

**IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
DELIVERED ON THE 11TH OF JULY, 2024
BEFORE THEIR LORDSHIPS**

**MOHAMMED LAWAL GARBA
EMMANUEL AKOMAYE AGIM
CHIOMA EGONDU NWOJU-IHEME
HARUNA SIMON TSAMMANI
MOORE ASEIMO A ADUMEIN
HABEEB ADEWALE. O. ABIRU
JAMILU YAMMAMA TUKUR**

**JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT**

SC/343/2024

BETWEEN

Attorney General Federation

..... Plaintiff

AND

1. **Attorney General, Abia State**
2. **Attorney General, Adamawa State**
3. **Attorney General, Akwa-Ibom State**
4. **Attorney General, Anambra State**
5. **Attorney General, Bauchi State**
6. **Attorney General, Bayelsa State**
7. **Attorney General, Benue State**
8. **Attorney General, Borno State**
9. **Attorney General, Cross River State**
10. **Attorney General, Delta State**
11. **Attorney General, Ebonyi State**
12. **Attorney General, Edo State**
13. **Attorney General, Ekiti State**
14. **Attorney General, Enugu State**
15. **Attorney General, Gombe State**
16. **Attorney General, Imo State**

1


Official
Certified True Copy
Usman B. Bature Esq
.....
REGISTRAR
SUPREME COURT OF NIGERIA
18/7/24
+

17. **Attorney General, Jigawa State**
18. **Attorney General, Kaduna State**
19. **Attorney General, Kano State**
20. **Attorney General, Katsina State**
21. **Attorney General, Kebbi State**
22. **Attorney General, Kogi State**
23. **Attorney General, Kwara State**
24. **Attorney General, Lagos State**
25. **Attorney General, Nasarawa State**
26. **Attorney General, Niger State**
27. **Attorney General, Ogun State**
28. **Attorney General, Ondo State**
29. **Attorney General, Osun State**
30. **Attorney General, Oyo State**
31. **Attorney General, Plateau State**
32. **Attorney General, Rivers State**
33. **Attorney General, Sokoto State**
34. **Attorney General, Taraba State**
35. **Attorney General, Yobe State**
36. **Attorney General, Zamfara State** **Defendants**

JUDGMENT

(DELIVERED BY HABEEB ADEWALE OLUMUYIWA ABIRU, JSC)

I have had the privilege of reading before now the lead judgment delivered by my learned brother, Emmanuel Akomaye Agim, JSC. His Lordship has considered and resolved the issues in contention in the appeal. I am not in concurrence with the entire reasoning in the lead judgment and I agree that the action of the Plaintiff succeeds, but only in part.

The Plaintiff commenced the present action by an Originating Summons dated and filed on the 20th of May, 2024 and it set forth the following questions for determination by this Court:

1. Whether, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the

2

Official
 Certified True Copy
Alman B. Bature Esq
 REGISTRAR
 SUPREME COURT OF NIGERIA

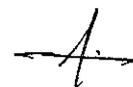
A.

Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, or anyone of them, acting through their/its respective State Governors and or State House of Assembly, are/is not under obligation to ensure democratic governance at the third tier of government in Nigeria, namely, at the Local Government level?

2. Whether, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, or anyone of them, acting through their/its respective State Governors and or State Houses of Assembly, can, using State power derivable from Laws enacted by the State Houses of Assembly (anyhow or called) or Executive Orders/other actions (anyhow so called) lawfully dissolve democratically-elected Local Government Councils within the said States/State?
3. Whether, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b), 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, or anyone of them, acting through their/its respective State Governors and or State House of Assembly, the 1st – 36th Defendants, or anyone of them can, using state powers derivable from Laws enacted by the State House of Assembly (anyhow so called) or Executive Orders/other actions (anyhow so called), lawfully dissolve democratically-elected Local Government Councils within the said States and replace them with Caretaker Committees (anyhow so called)?
4. Whether, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the dissolution of democratically-elected Local Government Councils by 36 States of Nigeria, or anyone of them, using state powers derivable from Laws enacted by the State of Houses of Assembly (anyhow so called) or Executive Orders/other actions (anyhow so called), is lawful and constitutional?
5. Whether, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the

3

Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA



Constitution of the Federal Republic of Nigeria, 1999, any of the elected or other officials of the 36 States of Nigeria, who through the instrumentality of either a State Law or any administrative directive/order, dissolves or causes the dissolution of democratically-elected Local Government Councils of their States has not gravely breached the provisions of the Constitution of the Federal Republic of Nigeria, 1999; hence has committed gross misconduct?

6. Whether in the face of a violation of the Constitution and the unconstitutionality of a structure of administration of Local Government Council other than a democratically elected Local Government Council guaranteed by Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal Government/Federation is obligated under Section 162(5) and 6 of the 1999 Constitution to pay/allocate to a State funds standing to the credit of the Local Government when no democratically elected Local Government guaranteed under the Constitution vide Section 7 of the 1999 Constitution, is in place?
7. Whether having regard to the effect of Section 7 of the 1999 Constitution and Section (162)(5) and (6) of the 1999 Constitution, a State which is in breach of Section 1(1), (2) and 7 of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution of the Federal Republic of Nigeria is entitled to receive and spend funds meant for the Local Government Councils by virtue of Section 162(5) and (6) of the 1999 Constitution while still in breach of the Constitution by not putting in place a democratically elected Local Government system/councils?
8. Whether, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) and 162(3), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, or anyone of them, acting through any of their elected or other/its officials that dissolves democratically elected Local Government Councils within its domain is still entitled to the revenue allocation and operation of a Joint Account as stipulated in Section 162(3), (5), (6), (7) and (8) of the said Constitution until such a State reverses to status quo ante bellum?

Official
Certified True Copy
Osman B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

9. Whether the failure of the Defendants or anyone of them to put in place a democratically elected Local Government system mandatorily provided for Section 7 of the 1999 Constitution is not a breach and subversion of Sections 1(1), (2) and 7(1) of the Constitution as to create an interregnum in Local Government system and render inoperable Section 162(5) of the 1999 Constitution regarding allocation of fund standing to the credit of Local Government in Federation Account of the State?
10. Whether, by the combined reading of Sections 1(1), (2) and (3), (4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), 2(a), (c) and 4 (4) of the Constitution of the Federal Republic of Nigeria, 1999, any elected or other official of the 36 States of Nigeria, (or anyone of them) through the instrumentality of either a State Law or any administrative directive/elected, dissolves or causes the dissolution of democratically-elected Local Government Councils of their/its States is not liable to be arraigned during or at the end of his tenure (as the case may be) for criminal offences bordering on breach of the Constitution/contempt of court and or breach of applicable criminal and penal laws?
11. Whether, by the combined reading of Sections 1(1), (2) and (3), 2, 7(1) and 7(3), 14(1), 2(a), (c) and (4) and 162(2), (3), (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the States or anyone of them have/has unbridled and unrestricted discretion to operate the "State Joint Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government Councils within those States, rather than for the greater benefit of those Councils, which are the third tier of Government in Nigeria.
12. Whether by virtue of Section 162(3) and (5) of the Constitution of the Federal Republic of Nigeria, 1999, the amount standing to the credit of a Local Government Council in the Federation account should be distributed to it, and if so whether it can be paid directly to it?
13. Whether by virtue of S. 162(5) of the Constitution of the Federal Republic of Nigeria 1999, a State Government is not merely an agent of the Local Governments in the State to collect the amount standing to the credit of the Local Government in the Federation Account and pay directly to the

Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Official A.

Local Government and as such agent has no power or right to spend or use any part of it for any purpose?

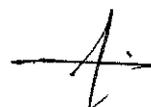
14. Whether, by virtue of S. 162(3), (5) and (6) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of a Local Government Council in the Federation account and received by a State on its behalf, and paid into a State Joint Local Government Account is liable to be paid directly to each Local Government without delay?
15. Whether a Local Government Council is not entitled to a direct payment from the Federation account of the amount standing to its credit in the said Federation account, where the State Government has persistently refused or failed to pay to it the said amount received by the State Government on its behalf?

Consequent on the determination of the said questions, the Plaintiff prays the Court to grant the following prayers:

1. A DECLARATION that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 read together with Section 318(1), thereof, which defines "Government" to include the Government of a Local Government Council, the 36 States of Nigeria, or anyone of them, acting through their/its respective State Governors and or State House of Assembly, are/is under obligation to ensure democratic governance at the third tier of government in Nigeria, namely, at the Local Government level.
2. A DECLARATION that, by the combined reading of Sections 1 (1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), 2(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, acting through their/its respective State Governors and or State Houses of Assembly cannot, using State power derivable from laws enacted by the State Houses of Assembly (anyhow so called) lawfully dissolve democratically elected Local Government Councils within the said State/State.
3. A DECLARATION that, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) (4) of

6

Official
Certified True Copy
Elman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA



the Constitution of the Federal Republic of Nigeria, 1999 read together with section 318(1) thereof, which defines, "Government" to include the Government of a Local Government Council, the 36 States of Nigeria, acting through their respective State Governors and or State Houses of Assembly, none of the 1st to 36th Defendants can, using State power derivable from Laws enacted by the State Houses of Assembly (anyhow so called) lawfully dissolve any of the democratically elected Local Government Councils within the said States/State and replace them/it with Caretaker Committees (anyhow so called).

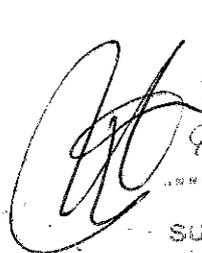
4. A DECLARATION that, by the combined reading of Sections 1(1), (2) and (3) 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, the dissolution of democratically elected Local Government Councils by the 36 States of Nigeria, or anyone of them, using State powers derivable from Laws enacted by the State Houses of Assembly (anyhow so called) is unlawful, unconstitutional, null and void.
5. A DECLARATION that, in the face of violation of the provision of the 1999 Constitution of the Federal Republic of Nigeria by reason of failure to put in place a democratically elected locally elected Local Government Council guaranteed by Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal Government/Federation is not obligated under Section 162(5) and (6) of the Constitution to pay/allocate to a State funds standing to the credit of the Local Government when no democratically elected Local Government Councils guaranteed under the Constitution vide Section 7 of the 1999 Constitution are/is in place.
6. A DECLARATION that, having regard to the effect of Section 7 of the 1999 Constitution and Section 162(5) and (6) of the 1999 Constitution, a State which is in breach of Section 1(1), (2) and 7 of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution is not entitled to receive and spend funds meant for the Local Government Councils by virtue of Section 162(5) and(6) of the 1999 Constitution while still in breach of the Constitution by not putting in place a democratically elected local government system/councils.

