

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE PORT HARCOURT JUDICIAL DIVISION
HOLDEN AT PORT HARCOURT
ON TUESDAY THE 11TH DAY OF JANUARY, 2022
BEFORE HIS LORDSHIP
HON. JUSTICE S. I. MARK
(JUDGE)

SUIT NO: FHC/PH/CS/123/2020

BETWEEN

1. APIAMBO IBIGBENYE WARI Tech. FNISET
 2. OPADOKUN M. KEHINDE Tech. FNISET
 3. REV. GABRIEL AJAYISALAWU Tech. FNISET
- For themselves and as Representatives
of National Executive Council of Nigerian
Society of Engineering Technicians (NISSET)

COMPLAINANTS

AND

1. DEACON EMMANUEL A. JAMES
2. MUTIU O. OLARUNTOLA
3. DAMIAN ANYANWU

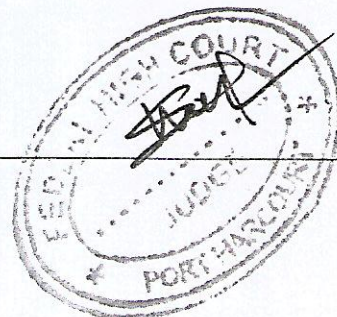
DEFENDANTS



JUDGMENT

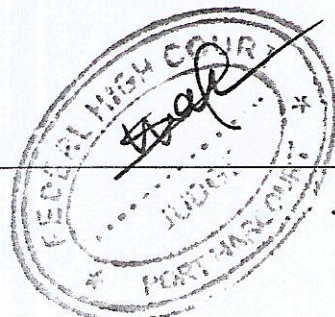
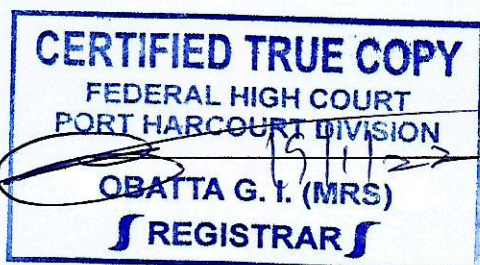
By an Originating summons dated 24/8/2020 and filed on the same date, the plaintiffs prayed the court thus:

1. **A DECLARATION** that those who failed to meet the basic academic requirements for membership of the Nigerian Society of Engineering Technicians (NISSET) as set-out by the Council for Regulation of Engineering in Nigeria and adopted by the society



are not members of the Nigerian Society of Engineering Technicians.

2. **A DECLARATION** that the purported Board of Trustees as constituted without compliance with the Memorandum and Articles of Association of the society does not exist.
3. **A DECLARATION** that the Board of Trustee members do not have the powers under the Memorandum and Articles of Association to fix dates and venues for Annual General Meeting or Extra-Ordinary General Meeting of the Nigerian Society of Engineering Technicians.
4. **A DECLARATION** that the annual general meeting of the Nigerian Society of Engineering Technicians called by the National Executive Council of NISSET on the 8th – 9th of October, 2019 is valid.
5. **AN ORDER** of the Honourable Court restraining the 1st Defendant from parading himself as the Chairman, Board of Trustees of the Nigerian Society of Engineering Technicians.
6. **AN ORDER** of the Honourable Court restraining the 2nd Defendant from parading himself as the National



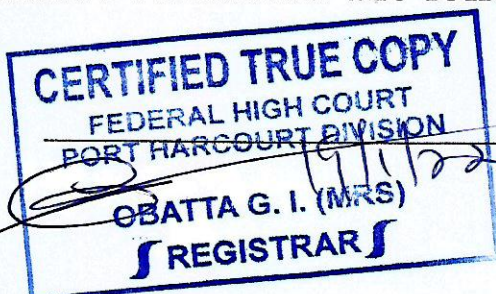
President of the Nigerian Society of Engineering Technicians and member of the Board of Trustee.

