

**Legal Defence and Assistance Project (LEDAP)
GTE & LTD v Federal Ministry of Education &
Another (Judgement) (FHC/ABJ/CS/978/15)
[2018] NGFCHC 1 (17 April 2018)**

Top of Form

Bottom of Form

IN THE FEDERAL HIGH COURT

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA, NIGERIA

ON WEDNESDAY THE 15TH DAY OF MARCH, 2017

BEFORE THE HONOURABLE JUSTICE J.T. TSOHO, JUDGE

SUIT NO.: FHC/ABJ/CS/978/15

BETWEEN:

LEGAL DEFENCE AND ASSISTANCE

PROJECT (LEDAP) GTE & LTD

PLAINTIFF

AND

FEDERAL MINISTRY OF EDUCATION & ANOR

DEFENDANT

JUDGMENT

By an Originating Summons dated 27/10/2015 but filed on 03/12/ 2015 the Plaintiff sought for reliefs and posed questions for determination as follows:

1. A DECLARATION that the constitutional provisions on the right to free, compulsory and universal primary education up to junior secondary school for all Nigerian citizens under section 18 (3) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is an enforceable constitutional right by virtue of the Compulsory, Free Universal Basic Education Act, 2004.

2. A DECLARATION that the Federal and State Governments are under constitutional obligation to provide financial and institutional resources for free, compulsory and universal primary education and junior secondary education for all qualified Nigerians in fulfillment of their constitutional obligations under section 18 (3) (a) of the 1999 Constitution and section 2 of the Compulsory free Universal Basic Education Act.

3. A DECLARATION that failure to adopt and implement free, compulsory and universal primary education and free junior secondary education is a breach of the constitution by the executive head of the government that failed to do so.

4. AN ORDER compelling the Federal and State Governments to forthwith provide financial and institutional resources for citizens' exercise of their right to free, compulsory and universal primary education and free junior secondary education in terms of section 11 of Compulsory, Free, Universal Basic Education Act.

5. AN ORDER directing the 1st Defendant {Federal Minister of Education) to withdraw forthwith all tuition fee and any other payment by pupil at primary and junior secondary school in Nigeria in accordance with Section 2 (1) of the Compulsory, Free, University Basic Education Act, 2004.

The Grounds upon which the reliefs are sought are stated thus:

1. The provisions of Chapter 2 of the constitution are not enforceable by virtue of section 6 (6) (b) of the Constitution.

2. However, once a legislation is enacted to give legal effect to any of the provisions of Chapter 2, the right contained in such provision become enforceable under section 6 (6) (b) of the Constitution.

3. Having enacted the Compulsory, Free Universal Basic Education Act, 2004, the National Assembly has given legal effect to rights to free universal primary education and free junior secondary education for every Nigerian child contained in section 18 (3) (a) of the Constitution.

4. Section 18 (1) and (3) of the 1999 Constitution requires all governments in Nigeria to provide equal and adequate educational opportunities at all levels for all Nigerian citizens. It provides thus:

18. (1) Government shall direct its policy towards Ensuring that there are equal and adequate educational opportunities at all levels.

(3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide

- (a) free, compulsory and universal primary education;**
- (b) free secondary education;**
- (c) free university education; and**
- (d) free adult literacy programme.**

5. . By virtue of sections 2 (1) and 3 (1) of the Compulsory, Free University Basic Education Act, 2004; the right to free universal primary education and free junior secondary education for every Nigerian child is guaranteed. They provide thus:

2 (1) Every Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age.

3 (1) The services provided in public primary and junior secondary schools shall be free of charge.

6. Although section 18 of the Constitution falls under the non- justiciable fundamental objectives and directive principles of state policy, it has however become justiciable or enforceable by the combined effect of that section and sections 2 and 3 of the Compulsory, Free Universal Basic Education Act, 2004.

7. The Federal and state governments are therefore, under constitutional obligation to provide financial and institutional resources for free, compulsory and universal primary education and free junior secondary education.

8. Governments have the legal duty and responsibility under section 13 of the constitution to conform to, observe and apply the provisions of Chapter two of the constitution. Section 13 of the 1999 constitution provides that:

“ It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this constitution.”

9. The failure to adopt and implement free compulsory and universal primary education and free junior secondary education is a breach of the constitutional obligation of the government that failed to do so being a failure of the duty and responsibility of such head of government to exercise power to conform to, observe and apply section 18 of the constitution and sections 2 and 3 of the Compulsory, Free Universal Basic Education Act, 2004.

