H' is the same official Report of the Uniosun Disciplinary Committee attached to Plaintiffs supporting affidavit as Exhibit 'C'.

Also attached by the Defendants are different letters Written by the secretary Board of Trustees to the National Treasurer and the National President of the Association as Exhibits I (i) to I (vi) and a letter Written by the same secretary of the Board to

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the National president on "BOT Decision on Campus Tour" as exhibit 'J'. The Defendants, likewise attached a letter Exhibit 'K' complaining of the lackadaisical Attitude And Total Disrespect And Disregard for the BOT UNIOSUN Alumni by the NEC UNIOSUN Alumni.

The Written Address of the Defendants Counsel was also filed along with their Counter Affidavit.

The Plaintiffs, reacting to the depositions contained in the Defendants' Counter affidavit filed two Separate Better And Further affidavits deposed to, respectively, by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. To the 2<sup>nd</sup> Plaintiff's Better And Further Affidavit was attached Exhibit 'F' which is the 'Status Report' on the Association Published by the Corporate Affairs Commission, Abuja. Plaintiffs' Counsel also filed his Written Address on the Better And Further Affidavits as required by the Rules of Court.

At the hearing of the suit, learned Counsel to the parties referred to their Affidavit in Support, Further and Better Affidavit and the Counter Affidavit, respectively and adopted their Written Addresses.

The learned Counsel to the Plaintiffs in his Written Address in Support of the Originating Summons submitted Ten (10) issues for determination by the Court in the proceeding.

The said issues border on whether the Petition (earlier referred), the suspension of Plaintiffs, the Disciplinary Committee and its report and the Board of Trustees of the UNIOSUN Alumni Association are either incompetent, Irregular, unduly constituted or generally in violation of the Associations Constitution. Plaintiffs Counsel is also alleging a breach of the Right of Plaintiffs to fair hearing.

On the issues formulated by Plaintiffs' Counsel, it was submitted that the Defendants have failed to comply with various provisions of the Association's Constitution in

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relation to the signing of the petition. Written against the plaintiffs, the making or issuance of the Disciplinary Report, the composition of the panel of Disciplinary Committee and the eventual suspension of Plaintiffs from office as well as the dissolution of the National Executives Committee of the Association.

Mr. D. E. Eniolapo, of Counsel referred to Article 9 paragraphs 'A' (ix), F (i) & (ii); Article 16 paragraph A (i) and to Exhibits 'B' & 'C' in his submissions.

The learned Counsel further argued that the Plaintiffs' right to fair hearing has been breached in that the Petition complained of was not served on members of the National Executives of the Association and that the 2<sup>nd</sup> Plaintiff was not invited by the Disciplinary Committee to State his Defence before he was suspended.

Mr. Eniolapo, also argued that the Rules of natural Justice and/or fair Hearing (inclusive of fair trial) must be obeyed in the determination of the Rights and obligations of any person or authority.

Learned Counsel referred to the basic criterial or attributes of fair hearing and submitted that these have not been complied with by the Defendants in this case.

Reference was made by him to S. 36 of the 1999 Constitution of Federal Republic of Nigeria, Article 9 paragraph A (xiv) of the Association constitution and to the cases of Arobieke V. N. E. L. M. (2005) 5 NWLR (pt.1613) page 383-402, paragraphs A-C & Sani V. State (2018) 8 NWLR (pt.1622 at 439 paragraphs F- H).

Further on the issues formulated by him, Plaintiffs Counsel submitted that the 2<sup>nd</sup> Defendant is not daily Constituted by reason of its members not being 'national achievers' and that 2<sup>nd</sup> Defendant lacks the power to dissolve the National Executives of the Association under the Association's Constitution as was done in this case. He referred to Article 9 paragraphs F (i) & G (v) and Article 3 paragraph A& D of the Associations' Constitution.

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In his Written Address in support of Plaintiffs' Further and Better Affidavit, Mr. Eniolapo argued that the Defendants have acted in breach of S.834 (1) & (3) of the company And Allied matters Act, 2020 in their appointment of the 2<sup>nd</sup> Defendant as Trustees.