7. AN ORDER of the Honourable Court restraining the 3rd Defendant from parading himself as the National Secretary of the Nigerian Society of Engineering Technicians and Secretary of the Board of Trustees.

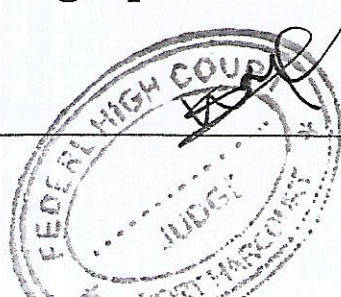
Before dealing with the substantive matter, I will tarry awhile and deal with the objection in the 1st def. counter affidavit in his paragraph 75, 76, and 77 with exhibit 2 being a decided case judgment between the defendants on record and Bolu James Ajibolu the immediate past president of Nigerian Society of Engineering Technicians otherwise called NISSET.

In that suit, Defendants got judgment against the former President and therefore said that the judgment serves as res judicata in the present suit, and that the court should decline jurisdiction as it is called to sit on an appeal against her judgment.

It has been held in the Supreme Court case of **ACHIAKPA V NDUKA (2001) 7 SC (Pt. III) 125 @136** that for a plea of res judicata to succeed the defendant must establish the following @ paragraphs 15 to 40:



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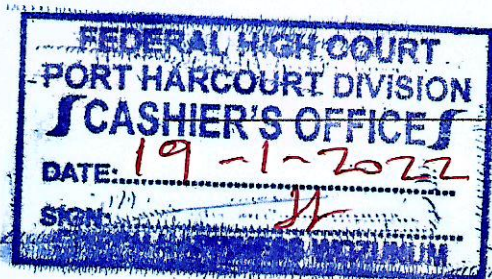


1. That the parties or their privies involved in both the previous and present proceedings are the same.
2. That the claim or issue in dispute, in both proceedings are the same.
3. That the res or the subject matter of the litigation in the two cases is the same
4. That the decision relied upon to support the plea is valid, subsisting and final and;
5. That the Court that gave previous decision relied upon to sustain the plea is a Court of competent jurisdiction”

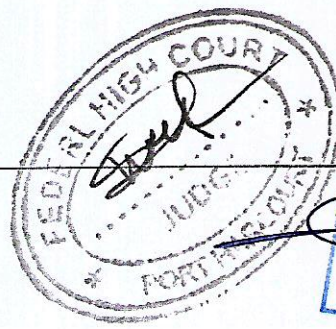
“Unless all the above preconditions are established the plea of estoppel per rem judicata cannot be sustained. The burden is on the party who sets up the defence of estoppel per rem judicata to establish the above preconditions conclusively”

In suit No. FHC/ABJ/CS/734/2016 being relied upon by the defendants, the parties in that suit are the 3 defendants here and one Bolu James Ajibolu, wherein the Defendants in this suit were the Plaintiffs

The issue was the Defendants power to suspend the president as board of trustee members and whether the



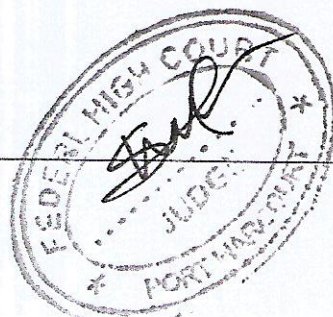
(4)



president can unilaterally take custody of the organization asset and whether the powers of the president is not limited to chairing the meeting of the organization.

In the present suit, the Plaintiffs are APIAMBO IBIGBENYE WARI, OPADOKUN M. KEHINDE and REV. GABRIEL AJAYI SALAMI against the present Defendants DEACON EMMANUEL A. JAMES, MUTIU O. OLARUNTOLA and DAMIAN ANYANWU.