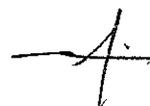
7

Official
Certified True Copy
Elsmann B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA



7. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 read together with section 318(1), thereof, which defines "Government" to include the Government of a Local Government Council, any of the elected or other officials of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of any of the democratically elected Local Government Councils of their/its State has gravely breached the provision of the Constitution of the Federal Republic of Nigeria, 1999, hence by that token has committed a gross misconduct.
8. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and (3)(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) and 162(3), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, acting through any of their elected or other officials that dissolve democratically elected Local Government Councils within its domain is not entitled to the revenue allocation and operation of a Joint Account as stipulated in section 162(3), (5), (6) (7) and (8) of the said Constitution until such a State revenues to status quo ante bellum.
9. A DECLARATION that any money, including statutory allocations, grants, financial interventions or palliatives that accrues to any of the State for/to the benefit of its Local Government or Local Government Councils shall, on being received by any such States or its organs or officials, be remitted immediately into the coffers of the Local Government Councils of the State without any deductions and delays or excuses.
10. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3), 4 (7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, read together with section 318(1), thereof, which defines "Government" to include the Government of the Local Government Council, any elected or other official of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of democratically elected Local Government Councils of their State is liable to be arraigned during or at the end of his tenure (as

 Official
Certified True Copy
Usman B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA



the case may be) for criminal offences bordering on breach of the Constitution/contempt of court and or breach of applicable criminal and penal laws.

11. A DECLARATON that, by the combined reading of Sections 1(1), (2) and (3), 2, 7(1) and 7(3), 14(1), (2)(a), (c) and (4) and 162 (2), (3) (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the States do not have unbridled and unrestricted discretion to operate the "State Joint Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government Councils within those States, rather than for the greater benefit of those Councils, which are the third tier of Government in Nigeria.
12. A DECLARATION that by virtue of S. 162 (3) and (5) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of Local Government Councils in the Federation account should be distributed to the and be paid directly to them.
13. A DECLARATION that by virtue of S. 162(5) of the Constitution of the Federal Republic of Nigeria 1999, a State Government is merely an agent of the Local Governments in the State to collect the amount standing to the credit of the Local Governments in the Federation Account and pay directly to the Local Governments and as such agent has no power or right to spend or use any part of it for any purpose.
14. A DECLARATION that by virtue of S. 162 (3), (5) and (6) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of a Local Government Councils in the Federation Account and received by a State on its behalf, and paid into a State Joint Local Government Account is liable to be paid directly to each Local Government without further delay.
15. A DECLARATION that a Local Government Council is entitled to a direct payment from the Federation Account of the amount standing to its credit in the said Federation Account, where the State Government has persistently refused or failed to pay to it the said amount received by the State Government on its behalf.

 Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA



16. AN ORDER of injunction restraining the Defendants, by themselves, their privies, agents, officials or howsoever called from receiving, spending or tampering with funds released from the Federation Account for the benefit of Local Government Councils when no democratically elected local government system is put in place in the State.
17. AN ORDER that the Federation through its relevant officials shall pay to Local Government in a State directly from the Federation account the amount standing to their credit therein, where the said State has refused or failed to pay to each of the or anyone of them, the amount it received or has been receiving on their/its behalf.
18. AN ORDER OF IMMEDIATE COMPLIANCE by the States, through their elected or appointed officials and public officers, with the terms of the judgment and orders made in this Suit; and successive compliance by successive State Government officials and public officers, save when the applicable provisions of the Constitution of Nigeria, 1999 as amended here interpreted are otherwise subsequently amended.
19. Any other or other orders as this Honourable Court may deem fit to make in all the circumstances of this case.

The grounds upon which the questions and the prayers sought were predicated are stated on the face of the Originating Summons. In the affidavits in support on the Originating Summons, it is the case of the Plaintiff that the action was commenced for the interpretation and enforcement of the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (1999 Constitution) referred to in the questions highlighted in the Originating Summons. The Plaintiff asserted that the President of the Federal Republic of Nigeria, whom he represents, and the Governors of the components State in the Federation, represented by the thirty six Defendants, took oath, at their respective swearing in ceremonies, to uphold and give effect to the provisions of the 1999 Constitution, the *grundnorm* and which has binding force all over the Federation of Nigeria,

10


Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

A.

and that they are all thus under a constitutional duty to give effect to the provisions of the 1999 Constitution.

It is the case of the Plaintiff that the 1999 Constitution provides for and recognizes three tiers of Government at the Federal, State and Local Government levels and that the three tiers of Government so recognized draw funds for their operations and functioning from the Federation Account which was created by the 1999 Constitution. It was its case that the 1999 Constitution provides for, recognizes and guarantees only a democratically elected local government system of governance at the Local Government level, and nothing else, and that this fact has been confirmed and reiterated by this Court in several decisions and which decisions are binding on all persons and authorities including the Defendants. It was its case that in deliberate subversion of the provisions of the 1999 Constitution which they swore to uphold and in total disregard for the decisions of this Court, the Defendants have failed and refused to put in place a democratically elected local government system of governance at the Local Government levels in their respective States, notwithstanding that no state of emergency has been declared in any of the States to warrant the suspension of democratic institutions, and that all efforts to get the Defendants to comply with this dictate of the 1999 Constitution have yielded no positive result.

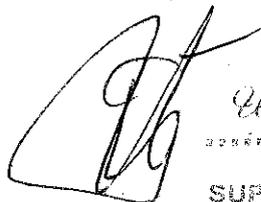
It is the case of the Plaintiff that the 1999 Constitution mandated the Federation of Nigeria to maintain a Federation Account into which all revenue accruing to the Federal Republic of Nigeria, save for some exempted funds, are paid and from which funds are distributed to the three tiers of Government at the Federal, State and Local Government levels. It is its case that the 1999 Constitution directs each State to maintain a Special Account called "State Joint Local Government Account" into which the funds due for the Local Government Councils in the State from the

 Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Federation Account are to be paid for the benefit of each of the Local Government Council. It is its case that the funds due to the Local Government Councils from the Federation Account and paid into the State Joint Local Government Account are received by the States in trust for the benefit of the Local Government Councils in the States and are to be paid only to the Local Government Councils with democratically elected systems of governance provided for in the 1999 Constitution.

It is the case of the Plaintiff that the failure of the Defendants to put in place a democratically elected local government system in the Local Government Councils in their respective States has continued to deny the constitutionally recognized beneficiaries of the funds due from the Federation Account to the Local Government tier of governance of the Federation. It is its case that to continue to disburse the funds due from the Federation Account to the Local Government tier of governance of the Federation to the Defendants in the absence of a democratically elected local government system in the Local Government Councils undermines the sanctity of the 1999 Constitution and gives room for persons not constitutionally recognized as beneficiaries of the funds to expend them. It is its case that it is the responsibility of the Federation of Nigeria to ensure that funds due from the Federation Account to the Local Government tier of governance of the Federation does not get into wrong hands so as to promote fiscal responsibilities at the different tiers of governance created by the 1999 Constitution and to put an end to the insecurity prevalent in the Local Government Areas of the Federation due to abject poverty, unemployment and lack of basic amenities at that level of governance.

It is the case of the Plaintiff that the Defendants, acting through their successive State Governments are in the habit of truncating democracy at the Local Government Levels in their respective States and willy-nilly dissolving democratically elected members of the Local Government

 Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Councils and replacing them with Caretaker Committees or other Committees. The Plaintiff mentioned specifically the 1st, 2nd, 3rd, 4th, 7th, 9th, 10th, 16th, 17th, 18th, 19th, 21st, 22nd, 23rd, 25th, 26th, 27th, 29th, 30th, 31st, 32nd, 33rd and 36th Defendants as States where democratically elected Local Government Councils were dissolved or where Caretaker Committees/Interim Transition Committees were appointed to run the Local Government Councils or where there are neither democratically elected Local Government Councils or Caretaker Committees running the Local Government Councils and it referred to a Newspaper report and Newspaper editorial and an online report corroborating the assertion.

It is the case of the Plaintiff that it is not in the place of any of the Defendants to subject the funds remitted to the Local Government Areas in their States to any other sharing formula different from that used in disbursing the funds from the Federation Account and/or to make any deductions after the remittance of the funds to the State Joint Local Government Account and that neither is it in the place of the Defendants to expend the funds on behalf of the Local Government Councils on any item whatsoever. It is its case that the National Assembly, comprising the representatives of all Nigerians, has expressed grievance and dissatisfaction with the way the Defendants are interfering with the running of and the funds meant for the Local Government Councils and had in fact passed the Monitoring of Revenue Allocation to Local Governments Act of 2005 to curb the activities of the Defendants, but to no avail, and it referred to the proceedings of the Senate and the online reportages of the proceedings.

It is the case of the Plaintiff that the Federation of Nigeria has a dispute with the Defendants with respect to and concerning the arbitrary dissolution of Local Government Councils and their replacement with Caretaker and other Committees and also with respect to their continued disobedience of the decisions of this Court and of the Court of Appeal on


Official
Certified True Copy
Usman B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

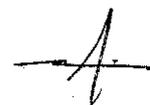
A

the subject and it is thus seeking more stringent reliefs in this action. It is its case that only the grant of the more stringent reliefs sought in this action will ensure the compliance of the Defendants with the provisions of the 1999 Constitution on having democratically elected local government system governance at the Local Government Councils and in ensuring that the funds shared to the Local Government tier from the Federation Account get to the Local Government Councils intact.

Upon being served with the processes of the Plaintiff, the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 17th, 18th, 19th, 21st, 22nd, 23rd, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th and 35th Defendants filed two processes each in response, their respective notices of preliminary objections and counter affidavits to the Originating Summons, while the 15th, 16th, 20th, 24th, 25th and the 36th Defendants filed only a counter affidavit to the Originating Summons.