He urged me to grant the reliefs sought by the Plaintiffs in this suit.

The Defense Counsel on his part adopted the issues formulated by the Plaintiffs in the proceeding.

Learned Counsel to the Defendants, Abee Ololade Amosun Esq. Submitted that the petition complained against by the Plaintiffs having being written against only four members (as against all members) of the National Executive Council of the Association, it can properly be signed by one or two persons. He argued that the signing of the instant Petition by just 3 members is in line with the Associations constitution. Counsel referred to Article 16 A (i) of the Association's constitution.

Mr. Ololade, of Counsel again, argued that that 2<sup>nd</sup> Plaintiff was not one of the members of the Executive Council initially investigated by the Disciplinary Committee set up by the 2<sup>nd</sup> Defendant. That the allegation made against the 2<sup>nd</sup> Plaintiff arose from the findings of the Disciplinary Committee which recommended that the said allegation be further investigated by the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Plaintiff, according to Counsel, had been directed to submit his Bank's Statement of Account but that he however refused to do so.

Mr. Ololade further argued that by the Association's Constitution, the responsibility of her National Executive council is collective. He referred to Article 9 (A) (iii).

He submitted that the non service of the petition complained of on the said members and their non invitation to defend themselves before the Disciplinary Committee do

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not contravene their constitutional right to fair hearing as enshrined in S.36 of the 1999 constitution.

On whether the suspension of the Plaintiffs by the 2<sup>nd</sup> Defendant was in conformity with the Association's Constitution, Defendant's Counsel referred to Article 9 A, (G), (I), (3) & (4); 13 (G) and 16 (B) (iii) of the Association's Constitution and submitted that the suspension was not ultra vires, null and void.

Mr. Ololade argued that both Plaintiffs and other members of their National Executive Council have failed to provide their personal Bank's statement of Account as directed in the Disciplinary's Committee's Investigation Report; despite the fact that monies belonging to the Association were traced into some of their personal Bank Accounts. Defendants' Counsel further argued that the Plaintiffs and their National Executive Committee members have also disobeyed and disregarded the Association's Board of Trustees by their actions and inaction, contrary to Articles 9 (G) and 13 (G) of the Associations constitution.

On whether the Disciplinary Committee set up by the 2<sup>nd</sup> Defendant was legal and its Investigative Report valid, Mr. Ololade argued that the Disciplinary Committee established as a standing Committee under Article 9 F(ii) of the Association's constitution is a committee different from the one to be established under Article 16 (B) of the said constitution by the Board of Trustees.

He submitted that the 5 members committee set up by the Board of Trustees is therefore properly established and its Report also valid in this circumstances.

On membership of the 2<sup>nd</sup> Defendant, Defense Counsel argued that the Association's constitution does not define a "National Achiever" and that since the present members of the 2<sup>nd</sup> Defendant are reputable individuals they are qualified to be

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members of the B.O.T. that these Board of Trustee members have equally conducted the affairs of the Association in accordance with the provision of her constitution.

The Defense Counsel submitted that Plaintiffs are not entitled to the reliefs sought by them and that the Court should dismiss the suit with substantial cost.

Permit me to say here that the parties to this suit, before the Plaintiffs suspension, were members of the same Association, 'the Osun State University Alumni Association' otherwise known or referred to as UNIOSUN Alumni Association. Their Association has a Constitution which is to guide and regulate their conducts and affairs either as members or officials of the said Association.

I have waded through and read the affidavit evidence and the exhibits; the most important one being the Association's Constitution attached by Plaintiffs as Exhibit 'A' and by the Defendants as exhibit 'G'; adduced and submitted before and to the Court in this suit. I'm of the humble opinion that the dispute which had compelled the filing of this suit by Plaintiffs could have been avoided if the said Constitution of the Association has been elegantly, unambiguously and properly drafted as to eliminate all grey arrears as to the exercise of official powers and authority by its various organs or executive bodies.

The salient facts on how the parties became estranged association members are not really in dispute.