The issues in the present suit are varied namely whether the Defendants are qualified members of the organization; Whether the defendants can make themselves Board of Trustee members without the consent of the National Executive council of the organisation; Whether as board of trustee members they have the right to summon an extra ordinary general meeting of the organization, taking into consideration the Memorandum and Article of Association of the organization; Whether as Board of Trustee members the Defendants has the power to make themselves as National Executive members of the organization and lastly whether the expiration of the tenure of the



National Executive Committee terminates the tenure of the National Executive Council and branch chairmen.

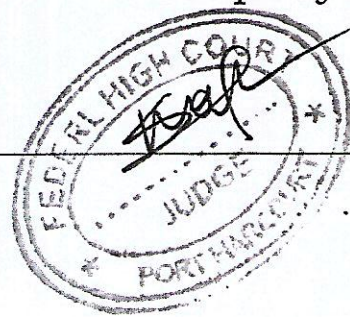
Flowing from the above, it is self-evident that the parties and issues are not the same in the concluded case and the current case.

The Defendant has woefully failed to meet the conditions as set out in the ACHIAKPA case (supra). The jurisdictional objection is dismissed and I so hold

Going into the substantive matter, the Plaintiff by an originating summons dated and filed on the 24/8/20 sued for themselves and on behalf of National Executive Council of Nigerian Society of Engineering Technicians otherwise referred to as NISSET

The Originating summons is accompanied by a 61 paragraph Affidavit in support with 20 Exhibits. The Affidavit was deposed to by the 1st Plaintiff and a written address was also filed.

The 1st Defendant in response upon the service of the Originating Summons filed a Counter Affidavit of 79 paragraphs with 19 Exhibits dated and filed on 30/10/20. The written address accompanying the



Counter Affidavit was dated 29/10/20 and filed on the 10/11/20

The Plaintiff upon receipt of the Counter Affidavit filed a further Affidavit of 51 paragraphs deposed to by the 1st Plaintiff dated and filed on the 17/11/20 with 12 Exhibits.

Thereafter the 1st Defendant also filed a 24 paragraphed "Further Affidavit" with 2 Exhibits attached with additional written argument.

The Plaintiffs and Defendants argued their respective cases in their written addresses relying on attached Exhibits to their various Affidavits.

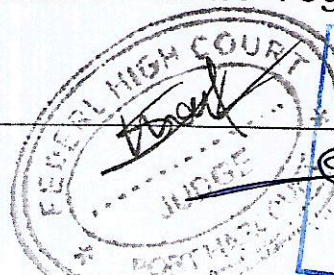
The 2nd and 3rd Defendants did not file any response in this Suit despite.

I have studiously gone through their various submissions and case and statutory laws and I came to the irresistible conclusion that the issues for determination are as follows:

1. *What are the powers of the contending parties in view of the provisions of the Memorandum and Articles of Association of NISSET with regards to*



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conduct of election for the officer of National Executive Officers and appointment of Board of Trustee membership

2. *What is the criteria for membership of NISSET in view of the conflicting Claims of the parties*

The parties are in agreement to qualification of membership arising from various regulatory agencies see exhibit 4 of the Plaintiff affidavit. The parties has also exhibited various qualification issued by various bodies. To be a member of NISSET, one has to get one of the qualifications enumerated in the said exhibit 4 of the Plaintiffs affidavit as exhibited.

Parties were harmoniously together in NISSET until the disagreement that brought them to this Court. Articles 27, 29, 31, 37, 38, 42, 46, 47a & b and 63 of the Memo and Article of NISSET are germane to the resolution of this suit. Both the Plaintiffs and Defendant are in agreement that the Article of Association is a document of authority.

Refer to Section 41(1) of the of the Company Allied Matters Act provides: "*Subject to the provisions of this Act, the Memorandum and Articles when, registered, shall have the effect of a contract under seal between*



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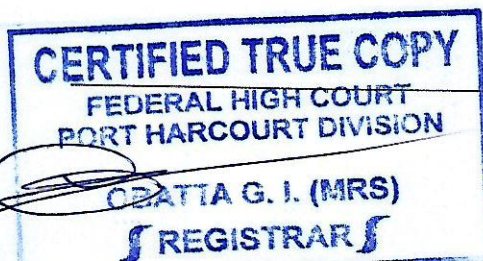
the company and its members and officers and between the members and officers themselves whereby they agree to observe and perform the provisions of the Memorandum and Articles, as altered from time to time in so far as they relate to the company, members or officers as such."