10. The Compulsory, Free Universal Basic Education Act, 2004 went further to stipulate how this right to free compulsory and universal primary education and free junior secondary education should be fulfilled by governments, by requiring a block grant of universal basic education. Section 11 of the Act provides that:

11. (1). The implementation of the Universal Basic Education shall be financed from –

- (a) Federal government block grant of not less than 2% from its Consolidated Revenue Fund;**
- (b) Funds or contributions in form of Federal guaranteed credits; and**
- (c) Local and international donor grants.**

(2). For any State to qualify for the Federal Government block grant pursuant to sub section (1) of this section, such State shall contribute not less than 50% of the total cost of projects as its commitment in the execution of the project.

(3) The administration and disbursement of funds shall be through the State Universal Basic Education Board.

11. The Defendants have not complied with the above provisions. As a result, the Plaintiff and all qualified Nigerians are not accessing free compulsory and universal primary education and free junior secondary education.

12. This Honourable Court has the power to compel the Defendants to comply with the above law, and to require them to report within a specified fiscal period, measures they have taken to comply with the said provisions of the law.

13. That Plaintiff, being a duly registered organization under the laws of Nigeria, with registered mandate to promote good governance, have the legal right to bring this action to demand that Federal and state governments adopt and implement the provisions of the constitution regarding citizens right to free compulsory and universal primary education and free junior secondary education.

In support of the Summons is a 16 paragraph affidavit deposed to by Melissa Omene a legal practitioner of the Plaintiff. Annexed thereto are CTC of the Certificate of Registration and the Memorandum and Articles of Association of the Plaintiff, marked as Exhibit A. it is further supported by a Written Address dated 27/10/2015.

This Court on 29/11/2016 granted leave to Learned Counsel for the Plaintiff, E.C. Obiagwu Esq. to argue the Originating Summons. He relied on the affidavit and adopted the Written Address as their arguments in support of the Originating Summons, while urging the Court to answer all the questions posed in the affirmative and to grant all the reliefs sought.

It is on record that this Court permitted the Plaintiff to proceed in the absence of both Defendants, being satisfied that they had been served with the Originating Summons on 20/4/ 2016 and the service was duly acknowledged. Further to that, an Affidavit of Service deposed to on 25/11/ 2016 by Amarachi Nwabia, a Legal Practitioner in the Law Firm of the Plaintiff's Counsel showed that a letter dated 23/11/2016 (attached as Exhibit A) was served on each of the Defendants on 24/11/2016 giving them notice of hearing of this suit on 29/11/ 2016. Receipt of the letter by each of the Defendants is acknowledged with the official stamps of the Defendants impressed on the Return of Service. Despite all these, the Defendants neither entered appearance nor filed any response at all. The Plaintiff's Case is hence not contested.

The Plaintiff proceeded in accordance with the provisions of Order 8 Rules 1 and 10 of the Federal High Court (Civil Procedure) Rules, 2009. In general, where the Plaintiff's Claim is unchallenged and uncontroverted, the Court will accept the available evidence and act on it. See *Aprofim Eng. Const. Ltd v. Sidov Ltd* (2006) 13 NWLR (Pt. 996) C.A. 73 at 83, paragraphs A - E. However, it is trite that it is not in all cases where a defendant does not defend an action that the Plaintiff is entitled to judgment; as much depends on the peculiarity of the Case. See, *Alhaji B. Abubakar v. Alhaji Daniya Waziri & 3 Ors* (2008) 6 - 7 SC (Pt. 11) 82. The Judgment in the instant case will how ever be on its merit, as it basically turns on interpretation of constitutional and statutory provisions, as opposed to relying purely on evidence.

It is observed that the Plaintiff at page 15 of its Written Address specifically stated having formulated 4 questions for determination but proceeded to outline 5 questions and ended up arguing 4 questions in Isolated manner. I hold the humble opinion that all the 4 questions/Issues argued by the Plaintiff essentially revolve around, question 1, which I'm inclined to focus on, in the hope that its resolution will cover all the other questions. Question 1 reads thus:

Whether by the combined effect of Section 18 of the 1999 Constitution and Section 2 (1) of the compulsory, Free Universal Basic Education Act 2004, the right to compulsory and universal primary education and free junior secondary education for all qualified Nigerian Citizens are enforceable rights in Nigeria?