A petition was written against 4 of the members of the Associations National Executive Council members accusing them of financial misconduct and breach of constitutional provision. A 5 (Five) man Disciplinary Committee was setup by 2<sup>nd</sup> Defendant (that is, the Board of Trustees) to investigate the allegations. At the end of the investigations, the 2<sup>nd</sup> Defendant proceeded to place the Plaintiffs and other members of their National Executive Council on suspension.

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The grievance of the Plaintiffs in this suit is that their suspension by the 2<sup>nd</sup> Defendant is not in accord with the provisions and guidelines laid down in their Association's constitution for the conduct of such an exercise.

Considering these factual situation, I do not see how the suit of the Plaintiffs can admit the undue proliferation or elongation of the issues for determination as formulated by Counsel to the parties in the suit.

Take for example issues (vii) and (viii) dealing with the constitution (as to membership) of the 2<sup>nd</sup> Defendant in this suit.

Apparently, the 2<sup>nd</sup> Defendant was constituted at the same National Annual General Convention of the Association which similarly produced the National Executive Council of the Plaintiffs.

The Plaintiffs were elected into office in May, 2021. There is nothing in their affidavit evidence suggesting that the constitution of the 2<sup>nd</sup> Defendant's membership was at that time or at any other time thereafter, challenged by the Plaintiffs.

It's only now that Plaintiffs have been suspended from office by the said Defendant that Plaintiffs suddenly woke up from their slumber to allege impropriety in the way and manner 2<sup>nd</sup> Defendant was constituted. Interesting, before now 1<sup>st</sup> Plaintiff had even appeared before a Disciplinary Committee set up by the same 2<sup>nd</sup> Defendant.

In the circumstances, I do not consider the issues (vii) and (viii) formulated by both Counsel as constituting life issues before me. They are rather extraneous considerations and mere academic exercise in my resolution of the dispute between the parties to this suit.

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The Courts are to resolve real issues in dispute in any proceeding and not to engage in academic exercises which are of no value in Judgment delivery.

SEE: National Insurance Corporation of Nigeria V. Power & Industrial Engineering Co. Ltd (1988) 1 SC 33.

In similar vein, issues (i) to (vi) and (ix) formulated by both Counsel do not admit of the verbosity to which they have been subjected by learned Counsel and they can as well be summed up in one singular issue; and expressed as follows: -

*'Whether the suspension of the Plaintiffs and other members of their National executive Council by the 2<sup>nd</sup> Defendant is against the provisions of the Association's Constitution and the principles of natural Justice, thereby justifying the grant of the Reliefs sought by Plaintiffs in this suit'.*

In resolving this issue, much reliance, as I have earlier stated, has to be placed on the construction of relevant provisions of the Association's Constitution which is Exhibits 'A'/'G' in this proceeding.

By ARTICLE 9 (F) of the Association's Constitution, two standing committees are established. These are the Finance And Project Committee and the Disciplinary Committee.

Considering the importance of this provision of the Association's Constitution to this proceeding, it is necessary to have same quoted here *in extensio*. The said Article 9 (F) (ii) provides as follows:

*'The Disciplinary Committee shall have the duty to uphold good conduct and to discipline any member, officer or branch of the Associations for the infraction or breach of any of the provisions of this Constitution. The Executive Council shall refer any such member, officer or branch to the Disciplinary Committee for full*

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investigation. The Disciplinary Committee shall, upon full investigation suggest any reasonable penalty including fines, suspension or removal from office of the NEC. The Disciplinary Committee shall consist of seven (7) members and its decisions shall be a simple majority. The National vice-president shall be the chairman of the committee and the National Legal Adviser shall be member of the Committee.

The decision of NEC based on the report and suggestion by the Disciplinary Committee is final and shall be executed immediately except and until it is reversed by the National Convention on appeal by the party concerned. The members, officers or branch so disciplined shall have the right to appeal to the National Convention against the decisions of the Disciplinary Committee and NEC. The decision of the National Convention shall be final".