Article of Association of NISSET is Exhibit 4 in the Plaintiff's Affidavit which is not disputed by the Defendants and they have also quoted copiously from the same in advancing their arguments.

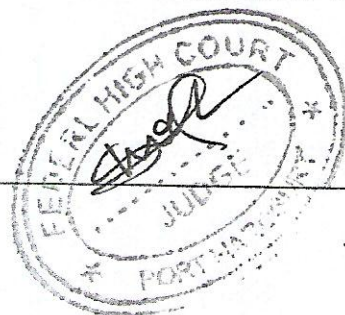
Article 27 of the Article of Association of NISSET has the composition of the National Executive Council which has been described as the governing body of the society with membership covering all elected officers of the society, immediate past president, branch chairmen or their representatives and others stated therein.

Article 29 represents the Executive Committee that oversee the management and administration of the society's affairs

Article 31 provides for election of officers and that nomination for executive council shall be at the Annual General Meeting



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Article 37 provides thus: “ for the purpose of Article 21(d) the Executive Council cannot Act in the absence of more than one-third (1/3) of its members; but for other purposes five members of the Executive council personally present shall form a quorum”

Article 38 provides thus ”All acts done by the Executive Council or by any committee appointed by the Executive Council or by any members of the Executive Council or by its agent shall be valid notwithstanding the subsequent discovery of any defect in their or his appointment, provided such acts are performed in good faith”

Article 42 provides for holding of Annual General Meeting at any place approved by the Council and that the purport of the Annual General Meeting shall amongst others be election of National President, National Vice President and Other elected members of the council where applicable.

Articles 46 – 48 provides for Extra ordinary General meeting to be called by the Executive council to transact businesses specified in those notices and the meeting shall hold at the National Secretariat.

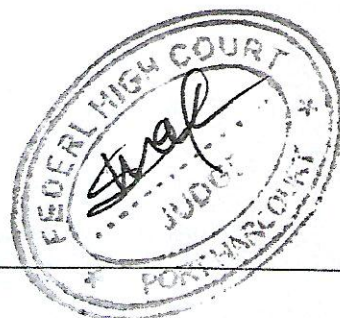


Article 63 provides for Board of Trustees that are to be appointed by the Executive Council and shall be five members, including the president who shall be immediate past president. The tenure shall be three (3) years and not serving more than three terms.

The Plaintiff has exhibited Exhibit 6 as the resolution that led to the Annual General Meeting held to elect the National Officers on the 8th and 9th of October 2019 at Lokoja.

The Defendants has also by Exhibit 7 attached to their Counter Affidavit conveyed the holding of an Extra – Ordinary General meeting to Mr Bolu James Ajibolu the immediate past President with dates for the meeting specified as 2nd and 3rd October 2019 at Ministry of Works Hall Ahmadu Bello way GRA Ilorin Kwara State

It is self – evident who has the power to convene an Annual General Meeting or Extra – ordinary General meeting as the findings from the Provisions of the Memorandum and Articles of Association of the society. That responsibility resides in the National Executive Council.



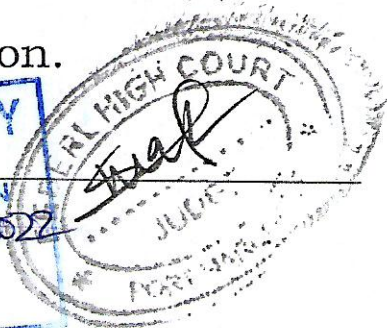
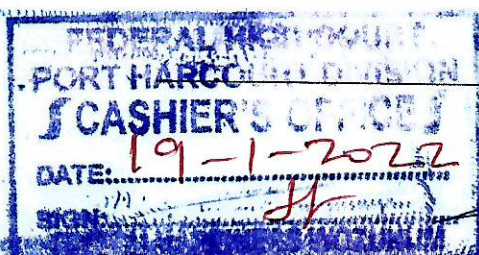
For the Annual General Meeting, they can elect to hold it at any appointed place but for the Extra - ordinary general meeting it must be in the society national secretariat. See Articles 27, 31, 42, 46 and 47 (a) & (b)