The 1st Defendant (Abia State) admitted in its counter affidavit that there is no democratically elected local government system of governance in its Local Government Councils, but it was its case that this was due to the fact that there are two restraining orders issued it against by the High Court of Abia State in Suits Nos. HAR/8/2023 – Onwuneme Vs ABSIEC and HB/1/2023 – Nwoke Vs The Speaker, Abia State House of Assembly restraining it and its relevant agencies from conducting Local Government elections. It is its case that there is no provision in the 1999 Constitution that the funds due to Local Government Areas should be paid only those that have a democratically elected Local Government Councils, but that the funds should be paid to the State for the benefit of the Local Government Councils. It is its case that it has been duly utilizing the funds received for the benefit of all the Local Government Councils such as payment of their staff, providing basic amenities at the grass root, alleviating poverty, creating employment and putting an end to misappropriation of funds. It is

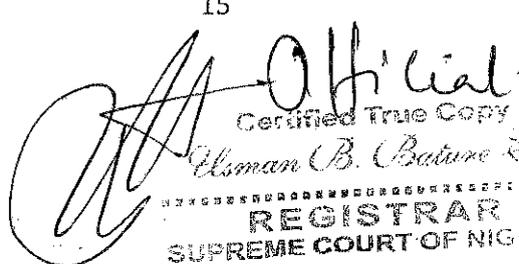
Official
Certified True Copy
Ulsman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA



its case that the Federal Government lacks the power to withhold statutory allocations due to Local Government Councils and that the orders sought by the Plaintiff are contrary to the provisions of the Constitution.

The 2nd Defendant (Adamawa State) too admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it has not conducted Local Government elections since the tenure of the last Council members expired in April 2024 and that the Local Government Areas are being managed by Transition Committees. It conceded that the 1999 Constitution provides for a democratically elected local government system of governance at the Local Government level, but it is its case that there is no provision for situations where it is impracticable to conduct elections at the expiration of the tenure of elected Local Government Council members due to natural or unforeseen circumstances. It is its case that there is no provision in the 1999 Constitution that the funds due to Local Government Areas should be paid only to those that have a democratically elected Local Government Councils and that its Local Government Areas are being run in accordance with the Constitution. It is its case that it uses the funds allocated to the Local Government Areas to provide primary healthcare and other essential services in their locations and to pay salaries of the Local Government Staff and that the only way of administering the funds of the Local Government Areas is as provided in Section 162(8) of the Constitution.

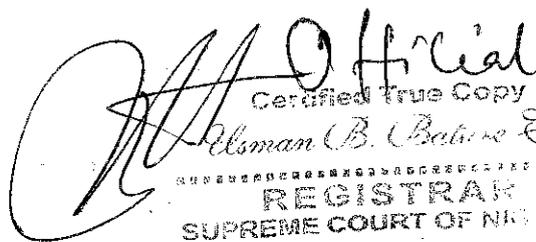
The 3rd Defendant (Akwa Ibom State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it has not conducted Local Government elections since the tenure of the last Council members expired in December 2023 and that the Local Government Areas are being managed by Transition Committees. It conceded that the 1999 Constitution

 Official
Certified True Copy
Usman B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA



provides for a democratically elected local government system of governance at the Local Government level, but it is its case that there is no provision for situations where it is impracticable to conduct elections at the expiration of the tenure of elected Local Government Council members due to natural or unforeseen circumstances. It is its case that the Constitution guarantees the power of the State House of Assembly to a make laws for the regulation of Local Government Councils including their establishment, structure, composition, finance and functions and it was pursuant to the law made by its House of Assembly that it set up Transition Committees to manage the Local Government Councils when it was impossible for it to conduct Local Government elections. It is its case that there is no provision in the 1999 Constitution that the funds due to Local Government Areas from the Federation Account should be paid only to those that have a democratically elected Local Government Councils and the Constitution does not vest any oversight function in the Federal Government over the funds due to the Local Government Areas from the Federation Account. It is its case that that its Local Government Areas are being run in accordance with the Constitution and that the only way of administering the funds of the Local Government Areas is as provided in Section 162(8) of the Constitution.

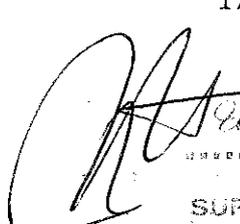
The 4th Defendant (Anambra State) admitted in its counter affidavit that there is no democratically elected local government system of governance in its Local Government Councils, but it was its case that this was due to the fact that there are two restraining orders issued it against by the High Court of Anambra State in Suit No A/68/2017 with Motion No 376M/2017 – Kelvin Vs The Executive Governor, Anambra State and Suit No HID/2/2016 with Motion No 17/2016 – Eneda Vs The Executive Governor, Anambra State restraining it and its relevant agencies from conducting Local Government elections. It conceded that the 1999 Constitution provides for

 Official
Certified True Copy
Emmanuel B. Babire Esq.
REGISTRAR
SUPREME COURT OF NIGERIA



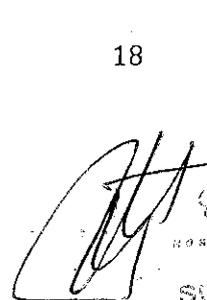
a democratically elected local government system of governance at the Local Government level, but it is its case the Constitution also guarantees the power of the State House of Assembly to a make laws for the regulation of Local Government Councils including their establishment, structure, composition, finance and functions. It is its case that substantial parts of its Local Government Areas suffer from severe security challenges and that the allocation of funds made to the Local Government Areas in its State is for the benefit of the inhabitants of the Local Government Areas and not to the elected officials of the Local Government Councils and that it has been expending the sums to provide maintenance of structures and development of the respective locations. It is its case that it is neither unconstitutional nor unlawful for the Federation to allocate revenue to the Local Government Areas regardless of the nature of the administration prevalent at any given time and the disbursement of funds between the States and Local Government Areas is not and has never been the responsibility or business of the Federal Government. It is its case that the issues canvassed in this action are the same as those canvassed in Suit No FHC/L/CS/770/2013 – Olisa Agbakoba Vs Minister of Finance.

The 5th Defendant (Bauchi State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it has not conducted Local Government elections since the tenure of the last Council members expired in sometime in 2023 and that the Local Government Areas are being managed by Transition Committees. It conceded that the 1999 Constitution provides for a democratically elected local government system of governance at the Local Government level, but it is its case that there is no provision for situations where it is impracticable to conduct elections at the expiration of the tenure of elected Local Government Council members due to natural or unforeseen circumstances. It is its case that the

17

Official
Certified True Copy
Usman B. Badare Esq.
REGISTRAR
SUPREME COURT OF NIGERIA


Constitution guarantees the power of the State House of Assembly to a make laws for the regulation of Local Government Councils including their establishment, structure, composition, finance and functions and it was pursuant to the law made by its House of Assembly that it set up Transition Committees to manage the Local Government Councils when it was impossible for it to conduct Local Government elections. It is its case that there is no provision in the 1999 Constitution that the funds due to Local Government Areas from the Federation Account should be paid only to those that have a democratically elected Local Government Councils and the Constitution does not vest any oversight function in the Federation over the funds due to the Local Government Areas from the Federation Account. It is its case that its Local Government Areas are being run in accordance with the Constitution and that the only way of administering the funds of the Local Government Areas is as provided in Section 162(8) of the Constitution and that it had consistently remitted funds due to the Local Government Areas for the payment of salaries, pensions, contributions of joint projects, security, and mandatory disbursements.

The case of 6th Defendant (Bayelsa State) in the counter affidavit is that it presently has democratically elected local government system of governance in its Local Government Councils and that they were inaugurated on the 29th of April, 2024 and that it has not since the inception of the Fourth Republic tampered with or dissolved any of its Local Government Councils before the expiration of their tenures. It is its case that it has not in any way denied and/or withheld the funds allocated to its Local Government Areas from its Local Government Councils and the funds are fully disbursed to them from the State Joint Local Government Account and that it is not in breach of any of the provisions of the Constitution and that as such this action is baseless as it concerns it.

 Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

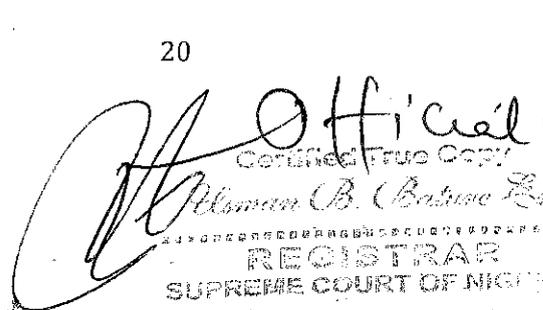
The 7th Defendant (Benue State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that Local Government Council members elected for its Local Government Areas in June, 2022 were suspended by the Governor, acting on the resolution of its State House of Assembly, and that the Local Government Areas are being managed by Caretaker Committees. It is its case that the disbursement or release of funds from the Federation Account to the State Joint Local Government Account is a statutory duty and withholding payment of same will run contrary to the clear and specific provisions of the Section 162(8) of the 1999 Constitution and that the State Government is the only body constitutionally allowed to receive the funds due to the Local Government Areas from the Federation Account through the State Joint Local Government Account. It is its case that the funds accruable into the State Joint Local Government Account are used for the purposes of payment of salaries of Local Government staff, provision of health, security and environmental management services in the Local Government Areas.

The case of 8th Defendant (Borno State) in the counter affidavit is that it presently has democratically elected local government system of governance in its Local Government Councils and that they were inaugurated in January, 2024 sequel to Local Government elections conducted upon the expiration of the last Local Government Council and that it has not at anytime tampered with or dissolved any of its Local Government Councils before the expiration of their tenures. It is its case that the disbursement or release of funds from the Federation Account to the State Joint Local Government Account is a statutory duty and withholding payment of same will run contrary to the clear and specific provisions of the Section 162(8) of the 1999 Constitution. It is its case that it has not in any way denied and/or withheld the funds allocated to its Local

Official *A*
Certified True Copy
Usman B. Botume Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Government Areas from its Local Government Councils and the funds are fully disbursed to them from the State Joint Local Government Account and they are allowed to spend their funds in accordance with their budgetary allocation without any interference from the State. It is its case that it is not in breach of any of the provisions of the Constitution and that as such this action is baseless as it concerns it.

The 9th Defendant (Cross River State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it has not conducted Local Government elections since the tenure of the last Council members expired on the 8th of June 2023 because of lack of funds and because of the challenged launched against the composition its local election umpire in Suit No HC/118/2022 – Peoples Democratic Party Vs Governor of Cross River State and which is now at the Court of Appeal as Appeal No CA/C/133/2023. It is its case that the funds due to the Local Government Councils are paid to the Local Government Areas created by the Constitution and that the Local Government Councils executives only manage the funds as trustees of the people and that in the absence of a democratically elected local government governance, the funds are still used for the benefit of the citizens in the location of the Local Government Areas. It is its case that the only way of administering the funds of the Local Government Areas is as provided in Section 162(8) of the Constitution and same is not done subject to the existence of a democratically elected Local Government Council and the Local Government Areas remain in existence even without a democratically elected Local Government Council. It is its case that the Federal Government has no oversight functions whatsoever over the funds belonging to the Local Government Councils and the non-release of the funds would negatively impact over 18,000 employees of the Local Government Councils and the salaries of Traditional Rulers.