From the foregoing provision, the following facts are deducible, viz:

- (i) This particular Disciplinary Committee is to exercise disciplinary powers over any member, officer or branch of the Association.
- (ii) The executive Council is to refer the cases of persons to be disciplined to the said committee.
- (iii) Report of investigations conducted is to be submitted to the Executive Council which shall take decisions on the punishment to be meted out to such erring member or officer as recommended by the Disciplinary Committee.
- (iv) Appeals against the decisions of the NEC lies to the National Convention of the Association.

It isn't in doubt that the Board of Trustees of the Association (BOT) has no duty assigned to it or any role to play in the discipline of members under the said Article 9 (F) (II).

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What I think is in doubt is whether the phrase "any member, officer or branch of the Association" used in the said provision also includes or encapsulates members of the National Executive Council of the Association.

The ambiguity is created by the sentence: "The Disciplinary Committee shall upon full investigation suggest any reasonable penalty, including fines, suspension or removal from office of the NEC." (SIC); also used or contained in the said provision.

The use of the word "of" as against "to" in the sentence is, in my view a secretarial error or mistake which appears to have led to grave misconception of the said provision by the Plaintiffs in this suit.

It is clear to me that the Disciplinary Committee established under Article 9 (F) (ii) of the Association's Constitution has no disciplinary power over the National Executive Council members (NEC). The NEC, I dare say, is the 'driver' of the Disciplinary Committee set up by that Article and the body to which its decisions lies for implementation.

Now, to curb the foreseeable excess of members of its National Executive Council members the Association's constitution, appears to have made provision for the setting up of another or other disciplinary Committee(s).

The matter is dealt with by ARTICLE 16 (A) & (B) of the Association's Constitution which is on Discipline And Removal of Officer.

By the provision of the said Article 16 (A) & (B) the president or any other national officer of the Association Executive may be removed from office for misconduct and irregularities in the performance of the functions of his or her office. Allegations against the entire executive must be in writing signed by 25 financial members of the Association and shall be presented to the Board of Trustees. Where the allegation

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is against any officer, the number of members who are to sign such allegations is however not specified.

Again, under the said Article 16, the allegations made against any such officer must be served on the officer concerned and also on all members of the Executive Council. Likewise, the reply of the officer to the allegations must be served on the members of the Executive Council.

It is the BOT that has the right to constitute a Five (5) member Disciplinary Committee to investigate such allegations where it deem it appropriate and the disciplinary Committee is to stand dissolved upon the completion of its assignment. As such, this particular Disciplinary Committee is not a standing committee of the Association.

However, in what appears to be another twist in the drafting of the Association's Constitution, as I perceived it, the Article 16 (B) (ii) of the constitution in question provides that the findings and recommendations of such Disciplinary committee constituted by the BOT are to be reported to the Executive Council or, alternatively I think, to an Emergency convention or a body appointed by such convention.

A more serious twist or ambiguity is added to these state of things by the unclear and inelegantly drafted Article 16 (C) of the Associations constitution.

The said Article 16 (C) provides:

*"When the committee is work on NEC and BOT, the committee shall be constituted at the National congress"*.

By the combined reading of the provisions of Article 16, the committee alluded to in paragraph 16 (C) can only mean the Disciplinary committee constituted by the BOT.

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Also, the only meaningful interpretation, I can give to the provision of the said paragraph (C) is that where the allegations to be investigated by the Disciplinary committee to be constituted under the Article affect or are made against members of the NEC and the BOT, then the constitution of the body (that is, the Disciplinary committee) is to be made at the National congress or convention of the Association.

Interestingly, while ARTICLE 9 (A) (Vii) of the Association's constitution provides that the National Executive Council members shall be collectively responsible for any act of commission done by them, ARTICLE 9 (G), in stating the functions of the Board of Trustees, in paragraph 10 (b) of page 15, the same constitution also makes the BOT jointly responsible for any act committed or omitted by the NEC.

Permit me to say here that my understanding of the words "Collective" or "Joint" responsibility is that the persons or group of persons to whom they refer either stand or fall together in the discharge of the duties or performance of the role assigned to them.

Having made the foregoing clarifications, the question to ask with reference to the sole issue calling for determination in this proceeding, is whether the suspension of the Plaintiffs from their membership of the National Executive Council of the Association is in line with the relevant provisions of the Association's constitution.