I cannot see in the Memorandum and Articles of the Association where the Board of Trustee members are given powers to summon any meeting let alone an Annual General Meeting or Extra - ordinary general meeting.

I make a finding that the Board of Trustee created by Article 63 (a) & (b) is subject to appointment by the National Executive Council with a renewal for up to 3 tenures and no more.

I also make a finding that the Defendants has not shown how and when they were appointed to the position of Board of Trustee members as provided for in Article 63 thereof.

Article 63 did not give the Defendants or any member of the society the power to appoint their selves Board of Trustee members. The appointment must be in accordance and as specified in Article 63(a) of the Memorandum and Article of Association.

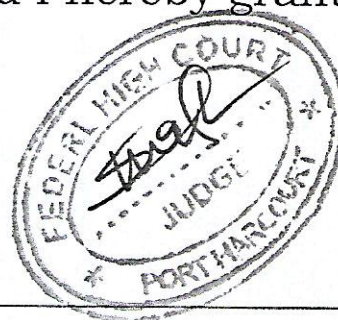
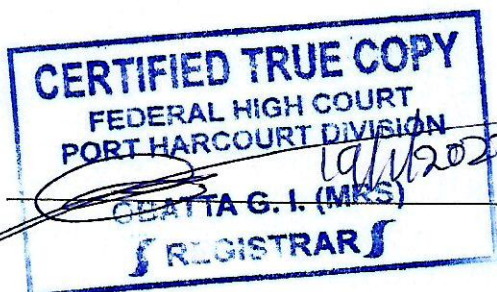


I find as a fact that the National Executive Council held a meeting on the 22nd of June 2019 at the NISSET Secretariat Abuja met with substantial compliance with the provision of the Article of Association of the society and on the unlikely event that there is any defects, same is cured by the provisions of Article 38 of the Articles of Association of the society.

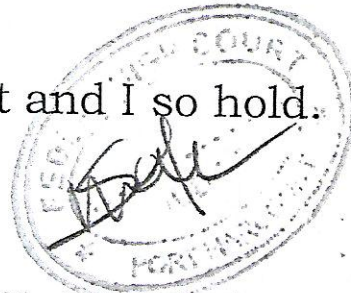
I also find as a fact and law that the Extra – ordinary general meeting held on 2nd and 3rd October 2019 by the Defendants is not supported by the provisions of the Articles of association of the society. Therefore the Extra-ordinary meeting and its products are null and void.

I equally find as a fact that the Annual General Meeting held by the Plaintiff on the 8th and 9th October 2019 meet with the requirement of the Article of Association of the society therefor the election and return of elected officers are valid.

Flowing from the above summation and findings, I hereby hold that the Plaintiff has made a case to warrant granting all the reliefs sought and I hereby grant same.



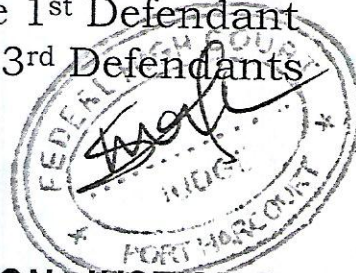
This is the Judgment of the court and I so hold.



HON. JUSTICE S. I. MARK
JUDGE
11/01/2022

Appearance:

C. N. Nweke, Esq. - for the Plaintiffs
C.T.C. Umez, Esq. - for the 1st Defendant
No representation for the 2nd and 3rd Defendants



HON. JUSTICE S. I. MARK
JUDGE
11/01/2022