 Official
Certified True Copy
Olumun B. (Babirye) Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

The 10th Defendant (Delta State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it is planning to hold Local Government elections on the 13th of July, 2024 and that it is incorrect that funds due from the Federation Account to the Local Government Areas are paid to a democratically elected local government system of governance, and rather the funds are allocated to the State and the State in turn distributes them to the Local Government Areas regardless of whether or not there is a democratically elected local government system. It is its case that the funds are distributed to the Local Government Councils and are utilized for the payment of workers' salaries, public health development of the various Local Government Areas, amongst others and that there has no report that the funds were not distributed to the Local Government Councils at any point in time.

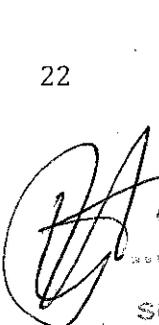
The case of 11th Defendant (Ebonyin State) in the counter affidavit is that it presently has democratically elected local government system of governance in its Local Government Councils and that they were duly elected on the 30th of July, 2022 and their tenure is still running and that it has not at anytime tampered with or dissolved any of its Local Government Councils before the expiration of their tenures. It is its case that it has religiously and promptly disbursed the funds received from the Federation Account for the Local Government Areas to the Chairman and members of the Local Government Councils and that it has been exceptional in complying with the provisions of the Constitution. It is its case that the Federal Government has no oversight functions whatsoever over the funds belonging to the Local Government Councils and that the function is that of its House of Assembly and that the Plaintiff has no cause against it.

The case of 12th Defendant (Edo State) in the counter affidavit is that it presently has democratically elected local government system of

Official 
Certified True Copy
Osman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

governance in its Local Government Councils and that they were duly elected on the 2nd of September, 2023 and were inaugurated on the 4th of September, 2023 and they are running the affairs of their respective Local Government Councils without any hindrance. It is its case that its House of Assembly is vested with the powers to enact laws regulating the distribution of monies to the Local Government Councils from the State Joint Local Government Account by the 1999 Constitution and that funds allocated to the account from the Federation Account are duly disbursed to the Local Government Councils and that it does not interfere with use or divert the said funds. It is its case that the Local Government Councils utilize the funds for payment of wages and allowances to its staff, teachers, primary health workers and Traditional Rulers and pensioners and that there is no dispute between it and any of the Local Government Councils on the operation and disbursement of funds from the State Joint Local Government Account.

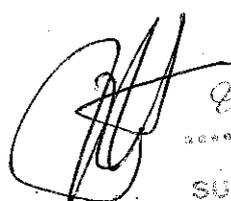
The case of 13th Defendant (Ekiti State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that the present members of the Local Government Councils were duly elected on the 2nd of December, 2023 and are serving their tenure in accordance with the Ekiti State Local Government Administration Law. It is its case that it has been distributing the funds allocated to its Local Government Areas from the Federation Account and paid into the State Joint Local Government Account according to the provisions of the Constitution and that each of its Local Government Councils has been receiving its share as stipulated by the Federation Account Allocation Committee. It is its case that it has not breached the provisions of the Constitution regarding the operation of the State Joint Local Government Account and that expenditures that cannot be taken care

 Official
Certified True Copy
Usman B. Babatope Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

of by individual Local Government Councils are managed jointly by it and the Local Government Councils.

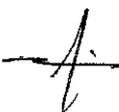
The 14th Defendant (Enugu State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it has not conducted Local Government elections since the tenure of the last Council members expired in November, 2021. It is its case that when its relevant agency issued guidelines for the conduct of Local Government Elections in October 2023, the guidelines were challenged in Court in Suit No E/682/2023 – Action Alliance Vs Enugu State Independent Electoral Commission and that the High Court of Enugu State delivered judgment on the 1st of December, 2023 voiding the guidelines and that this is the reason for its failure to have a democratically elected local government system of governance in its Local Government Councils.

The case of 15th Defendant (Gombe State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that the present members of the Local Government Councils were duly elected on the 27th of April, 2024 and are serving their tenure and are administering the affairs of their respective Local Government Areas. It is its case that it is the only body allowed by the Constitution to receive funds from Federal Allocation on behalf of the Local Government Areas in its State through the State Joint Local Government Account and that it has been distributing the funds so received to the Local Government Councils as provided in the Constitution. It is its case that there is no time it failed or refused to release or disburse funds from the Federation Account meant for its Local Government Areas and the funds are disbursed monthly by paying into the individual accounts of the Local Government Councils and are being used by the Local Government Councils for the benefit of its citizens without any interference.

 Official
Certified True Copy
Elsman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

The 16th Defendant (Imo State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it has not conducted Local Government elections because of heavy security challenges in the State in the past few years. It is its case that successful administrations in the State had dissolved elected Local Government Councils in the past leading up to the commencement of different Court actions and some of which have travelled to and are pending in this Court and that it will conduct the Local Government elections once the court cases are concluded. It is its case that it holds the funds allocated to the Local Government Areas of its State in trust for the Local Government Councils and had used same to provide social amenities such as primary health care and to carry out several infrastructural developments in the Local Government Areas and that the salaries of the Local Government Staff are also paid from the funds. It is its case that the Constitution did not make the allocation of funds to the Local Government Areas conditional upon the holding of conduct of Local Government elections and that the release of funds from the Federation Account to the Local Government Areas is mandatory and the suspension or non-release of the funds will amount to a constitutional breach.

The case of 17th Defendant (Jigawa State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that the present members of the Local Government Councils were duly elected and inaugurated on the 1st of July, 2021 and are serving their tenure which will end on the 30th of June 2024. It is its case that the Federation is under obligation to release funds meant for the Local Government Councils from the Federation Account as provided in the Constitution and it has not in any way undermined the sanctity of the provisions of the Constitution.


Official
Certified True Copy
Chaman B. (Bature Esq)
REGISTRAR
SUPREME COURT OF NIGERIA

The case of 18th Defendant (Kaduna State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that the present members of the Local Government Councils were duly elected and are serving their tenure which will end in November, 2024. It is its case that the disbursement and release of funds from the Federation Account to the State Joint Local Government Account is a statutory duty and withholding or non-disbursement of same is contrary to the specific provisions of the Constitution and that it is the only body allowed by the Constitution to receive funds from Federal Allocation on behalf of the Local Government Areas in its State through the State Joint Local Government Account. It is its case that it has been distributing the funds so received to the Local Government Councils monthly and that there is no time it failed or refused to release or disburse funds from the Federation Account meant for its Local Government Areas and which funds are used to pay salaries and provide social amenities in the localities. It is case that it has not breached any provision of the Constitution.

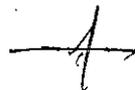
The case of the 19th Defendant (Kano State) on the counter affidavit is that it has always had in place a democratically elected local government system of governance in its Local Government Councils and that it has never denied, and does not intend to deny, any of its Local Government Councils the sums allocated to them from the Federation Account and that it has at all times fully complied with the provisions of the Constitution in respect of the remittance of funds due to the Local Government Councils. It is its case that it is by the provisions of the Constitution entitled to the continued disbursement of the funds due to its Local Government Areas from the Federation Account for immediate onwards remittance to its respective Local Government Councils and that no person or authority not constitutionally recognized spends any part of the due to the Local

Official
Certified True Copy
Olumide B. Babire
REGISTRAR
SUPREME COURT OF NIGERIA

Government Councils from the Federation Account. It is its case that the Federal Government has a mandatory duty to allocate to its Local Government Councils through it the sums due to the Local Governments Areas from the Federation Account.

The case of 20th Defendant (Katsina State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that the present members of the Local Government Councils were duly elected on the 11th of April, 2022 and are serving their tenure which will end in April, 2025 and that it is already making plans to hold the next Local Government elections on the 15th of February, 2025. It is its case that its Local Government Councils have consistently received the funds allocated to them from the Federation Account and they have been governing the affairs of their respective Local Government Areas without hindrance or interference and that it has complied with all the required constitutional provisions in its dealings with its Local Government Areas.

The case of the 21st Defendant (Kebbi State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that the present members of the Local Government Councils were duly elected in February 2022 and are serving their tenure and that they govern the affairs of their respective Local Government Areas without hindrance or interference. It is its case that it maintains a State Joint Local Government Account and into which it receives the monthly Federal allocations due to its Local Government Areas and that it has never denied the Local Government Councils the funds due to them and that no person not constitutionally recognized has access to or spends the funds of its Local Government Areas. It is its case that it has complied with all the required constitutional provisions in its dealings with its Local Government Areas.

Official 
Certified True Copy
Abdullahi B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

The 22nd Defendant (Kogi State) denied in its counter affidavit that it is neither running an undemocratic system of local government administration nor has it refused to put in place democratically elected Local Government System and it is its case that it has not dissolved any democratically elected Local Government Council in its State. It is its case that it is incorrect that it dissolved all the democratically elected Local Government Councils in its State on the 24th of December, 2023, but the fact rather is that the tenure of the elected Local Government Officials expired on that date. It is its case that that it has complied with all the required constitutional provisions in its dealings with its Local Government Areas and that it operates a functional State Joint Local Government Account from which it disburses funds standing to the credit of its Local Government Council and that it has not subverted or diverted the funds due to its Local Government Areas. It is its case that it is unconstitutional, unjust and unfair for the Federal Government to withhold the statutory allocation standing to the credit of its Local Government Areas for any reason whatsoever and that such an action would aggravate the existing socio-economic challenges of the people.

The 23rd Defendant (Kwara State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it has not been able to conduct Local Government election because of a protracted litigation which is now in this Court as Appeal No SC/CV/862/2022 and that it has plans to conduct the elections in September, 2024. It is its case that the disbursement or release of funds due to its Local Government Areas from the Federation Account into its State Joint Local Government Account is a mandatory constitutional duty and that it has consistently released and disbursed the funds to its Local Government Areas monthly and they have been wisely invested in the localities. It is its case that it is only body

27 Official
Certified True Copy
Umaru B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

allowed by the provisions of the 1999 Constitution to receive the funds of its Local Government Areas from the Federation Account and this is through the State Joint Local Government Account and that Federal Government is not empowered to retain the funds and that it does not interfere with the lawful utilization of the allocated funds of its Local Government Areas.

The case of the 24th Defendant (Lagos State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that the present members of the Local Government Councils were duly elected in 24th of July 2021 and are serving their tenure and that they govern the affairs of their respective Local Government Areas without hindrance or interference. It is its case that the statutory allocations to its Local Government Areas from the Federation Account are ultimately used for payment of staff salaries in the Local Government Offices including primary health care, primary schools and other essential services and the withholding of the statutory allocations for whatever reason is ultra vires the powers of the Federal Government.