The learned Counsel to the Plaintiffs had argued that the petition, Exhibit 'B' which precipitated the constitution of a disciplinary committee to investigate the 1<sup>st</sup> Plaintiff and some other members of his National Executive Council is incompetent and against the provision of the Association's constitution in that it was not signed by the required 25 financial members. The response of the Defendants to this submission was that since the petition was not written against the entire NEC

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members, it could be signed by less than that number as done by the BOT in this case.

I have carefully perused the content of Exhibit 'B'. the title or heading of the said petition has not left anyone in doubt as to the persons the writers have grouse with. The said title or heading of topic of the petition is expressed thus:

*"Incessant Financial Misappropriation and Breach of Constitutional provisions by members of the UNIOSUN Alumni Association National Executive Council (underling mine)."*

In the body of the petition, the writers expressed their concern on mismanagement of the Association's resources by its leadership from inception and requested the BOT to compel the NEC to Publish a full report of the Association's financial activities, amongst others, before the next election of the Association.

With the foregoing content of Exhibit 'B', it is my considered view that while the exhibit was written specifically against some members of the NEC named therein, it was generally written against all the National Executive Council members.

I am fortified in holding that view by the fact that the 2<sup>nd</sup> Plaintiff and other NEC members not specifically named in the petition Exhibit B, were later directed by the Disciplinary Committee in the Course of its investigations to submit their bank Statement of Accounts.

Ostensibly, upon their default, the whole NEC was sacked by the BOT.

In the circumstances, the petition, Exhibit 'B', ought to have been signed by the required 25 financial members of the Association as stipulated in Article 16 (A) (i) of the Association's constitution.

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The Plaintiffs have also complained that the 2<sup>nd</sup> Plaintiff and some of his NEC members were neither informed in advance of the allegations against them nor given fair hearing by the disciplinary Committee set up to investigate them.

In their reaction to this, the Defendants in paragraphs 63, 64 and 68 of their joint Counter Affidavit deposed to the fact that 2<sup>nd</sup> Defendant was not required to be part of the Disciplinary committee set up and that the Report of the Investigation carried out by the said Disciplinary Committee indicted him at page 3-4, item x of Exhibit 'H'

Relying on these and other depositions of the Defendants, Mr. Abeebe Oloade of Counsel, argued that 2<sup>nd</sup> Plaintiff was not specifically named in the petition Exhibit 'B' and that though he was indicted in the course of the investigations, the 2<sup>nd</sup> Plaintiff failed to produce his Bank Statement of Account as directed by the Disciplinary Committee.

Mr. Oloade argued further that the NEC members are collectively responsible for the act or omission of one or any of their members. In Defendants' Counsel view, the 2<sup>nd</sup> Plaintiff has been given fair trial before the Disciplinary committee.

Methink, this is far from the truth! The well known principles of natural justice "*Audi Alterem Partem*" (also enshrined in Article 9 paragraph A (xiv) of the Associations constitution as well as in S.36 of the 1999 constitution of Federal Republic of Nigeria), connotes the giving of equal opportunity to parties to be heard on any allegation made against them before a Court, Tribunal or any administrative body or quasi-judicial panel.

The Court, Tribunal or quasi-judicial body must in reaching its decision give equal opportunity and consideration to all concerned and in every material decision in the case to ensure that justice is not only done but seen to have been done.

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SEE: EJEKA V. STATE (2003) 6 SCM page 1 at 8, AROBIEKE V. NELM (Supra) page 402, paragraph A - C,

AGBI & ANOR V. OGBEH & ORS (2006) 7 SCM 1 AT PAGES 28-29.

As I have stated in this Judgment, the petition Exhibit 'B' was written against the whole NEC and 2<sup>nd</sup> Plaintiff as a member was not invited by the Disciplinary Committee or given opportunity to be heard before he was indicted and directive given for the production of his Bank Statement of Account.

Although 2<sup>nd</sup> Defendant ought not to be a member of the Disciplinary Committee as contended by Plaintiffs Counsel in this suit, since the Disciplinary Committee was not constituted pursuant to Article 9 F (ii) but under Article 16 (B), 2<sup>nd</sup> Plaintiff has his right to fair hearing breached by the Defendant for his suspension from office in pursuance of the Disciplinary Committee's findings or Report.