The core submissions relating to this question are contained in paragraphs 3.4 to 3.6 of the Plaintiff's Written Address. Put briefly, the Plaintiff submitted that irrespective of the provisions of Section 6 (6) (c) of the 1999 Constitution, some provisions of Chapter 2 of the Constitution will become enforceable if the Constitution provides otherwise in another section. It is further submitted that where the National Assembly enacts a law on any Section or sections of Chapter II of the Constitution, such section (s) will become automatically enforceable. Referred to the Cases of ***Olafisoye v. FRN* (2004) 4 NWLR (Pt. 864) 580** and ***A - G, Ondo State v. A - G., Federation* (2002) 9 NWLR (Pt. 772) 222, per Uwaifo, J.S.C.**

The Plaintiff stated that the National Assembly In 2004 enacted the Compulsory, Free Universal Basic Education Act, which guaranteed the right of every Nigeria n child to free, compulsory and Universal Primary Education and Junior Secondary Education. The Plaintiff then submitted that in view of the decision of the Supreme Court in ***A - G Ondo State v. a-g Federation* (supra), Sections 2 (1) and 3 (1) of the Compulsory, Free Universal Basic Education Act, 2004** have created enforceable rights under Section 18 of the 1999 Constitution. It urged this Court to so hold.

I have found very useful, the decision of the Supreme Court in ***A - G, Ondo State v. A - G., Federation* (2002) 9 NWLR (Pt. 772) 222** in the resolution, not just of question I posed by the Plaintiff, but indeed the entire suit. For that reason, I will quote at length the pronouncements of the Supreme Court, which are elucidating, Uwaifo, J .S.C. at page 382 (paragraphs A - D) stated as follows:

"As to the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy in Chapter 11 of our Constitution, Section 6 (c) says so (sic). While they remain mere declarations, they cannot be enforced by legal process but would be seen as a failure of duty and responsibility of state organs if they acted in clear disregard of them, the nature of the consequences of which having to depend on the aspect of the infringement and in some cases

the political will of those in power to redress the situation. But the Directive Principles (or some of them) can be made justiciable by legislation. This is the point Chief Babalola seemed to have elaborated upon when he said that the Fundamental Objectives and Directive Principles had lain dormant in our Constitution since 1979 and that the Act was the first effort to activate just one aspect of them in order that there may be good and transparent government throughout the Federation of Nigeria."

Uwaifo, J.S.C. further stated at page 391. (paragraphs F - H).

"We do not need to seek uncertain ways of giving effect to the Directive Principles in Chapter II of our Constitution. The Constitution itself has placed the entire chapter II under the Exclusive Legislative list. By this, it simply means that all the Directive Principles need not remain mere or pious declarations. It is for the Executive and the National Assembly, working together, to give expression to anyone of them through appropriate enactment as occasion may demand believed this is what has been done in respect of section (15(5) by the present Act. the National Assembly can well legislate if in its wisdom it considers it necessary"

The essence of the decision of the Supreme Court in A - G., Ondo State v. A - G., Fed. (supra) is that the Courts cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws for their enforcement, as done in respect of section 15 (5) of the 1999 Constitution by the enactment of the Corrupt Practices and Other Related Offences Act, 2000. That Act was enacted pursuant to the provision of Section 15 (5) of the 1999 Constitution which says:

"The State shall abolish all corrupt practices and abuse of power."

In the instant case, there is no doubt that the National Assembly enacted the Compulsory, Free Universal Basic Education Act, 2004, based on the provisions of Section 18 (1) & (3) of the CFR N 1999 (as amended).

Those provisions read as follows:

"18. (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

(3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide -

- (a) Free, Compulsory and universal primary education;**
- (b) Free secondary education;**
- (c) Free University education; and**
- (d) Free adult literacy programme."**

Having been guided by the pronouncements of the Supreme Court in the case of A - G., Ondo State v. A - G., Fed. (supra), I hold that with the enactment by the National Assembly of the Compulsory, Free Universal Basic Education Act, 2004, the specific provisions covered by that Act have become justiciable or enforceable by the Courts.

In the light of the foregoing, Questions a, b, d. and e. posed by the Plaintiff in the Originating Summons are answered affirmatively. As for Question C, its first segment is answered affirmatively. This is to the effect that failure to adopt and implement free, compulsory and Universal Primary education and free junior secondary education is a breach of constitutional obligation of the government. However, the second segment of Question C is tinged with political undertone by seeking declaration that the break of this obligation is an impeachable conduct. This, not being a purely legal issue, this Court refrains from answering it though necessary inference can be drawn as circumstances may demand.

Based on the answer to the Questions in the Originating Summons, this Court hereby grants all the Reliefs (1, 2, 3, 4 and 5) sought by the Plaintiff in this suit.

J. T. TSOHO

JUDGE

1/3/2017

Parties absent.

E.C. Obiagwu Esq with P. Egbele (Miss) for the Plaintiff.

Mrs. U.C. Ikpe for the 1st Defendant.