The case of the 25th Defendant (Nasarawa State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that its Local Government Areas are presently being governed by elected members of the Local Government Councils without any hindrance or interference. It is its case that it has granted its Local Government Councils full autonomy in accordance with the provisions of the Constitution and that upon receipt on the monthly allocation from the Federation Account, the funds meant for the Local Government Areas payable from the State Joint Local Government Account are not tampered with and are paid over to the respective Local Government Councils without delay and that it has in fact

Official
Certified True Copy
Alimam B. Babatope Esq
REGISTRAR
SUPREME COURT OF NIGERIA

had instance to augment the funds to assist the Local Government Councils fully carry out their statutory duties. It is its case that it has complied with all the required constitutional provisions in its dealings with its Local Government Areas.

The case of the 26th Defendant (Niger State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that the present members of the Local Government Councils were duly elected in 2022 and are serving their tenure and that they govern the affairs of their respective Local Government Areas without hindrance or interference. It is its case that it is entitled to the release of funds from the Federation Account for the existing democratically elected Local Government Council in its State and that there is no room for any person that is not constitutionally recognized to spend the funds due to its Local Government Councils. It is its case that the funds due to the Local Government Areas in its State and paid into the State Joint Local Government Account are distributed to the Local Government Councils and who spend the funds in accordance with their budgetary allocation without any tampering or interference from the State Government.

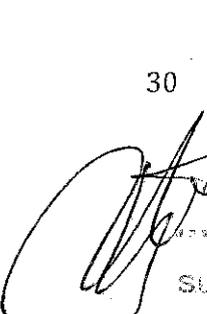
The case of the 27th Defendant (Ogun State) on the counter affidavit is that there is presently a democratically elected local government system of governance in its Local Government Councils and that they were inaugurated on the 25th of July, 2021 are serving their three year tenure. It is its case that it has ensured that the allocations due to its Local Government Areas from the Federation Account are promptly remitted to the Local Government Councils in accordance with the provisions of the Constitution and that it maintains a State Joint Local Government Account which is administered by a Committee comprising of representatives from the Local Government Councils. It is its case that it does not interfere with the lawful

Official
Certified True Copy
Ulsman B. Boluwale Esq
REGISTRAR
SUPREME COURT OF NIGERIA

utilization of the allocated funds by the Local Government Councils and that it has complied with all the required constitutional provisions in its dealings with its Local Government Areas.

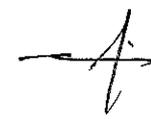
The 28th Defendant (Ondo State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it has not conducted Local Government elections since the tenure of the last Council members expired in August, 2023 and that the Local Government Areas are being managed by the Local Government Head of Administration until elections are held. It is its case that that it has not violated any of the required constitutional provisions in its dealings with its Local Government Areas.

The 29th Defendant (Osun State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that the Local Government elections that it conducted were annulled by the Federal High Court, Oshogbo in Suit No FHC/OS/CS/94/2022 and that the Local Government Areas are being managed by the Caretaker Committees until elections are held. It is its case that it has always received and held in trust all federal allocations accruing to its Local Government Areas and ensured that same is made available to the Caretaker Committees for effective provision of social amenities in their respective localities and that the Federal Government is duty bound to release to it all funds meant for its Local Government Areas whether or not there is in place a democratically elected local government system in so far as it is recognized as receiving body for the funds in trust for its Local Government Areas. It is its case that that it has not violated any of the required constitutional provisions in its dealings with its Local Government Areas.


Official
Certified True Copy
Olusola B. Obituro Esq
REGISTRAR
SUPREME COURT OF NIGERIA

The case of the 30th Defendant (Oyo State) on the counter affidavit is that there is presently a democratically elected local government system of governance in its Local Government Councils and that they were inaugurated on the 27th of April, 2024 and are serving their tenure. It is its case that, in line with the provisions of the Constitution, it maintains and operates a State Joint Local Government Account into which all allocations from the Federation Account to its Local Government Areas are received and from which it pays the respective Local Government Councils their corresponding entitlements and that it does not interfere with the utilization of the funds by the Local Government Councils. It is its case that that it has not violated any of the required constitutional provisions in its dealings with its Local Government Areas.

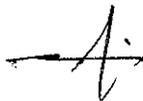
The 31st Defendant (Plateau State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that the democratically elected Local Government Councils were suspended by its House of Assembly and the Local Government are being managed by Transition Committees. It conceded that the Constitution recognizes only a democratically elected local government system of governance, but it its case that the Constitution also empowers the State House of Assembly to make laws for the regulation of the Local Government Councils including their establishment, structure, composition, finance and functions. It is its case that the funds due to the Local Government Areas in its State from the Federation Account are to be paid to the Local Government Councils whether they are elected or appointed and the Federal Government is not vested with oversight functions over the funds due to the Local Government Areas. It is its case that the funds accruing to its Local Government Areas are currently being managed by the State Joint Committee established in accordance with the provisions of the

Official 
Certified True Copy
Usman B. Picturo Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Constitution which appropriates and releases monies to the Local Government Councils for their administration. It is its case that that it has not violated any of the required constitutional provisions in its dealings with its Local Government Areas.

The case of the 32nd Defendant (Rivers State) on the counter affidavit is that there is presently a democratically elected local government system of governance in its Local Government Councils and that they were inaugurated on the 18th of June, 2021 for a three year tenure and they are serving their tenure. It is its case that its Local Government Councils enjoy full autonomy and have always received their allocations from the State Joint Local Government Account as and when due and that it has complied with all the provisions of the Constitution in its dealings with its Local Government Councils.

The 33rd Defendant (Sokoto State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that it is yet to conduct Local Government elections since the tenure of the last democratically elected Local Government Councils expired in April 2023. It is its case that it maintains a State Joint Local Government Account into which all funds due to its Local Government Areas from the Federation Account are paid and the funds are administered for its Local Government Areas in accordance with the Constitution for the benefit of its citizens living in the localities. It is its case that the funds received from the Federation Account for the Local Government Areas are for the benefit of the citizens of the State living in those Local Government Areas and not for the Local Government Officials whether elected or appointed and that the Federal Government is not constitutionally responsible for the funds of its Local Government Area.


Official
Certified True Copy
Umaru B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

The case of the 34th Defendant (Taraba State) on the counter affidavit is that there is presently a democratically elected local government system of governance in its Local Government Councils and that they were inaugurated on the 20th of November, 2023 after a successful conduct of Local Government elections on the 18th of November, 2023 and they are serving their tenure. It is its case that it maintains a State Joint Local Government Account for the receipt of funds due to its Local Government Areas and that the funds are disbursed to the democratically elected Local Government Council and that it has complied with all the provisions of the Constitution in its dealings with its Local Government Councils.

The case of the 35th Defendant (Yobe State) in the counter affidavit is that it has always had democratically elected local government system of governance in its Local Government Councils and that it has never truncated the tenure of its elected Local Government Council members. It is its case that the Federal Government is not constitutionally responsible for the funds of its Local Government Area and that it has not violated any of the required constitutional provisions in its dealings with its Local Government Areas.

The 36th Defendant (Zamfara State) admitted in its counter affidavit that there is presently no democratically elected local government system of governance in its Local Government Councils and that its Local Government Areas are being managed by Interim Administrators and that it has not been able to conduct Local Government elections by reason its severe security challenges which made it declare a state of emergency on security in the State. It is its case that it has never denied its Local Government Areas the funds due to them from the Federation Account and that it has not violated any of the required constitutional provisions in its dealings with its Local Government Areas.

33

[Handwritten Signature]

Official
Certified True Copy
Umaru B. Bello Esq
REGISTRAR
SUPREME COURT OF NIGERIA

As stated earlier, thirty of the Defendants filed notices of preliminary objection. The grounds of the preliminary objections are similar and can be grouped under six headings; namely that:

- i. The Plaintiff did not disclose any personal injury suffered and/or sufficient interest to cloth him with the requisite *locus standi* to maintain the action;
- ii. The action as constituted did not disclose the existence of any dispute between the Federation and the States within the provisions of Section 232 of the 1999 Constitution to justify the invocation of the original jurisdiction of this Court;
- iii. The issues raised in the action amount to a re-litigation and that the action is thus caught by the doctrine of issue estoppel/res judicata;
- iv. The subject matter of the action is speculative, academic and hypothetical;
- v. The action is incompetent for failure to join the States' Houses of Assembly and Local Government Councils as parties; and
- vi. The originating summons as filed is incompetent in that it is a wrong mode of commencing the action and for not been signed by the Registrar of Court.

As is usual, the preliminary objections of the Defendants will be resolved before proceeding to the substance of the action of the Plaintiff, if need be; this is the course of proceeding advised by this Court in several cases – see for example **Koko Vs Koko** (2023) LPELR 59773(SC), **Adagun Vs Santumari** (2023) LPELR 60694(SC), **Adediran Vs Independent National Electoral Commission** (2024) LPELR 61791(SC).

Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

The first ground of the preliminary objection was prevalent in the notices of preliminary objection filed by many of the Defendants. However, a read through the contentions on the ground of objection shows that there is a general misunderstanding of the powers, role and duties of Plaintiff, the Attorney General of the Federation. The office of the Attorney General is not indigenous to Nigeria. It has its origin in early English system of jurisprudence and it dates from the European Middle Ages, but it did not assume its modern form before the 16th century. Initially, King's attorneys were appointed only for particular business or for particular cases or courts, but by the 15th century an Attorney General for the Crown was a regular appointee. This personage was the Chief Law Officer of the Crown and its only legal representative in Court. In time, he acquired the right to appoint deputies and became a figure of great influence as the medieval system broke down and new courts and political institutions evolved.

The Attorney General possessed enormous powers under common law and part of which was to act as the guardian of public interest. Writing in 1964, Professor J. L. Edwards in his book *"The Law Officers of the Crown"* at page 286 describes the Attorney General's functions as the guardian of the public interest thus:

"First, there is the Attorney-General's position as the Crown's principal agent for enforcing public legal rights. Generally referred to as relator actions, proceedings are brought in the name of the Attorney-General with the object, for example, of obtaining a declaration or an injunction (1) in cases of public nuisance, (2) with a view to restraining a corporation from exceeding the legal powers conferred upon it by statute, where the excess of power tends to injure the public, or (3) to prevent the repeated commission of a statutory offense by any person. These aspects of the Attorney-General's role as protector of public rights are of great antiquity. Quite distinct is the modern participation by successive holders of the office of Attorney-General who have deemed it their duty to represent the public interest before public tribunals."