On whether the BOT has the Power to suspend the NEC of the Association under its Association Constitution, the Plaintiff Counsel argued that there was no basis for the suspension since the Disciplinary Committee's report did not indict the NEC members. He argued further that if the Report Exhibit 'C' actually did so, the Disciplinary Committee's duty is to recommend punishment to be meted out to the erring members under Article 9 F(ii).

Mr. Eniolapo, of Counsel also made other submissions as to the tenure of office of the NEC and how it can be brought to an end under that Article.

Learned Counsel to the Defendant, in his reaction, had submitted that the Article governing the suspension of the members in this instance is Article 16 (and not Article 9) and that the Plaintiffs are properly suspended by the BOT under that Article 16.

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G. O. AKINLEYE

REGISTRAR

12/10/23

I'm in agreement with learned Counsel to the Defendants to the extent that the applicable provision is Article 16 of the Association's constitution and that the submissions of learned Counsel to the Plaintiffs on the point are misconceived.

However, as I have earlier stated, the Report of the Disciplinary Committee set up by the BOT under Article 16 A & B, is to be submitted to NEC or to an Emergency convention or to a body so appointed by the convention.

More importantly, where the Disciplinary Committee's work is one affecting the NEC and BOT, the said Disciplinary Committee is to be constituted at the general congress or convention of the Association.

Again, as I have have indicated in this Judgment, the responsibility of the NEC and the BOT is collective and both are to stand or to fall together for their actions or inactions.

As against the Defendant's Counsel submissions, there is no provision in Article 16 or in any other provision of the Association's constitution vesting the powers to suspend or remove the NEC or any of its members from office on the BOT.

In clear terms the BOT has acted in contravention of the Association's constitution by suspending the Plaintiffs and the National Executive Council, and I so hold.

The Plaintiff's Counsel has made other submissions in his address relating to the composition of the Disciplinary Committee and its Report; hinging his said submission on Article 9 F (ii).

My finding above that the relevant provision applicable is Article 16 A & B, I think, should suffice and those submissions on the subject hold no water.

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G. O. AKINLEY

----- DIRECTOR -----

*[Handwritten signature]*

Now, the important question to ask here is "Whether the Court can proceed to grant all the reliefs sought by the Plaintiffs, the Court having found that their suspension is unlawful".

It is important to note that the Plaintiffs suit is not brought in representative capacity and hence, the reliefs to be granted are those entitled to by them as individuals and not as a body of National Executive Council (NEC).

Again, it is the contention of the Defendants in their affidavit evidence (a contention which Plaintiffs have not controverted) that the tenure of each of the Plaintiffs has expired since 28<sup>th</sup> May, 2023, by the relevant provision of the Association's constitution.

Can the Court order the re-instatement of Plaintiffs or the elongation of their tenure of office?

The Answer are in the Negative!

In the circumstances, the award of damages should suffice since plaintiffs by their relief 12 sought for other relief the Court may deem fit to make.

On the whole the suit of the Plaintiffs succeeds and I hereby grant the following Reliefs in their favour and against the Defendants, that is:

1. Declaration that the suspension of the Plaintiffs as members of the National Executive Council of the UNIOSUN Alumni Association by the 2<sup>nd</sup> Defendant is ultra vires, null and void, having been done in contravention of the Associations Constitution.
2. An Order setting aside the said suspension of the Plaintiffs made by the Defendants before the expiration of their tenure of office on 28<sup>th</sup> May, 2023.

3. A sum of ₦1,500,000:00 (One Million, Five Hundred Thousand Naira) in favour of each of the Plaintiff as damages for their unlawful suspension from office by the Defendants.



HON. JUSTICE M.O. AWE

JUDGE

STA OCTOBER, 2023.

COUNSEL:

Aishat Popoola holds D. E. Eniolapo's brief for Plaintiffs.

Abeeb Ololade amosun appears for Defendants.



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G. O. AKINLAI