35

Official
Certified True Copy
Uman B. Badure Esq
REGISTRAR
SUPREME COURT OF NIGERIA

With the assimilation of common law through the received English Law as part of the laws applicable in this country, the common law powers of the Attorney General of the Crown became part of our laws and they are vested in the Attorney General of the Federation. There is no statutory or constitutional provision limiting or excluding the exercise of the common law powers by the Attorney General. Thus, as the Chief Law Officer of the Federation, the Attorney General may exercise all such powers and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights. Speaking on the point in a similar situation, the Supreme Court of Florida in the 1869 case of **State Ex. Rel. Attorney General Vs Gleason** (1869) 12 Fla. 90 at 112 held thus:

“The Attorney General is the attorney and legal guardian of the people or the Crown, according to the form of government. His duties pertain to the Executive Department of the State, and it is his duty to use means most effectual to the enforcement of laws, and the protection of the people, whenever directed by the proper authority, or when the occasion arises... Our Legislature has not seen it fit to make any change in the common law rule. The office of the Attorney General is a public trust. It is a legal assumption that he will do his duty, that he will act with strict impartiality. In this confidence he has been endowed with a large discretion, not only in cases like this, but in other matters of public concern. The exercise of such discretion is in its nature a judicial act, from which there is no appeal, and over which the courts have no control.” {quoted in **State of Florida Ex. Rel. Attorney General Vs Exxon Corporation** (1976) 526 F 2d. 266}

The Supreme Court of Minnesota in the United States reiterated the point in the 1960 case of **Slezak Vs Ousdigian** (1961) 260 Minn. 303 that:

“The Attorney General is the Chief Law Officer of the State. His powers are not limited to those granted by statute, but include extensive common law powers inherent in his office. He may institute, conduct, and maintain all

 Official
Certified True Copy
Usman B. Babura Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

such actions and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights. He is the legal adviser to the executive officers of the State, and the courts will not control the discretionary power of the Attorney General in conducting litigation for the State.”

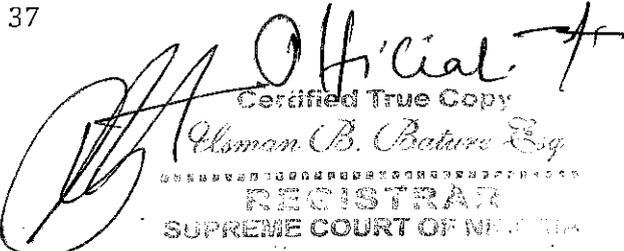
This power of the Attorney General to commence an action to enforce the laws of the State, preserve order, and protect public interest was restated by this Court in **Attorney General, Federation Vs Attorney General Imo State and Ors** (1982) 13 N.S.C.C. 567 at 578, where Bello, JSC, (as he then was) opined thus:

“In addition to the provisions of the Petitions of Right Act, Cap. 149 Vol. V. Laws of the Federation of Nigeria and Lagos, 1958 and the Petitions of Right Laws of the several States which empower the Attorney-General to prosecute claims by their respective Governments against any private person, by virtue of the public law of a state, its Attorney-General has the power to institute in any Court of competent jurisdiction any civil proceedings, with or without a realtor, involving the rights and interest of the public which he deems necessary for the enforcement of the laws of the state, the preservation of order and the prevention of public wrongs...”

Mention may also be made of the *Attorney-General for New South Wales v. The Brewery Employees Union* (1908) 6 C.L.R. 469 at pp. 550 – 551 where O’Conner, J. said:-

‘It is a principle well established in British law that when corporation or public authority clothed with statutory powers exceeds them by some act which tends in its nature to interfere with public rights and so to injure the public, the Attorney-General from the community with or without a realtor, according to circumstances to protect the public interests, although there may be no evidence of actual injury to the public.’”

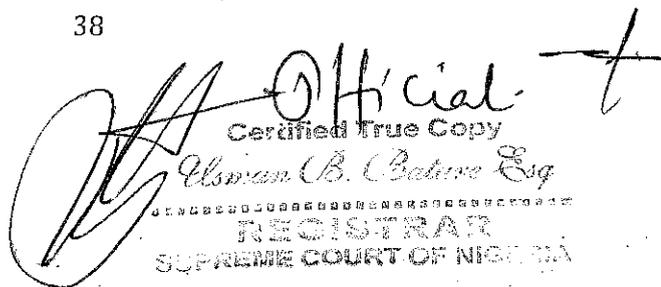
Therefore, where an action is commenced to enforce the laws of the State, preserve order, and protect public interest, it is sufficient to vest the Attorney General with a standing to sue. It is not a requirement that the


Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Attorney General must disclose a personal injury suffered to have a standing to sue. In **State of Minnesota by Hatch Vs America Family Mutual Insurance Co.** (2000) 609 N.W.2d 1, Minnesota Attorney General sued an insurance company alleging violations of consumer protection laws and insurance trade practice regulations. The defendant argued that the Attorney General did not have the authority to bring an action against the insurance company. The Court of Appeals held, "as the Chief Law Officer of the State, the Attorney General possesses all of the powers inherent in that office at common law." The Court also noted that "the Attorney General's discretion to bring suit is plenary and is beyond the control of any other state department or officer."

Now, it is the facts in the originating process of a plaintiff that donates a standing to sue – **JFS Investment Ltd Vs Brawal Line Ltd** (2010) 18 NWLR (Pt 1225) 495, **Wilson Vs Okeke** (2011) 3 NWLR (Pt 1235) 456, **Taiwo Vs Adegboro** (2011) 11 NWLR (Pt 1259) 562. By the assertions in the affidavits in support of the Originating Summons, the instant action was commenced to protect the sanctity and integrity of and to enforce the provisions of the 1999 Constitution and to in the process protect the interest of the majority of Nigerians. Definitely, the Attorney General has the required standing to commence and maintain such an action. In the case of **Commonwealth Ex. Rel. Hancock Vs Paxton** (1974) 516 S.W.2d 865, where the question was whether the Attorney General of Kentucky had standing to initiate and maintain a suit challenging the constitutionality of an Act of the General Assembly, against a state officer, department or agency charged with the administration of the Act, the Court of Appeals of Kentucky held thus:

"The appellees maintain in substance that the Attorney General's duty is to defend the law, which they interpret to mean only to defend suits attacking statutory laws. They overlook the duty of the Attorney General to uphold the Constitution, which surely embraces the power to protect it from attacks in the form of legislation as well as from attacks by way of


Official
Certified True Copy
Olusola B. Babatope Esq
REGISTRAR
SUPREME COURT OF NIGERIA

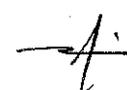
lawsuits by other persons against state officers or agencies. We think that if the Constitution is threatened by an item of legislation, the Attorney General may rise to the defense of the Constitution by bringing a suit, and is not required to wait until someone else sues.”

The first ground of the preliminary objections of the Defendants is totally misconceived.

The second ground of the preliminary objection contests that the action as constituted did not disclose the existence of any dispute between the Federation and the States to warrant the ignition of the original jurisdiction of this Court under Section 232 of the 1999 Constitution. Section 232 (1) of the 1999 Constitution provides:

“The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.”

The key words in this provision are “any dispute” involving any question of law or fact on which the existence or extent of a legal right depends. In the cases of **Attorney General of Abia State Vs Attorney General of the Federation** (2007) 6 NWLR (Pt 1029) 200 and **Attorney General of Rivers State Vs Attorney General of the Federation** (2019) 1 NWLR (Pt 1652) 53, this Court held that word ‘dispute’ used in Section 232 (1) of the 1999 Constitution involves acts of argument, controversy, debate and claims as to rights whether in law or fact, varying opinions, whether passive or violent or any disagreement that can lead to public anxiety or disquiet. And in the case of **Texaco Panama Incorporation (Owners of the Vessel M.V. Star Tulsa) Vs Shell Petroleum Development Corporation of Nigeria** (2002) 5 NWLR (Pt 759) 209, this Court held that the word ‘any’ when used in a statute has a diversity of meaning and may be employed to indicate ‘all’ or ‘every’ as well as ‘some’ or ‘one’ and its meaning in a given statute depends upon the

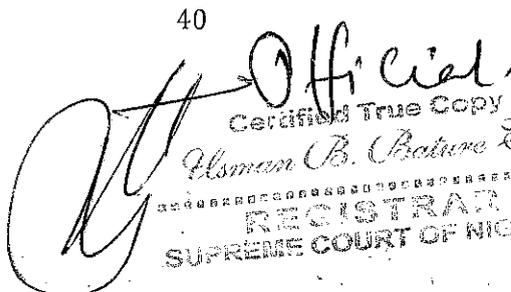
Official 
Certified True Copy
Ulsman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

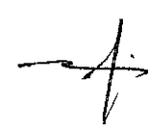
context and the subject-matter of the statute. In other words, the words "any dispute" used in Section 232 (1) of the 1999 Constitution may mean 'all disputes', 'every dispute', or 'some disputes' or 'one dispute'.

It must be conceded as argued by Counsel to the different Defendants that this Court had adopted the narrow meaning of the words "any dispute" in determining the nature of the actions that could be brought to invoke the original jurisdiction of this Court under Section 232(1) of the Constitution. This Court maintained the position that the dispute must involve the interest of the Federation as a unit or of a State or States as a unit before its original jurisdiction to hear the matter could be invoked. This Court held that it was not enough to predicate an action on the interpretation of the Constitution and argue that the action of a defendant is unconstitutional to invoke the original jurisdiction of this Court. The plaintiff must go further to show how his civil rights and obligations were breached. This Court thus distinguished between the common law powers of the Attorney General to commence public interest litigation, without the need to show the personal injury he suffered, from his right to commence an action invoking its original jurisdiction under Section 232(1) of the Constitution. This distinction was succinctly made by Bello, JSC in the case of **Attorney General, Federation Vs Attorney General Imo State and Ors** (1982) 13 N.S.C.C. 567 particularly at Pages 578-579. It was the position of this Court in the cases of **Attorney General of Bendel State Vs Attorney General of the Federation** (1981) 10 SC 1, **Attorney General of Adamawa State Vs Attorney General of the Federation** (2005) 8 NWLR (Pt 958) 581, **Attorney General of Anambra State Vs Attorney General of the Federation** (2007) 2 NWLR (Pt 1047) 1 and **Attorney General of Cross River State Vs Attorney General of the Federation** (2019) 10 NWLR (Pt 1681) 455.

However, in the case of **Attorney General of Kaduna State Vs Attorney General of the Federation** (2023) 12 NWLR (Pt 1899) 537 this Court departed

40


Official
Certified True Copy
Usman B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA



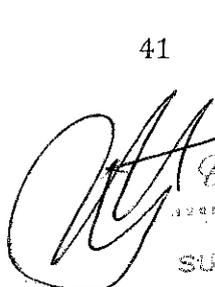
from the narrow interpretation of the words "any dispute" and it embraced its wider meaning of 'all disputes' or 'every dispute' and held that Section 232(1) of the 1999 Constitution vests this Court with original jurisdiction in respect of all types of disputes between the Federation and the States involving any question of law or fact on which the existence or extent of a legal right depends, and held that it does not exclude some types of such disputes. This Court, per Agim, JSC, stated at pages 583-584 thus:

"The scope of the original Jurisdiction is over "*any dispute*" between the Federation and a State or between States if and in so far as that dispute involves *any question* (whether of law or fact) on which the existence or extent of a legal right depends. It did not exclude some type of such disputes. The Constitution having used such general words as "any dispute" and "any question" to vest this court an unlimited subject matter exclusive original jurisdiction, no court including this court has the power to exclude from the original jurisdiction of this court disputes between states and the Government of the Federation over the exercise by the President of a power given to it by the Central Bank Act or other legislation. As this court held in *Obayuwana v. Governor of Bendel State & Anor ...*, where the Constitution states a word or phrase generally or without any limiting words, it is obvious that it intends that the word or phrase should have a general meaning and application, unless other provisions in the Constitution state or suggest the contrary. If there are no other provisions of the Constitution requiring or suggesting the contrary, the court must apply the word or phrase generally, and will have no power to restrict its application to specific situations."

This Court thus merged the common law power of the Attorney General to commence public interest litigation with his right to invoke the original jurisdiction of this Court under Section 232(1) of the 1999 Constitution. It is settled in our jurisprudence that henceforth on any question on the interpretation of the words "any dispute" in Section 232 (1) of the Constitution, it is this latter decision of this Court that will govern – **Osakwe Vs Federal College of Education, Asaba** (2010) 10 NWLR (Pt 1201) 1, **Maku**

41

Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA



Vs Sule (2022) 3 NWLR (Pt 1817) 231, **Onukwe Vs Nigerian Navy** (2024) 7 NWLR (Pt 1938) 501. The only obvious stricture left to the right of the Attorney General to invoke the original jurisdiction of the Court under Constitution is that the dispute must be a justiciable dispute; *i.e.* a dispute that is appropriate for judicial determination – **Attorney General of Bendel State Vs Attorney General of the Federation** *supra* and **Attorney General, Federation Vs Attorney General Imo State and Ors** *supra*.

Reading the cases presented by the Plaintiff on the Originating Summons and the Defendants in their respective processes, as summarized above, four areas of disputes are obvious:

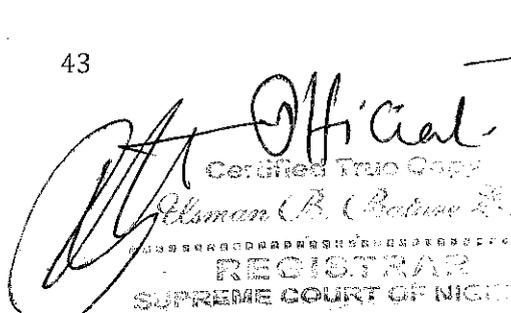
- i. Whether the provisions of the 1999 Constitution admit or accommodate the power or right of some of the Defendants to, for whatever reason, jettison democratically elected system of governance at the Local Government tier of the Federation and to appoint or put in their place Caretaker Committees, Transition Committees, Interim Administrators, Heads of Administration, or however so called to run Local Government tier of the Federation.
- ii. Whether by the provisions of the 1999 Constitution, the funds due to the Local Government tier of the Federation from the Federation Account can, and should, only be disbursed to Local Government Areas with a democratically elected system of governance.
- iii. Whether by the provisions of the 1999 Constitution, the funds due to the Local Government tier of the Federation from the Federation Account can be withheld or not disbursed for whatever reason.

- iv. Whether by the provisions of the 1999 Constitution, the Federal Government of Nigeria, represented by the Plaintiff, has, and/or can exercise, oversight functions over the funds due to the Local Government tier of the Federation from the Federation Account.

These are clearly disputes between the Federation and the States and they come within the wider interpretation of the words "any dispute" adopted by this Court in the case of **Attorney General of Kaduna State Vs Attorney General of the Federation** *supra*. A resolution of the above disputes will require an interpretation of the provisions of the 1999 Constitution and an interrogation of past decisions of this Court, if any, on similar disputes. Some of the Defendants canvassed in their notices of preliminary objection that these issues as thrown up by this action are academic and hypothetical and are merely calling on this Court to act in an advisory or legislative capacity. The Courts have stated severally that issues relating to the interpretation of a law, most especially of the provisions of the Constitution, cannot be described as being academic, hypothetical and/or speculative – **Plateau State Vs Attorney General of the Federation** (2006) 3 NWLR (Pt 967) 346 at 391, **Salik Vs Idris** (2014) 15 NWLR (Pt 1429) 36, **National Conscience Party Vs National Assembly** (2015) LPELR 25990(CA), **Ardo Vs Independent National Electoral Commission** (2017) 13 NWLR (Pt 1583) 450 at 477.

This is particularly more so in the present case as the identified disputes touch on the fundamental concepts of federation and federalism espoused in the 1999 Constitution. The disputes were thus rightly brought before this Court in its original jurisdiction and they are appropriate for judicial determination. The second and the fourth grounds of the preliminary objections of the Defendants are baseless.

The third ground of preliminary objection canvassed by the Defendants is predicated on the doctrines of issue estoppel and *res judicata* and the


Official
Certified True Copy
Allsman B. (Retiree) Esq
REGISTRAR
SUPREME COURT OF NIGERIA

ground of objection is anchored on the judgments of this Court in **Attorney General of Lagos State Vs Attorney General of the Federation** (2004) 18 NWLR (Pt 904) 1, **Attorney General of Abia State Vs Attorney General of the Federation** (2006) 16 NWLR (Pt 1005) 265. Now, the doctrine of *estoppel per rem judicata* postulates that where a final judicial decision has been pronounced by either a court or judicial tribunal of competent jurisdiction over the parties to and the subject matter of a litigation, any party or privy to such litigation, as against any other party or privy thereto, and, in the case of a decision in *rem*, any person whatsoever as against any other person, is estopped in any subsequent litigation from disputing or questioning such decision on the merits, whether it be used as the foundation of an action or relied upon as a bar to any claim, indictment or complaint or to any affirmative defence, case or allegation – **Ogah Vs Emenike** (2023) 10 NWLR (Pt 1893) 397, **Bi-Courtney Ltd Vs Aso Savings & Loans Plc** (2023) 17 NWLR (Pt 1912) 1.

It is settled law that for a plea of *estoppel per rem judicatam*, be it cause of action *estoppel* or issue *estoppel* to succeed, the following requirements or preconditions must be present, namely: (i) that the parties or their privies are the same in both the previous and present proceedings; (ii) that the *res* or the subject matter of the litigation in the two cases is the same; (iii) that the claim, in case of cause of action *estoppel*, or the issue or issues in dispute, in case of issue *estoppel*, is the same; (iv) that the decision relied upon to support the plea is valid, subsisting and final; and (v) that the court that gave the decision relied upon is a court of competent jurisdiction. Unless all these constituent elements or requirements of the doctrine are fully established, the plea cannot be sustained. They must be satisfied conjunctively and failure of any of them is fatal to the plea of *res judicata* – **Dauda Vs Attorney General, Lagos State** (2011) 13 NWLR (Pt 1265) 427,

Official
Certified True Copy
Alhassan B. Balogun Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Dakolo Vs Rewane-Dakolo (2011) 16 NWLR (Pt 1272) 22, **Orji Vs Chima** (2023) 17 NWLR (Pt 1912) 71.

Reading through the decision of this Court in **Attorney General of Lagos State Vs Attorney General of the Federation** *supra*, the issue that came up for decision in the case was whether the President of the Federal Republic of Nigeria could unilaterally, either by executive action or by administrative action, withhold the allocations due to the Local Government Areas of a State for an alleged breach of the provisions of the Constitution. This Court answered with an emphatic No! but it continued at Page 142B-D thus:

'Failure of a State Government to, for example, open and maintain the "State Joint Local Government Account" or not to pay a percentage of its income into the said account, or to divert the money in the said account for use other than for what they are meant, would constitute a breach of the relevant provisions of the Constitution. Any such breach would be actionable in a court of law and cannot be enforced by executive sanction unless such is provided for in any Act passed by the National Assembly under sections 162(5) and 162(7) of the Constitution. As the National Assembly is yet to pass any such laws, it will be unconstitutional for the President or any arm of the Executive to assume the role not specifically conferred on him under the Constitution.'

In the instant case, the Federal Government of Nigeria, represented by the Plaintiff, did not unilaterally withhold the allocations due to the Local Government Areas of any State for alleged breaches of the provisions of the Constitution. Rather the Plaintiff has approached this Court to complain about breaches of the provisions of the Constitution by the Defendants or some of the Defendants and has sought that whether, by reason of the breach, the provisions of the Constitution can be interpreted to include a consequence of withholding of the allocations due to the Local Government Areas of the infringing State. The situation in the case of

45


Official
Certified True Copy
Usman B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

Attorney General of Lagos State Vs Attorney General of the Federation *supra*, is completely different from that in the present case.

With respect to the case of **Attorney General of Abia State Vs Attorney General of the Federation** *supra*, the issue revolved around the validity or otherwise of the Monitoring of Revenue to Local Governments Act, 2005 enacted by the National Assembly and this was the issue resolved by this Court in that case. Again, this issue is different from the issues coming up for determination in the present case. It is obvious that neither the decision of this Court in **Attorney General of Lagos State Vs Attorney General of the Federation** *supra* nor its decision in **Attorney General of Abia State Vs Attorney General of the Federation** *supra* constitutes either issue estoppel or *res judicata* against the present action.

Counsel to the 4th Defendant added another dimension to the contention under this ground of preliminary objection by making reference to the judgment of the Federal High Court in Suit No FHC/L/CS/770/2013 – **Olisa Agbakoba Vs Minister of Finance** wherein the Court held that the allocations due from the Federation Account to Local Government Areas could not be withheld for the failure of the States to conduct Local Government elections and have in a place a democratically elected governance at the Local Government level. Counsel to the 4th Defendant contended that the judgment was still extant and was not appealed against and is thus a binding judgment in *rem* and constitutes *res judicata* in this action. However, as rightly pointed out by the Plaintiff, this Court shut down a similar objection in the case of **Attorney General of Abia State Vs Attorney General of the Federation** (2022) 6 NWLR (Pt 1856) 205. The Court, per Ogunwumiju, JSC, stated at Page 462F-H thus:

“My Lords, the premise of the defendant’s objection is flawed *ab initio*. This is because the two judgments sought to be used as issue estoppel are judgments of the Federal High Court which is a Court of first instance. By

Official
Certified True Copy
Uman B. Obituro Esq
REGISTRAR
SUPREME COURT OF NIGERIA

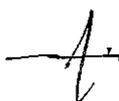
the combined effect of sections 232 and 235 of the CFRN (as altered), this Court is both a court of first instance and the final court in this class of cases brought for adjudication. Both courts do not enjoy equal or similar status. The judgment of the Federal High Court at first instance even where it has not been appealed against cannot bind the Supreme Court of Nigeria or pleaded as *res judicata* before this Court. It would be ludicrous to so hold.”

The contention of Counsel to the 4th Defendant was thus dead on arrival. The third ground of the preliminary objection of the Defendants is not well thought out.

The fifth ground of their preliminary objections complained about the failure to join the States’ Houses of Assembly and the Local Government Councils as parties. Reading through the identified disputes and questions calling for resolution in this matter, it is without doubt that they can be resolved without the joining of either the States’ Houses of Assembly or the Local Government Councils as parties. The settled position of the law on this point is that an action cannot be defeated by a non-joinder of particular parties and a Court is enjoined to deal with the matter in controversy so far as regards the rights and interest of the parties actually before him – **Julius Berger Nigeria Plc Vs Almighty Projects Innovative Ltd** (2022) 11 NWLR (Pt 1804) 201. In **Attorney General of Kaduna State Vs Attorney General of the Federation** *supra*, this Court reiterated the point thus:

“The law is settled that the non-joinder of a person who can be a party to an action, as a party to the action, would not defeat it, if the action as constituted as to parties, their rights and interests and the issues raised or arising for determination in the suit, can be fairly, effectually and conclusively tried and determined without joining such a person as a party to the action.”

The fifth ground of the preliminary objection was thus a non-starter.


Official
Certified True Copy
Umaru B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

The sixth and final ground of the preliminary objections of the Defendants is that the Originating Summons of the Plaintiff is incompetent because it was not signed or issued by the Registrar of this Court. The present position of the law on such an objection is that it is puerile. A look at the original of the Originating Summons shows that the Plaintiff presented same to the Registrar of Court for filing and same was duly assessed and that the Plaintiff took all necessary steps and did all that was required of him to file the process. The question of the signing and the issuance of the Originating Summons thereafter was a matter for the internal administrative procedures of the Registry of this Court. The law is settled that where a plaintiff has done all that is required of him to commence an action, his responsibility comes to an end and the responsibility shifts to the Registrar of Court to ensure that all necessary internal administrative processes are completed and a plaintiff cannot be held liable for the incompetent handling of his processes by staff in the Registry – **BBN Ltd Vs Olayiwola & Sons Ltd** (2005) 3 NWLR (Pt 912) 453, **Enterprises Bank Ltd Vs Aroso** (2014) 3 NWLR (Pt 1394) 294, **Julius Berger Nigeria Plc Vs Almighty Projects Innovative Ltd** *supra*, **Peoples Democratic Party Vs Uche** (2023) LPELR 59604(SC). In **Famfa Oil Ltd Vs Attorney General of the Federation & Anor** (2003) 9-10 SC 31 at 44 this Court held

"that once a prospective plaintiff has properly made his claim as required by law, delivered the same to the Registrar of the Court, paid the necessary fees payable and such fees are fully paid, his responsibility ceases. What is left to be done, such as signing and issuance of the relevant processes, or the writ of summons or originating summons by a Judge or other officers empowered by law to sign them are entirely the domestic administrative affairs of the Court and its staff and their failure to discharge any of their duties should not be visited on the litigant by allowing it vitiate any process filed by the litigant."

The entire six grounds of the notices of preliminary objection of the Defendants fail and the preliminary objections are hereby dismissed. This

48

Official
Certified True Copy
Allman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

takes us to the substantive action of the Plaintiff and deliberations thereon will begin with a determination of the several questions posed by the Plaintiff on the Originating Summons.

It must be stated from the onset that certain facts and statements of law are not in dispute in this matter. It is not in dispute that the Constitution of the Federal Republic of Nigeria, 1999 is the supreme law of the land and that its provisions has binding force on all authorities and persons throughout the country. It is not in dispute that all the functionaries of Government are under an obligation to actualize, execute, maintain and ensure adherence to the provisions of the Constitution, and to, in this wise, not do anything to undermine, subjugate and/or desecrate any of the provisions of the Constitution. It is not in dispute that the Constitution recognizes and makes provisions for the existence of three tiers of Government in the country at the Federal, State and Local Government levels. It is not in dispute that the Constitution makes provisions for how governance is to be conducted at each of the three tiers of Government.

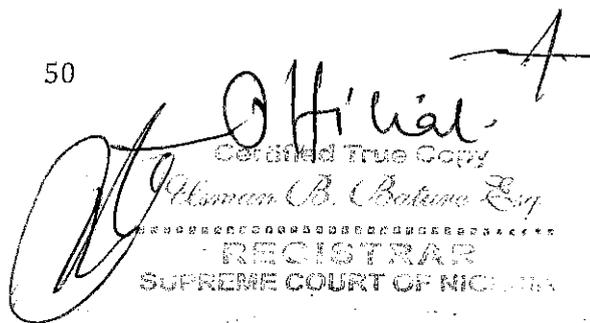
It is not in dispute that the Constitution guarantees the existence of a democratically elected system of governance at each of the three tiers of Government and states categorically that no person or group of persons shall take control of and/or govern any of the three tiers of Government or part thereof otherwise than as provided for in the Constitution. It is not in dispute that the Constitution does not provide or envisage a situation where any of the tiers of Government will be controlled, governed and/or managed otherwise than by a democratically elected system of governance for whatever reason, except where a State of Emergency has been declared by the President of the Federal Republic of Nigeria in the region over which that tier of Government presides.

A.

Official
Certified True Copy
Usman B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

These are truisms and they have been reinforced by several decisions of this Court and of the Court of Appeal. Thus, when in the past State Governors attempted to truncate democratically elected system of governance at the Local Government level, the recognized third tier of the Federal Government, and replace it with selection and/or appointed system of governance, the Courts were resolute in stating that it is settled "beyond any equivocation that the continued existence of democratically elected Local Government Councils is sacrosanct, non-negotiable and cannot be tampered with by any authority whatsoever" and that the it is only when a state of emergency is declared that democratic institutions at that tier of Government could be tampered with. The Courts struck down all actions taken by such State Governors and pronounced all laws passed by the State Houses of Assembly to actualize the truncating of democratically elected system of governance at the Local Government level, in the absence of a declared state of emergency, as unconstitutional, unlawful, null and void – see, for example, the cases of **Attorney General, Plateau State Vs Goyol** (2007) 16 NWLR (Pt 1059) 57, **Eze Vs Governor of Abia State** (2014) 14 NWLR (Pt 1426) 192, **Governor of Ekiti State Vs Olubunmo** (2017) 13 NWLR (Pt 1551) 1, **All Progressives Congress Vs Enugu State Independent Electoral Commission** (2021) 16 NWLR (Pt 1801) 1 and **Ajuwon Vs Governor of Oyo State** (2021) LPELR 55339(SC).

Implicit in the above stated truisms and established statements of law is the fact that there is an overriding constitutional obligation on all authorities, functionaries of government and institutions tasked with the responsibility of conducting elections to put in place democratically elected system of governance at each of the three tiers of Government, to ensure that elections are conducted and democratically elected officials are selected to take over governance at the relevant tier of Government, before the expiration of the tenure of the serving democratically elected officials, so as

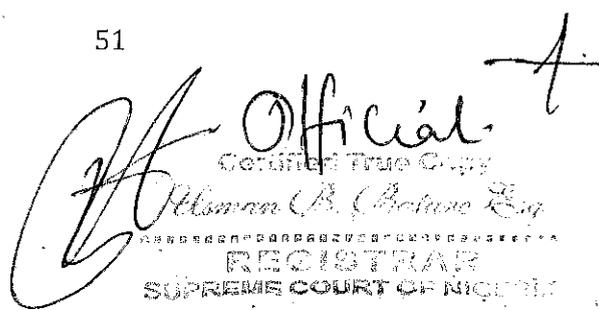

Official
Certified True Copy
Abimbola B. Babalola Esq
REGISTRAR
SUPREME COURT OF NIGERIA

not to create an interregnum. Where the authority or functionary of government in question fails in its obligation to so conduct an election and creates an interregnum, he cannot be allowed to rely on his self imposed impossibility to violate the provisions of the Constitution and impose a non-democratically elected system of governance at the concerned tier of Government.

This is in furtherance of the principle that a person cannot take advantage of his own default. A person cannot create a crisis situation and then turn around to plead the crisis in support of his interest – **Iyimoga Vs Governor, Plateau State** (1994) 8 NWLR (Pt 360) 73. In **Kish Vs Taylor** (1911) 1 K.B. 625 the Court held that: ‘a man may not take advantage of his own wrong. He may not plead his own interest as a self-created necessity.’ Thus, it has been held that a person cannot rely on a self-imposed urgency to obtain an order of interim injunction – **Kotoye Vs Central Bank of Nigeria** (1989) 1 NWLR (Pt 98) 419. It is settled law that a party cannot be compensated for self-inflicted injury – **Green Finger Agro-Industry Ltd Vs Yusufu** (2003) 12 NWLR (Pt 835) 488. It is also settled in the law of contract that a person cannot place reliance on the self-induced frustration to avoid his obligations under the contract – **Maritime National Fish Ltd Vs Ocean Trawlers Ltd** (1935) AC 524, **C. C. B Vs Onyekwelu** (1999) 10 NWLR (Pt 623) 452, **N. B. C. I. Vs Standard (Nig) Engineering Co Ltd** (2002) 8 NWLR (Pt 768) 104, **Unity Bank Plc Vs S. P. C. (Nig) Ltd** (2024) 2 NWLR (Pt 1921) 1. In **Bank Line Vs Arthur Capel & Co.** (1919) A.C 435 at 452, Lord Sumner stated:

“I think it is now well settled that the principle of frustration of an adventure assumes that the frustration that frustration arises without blame or fault of either side. Reliance cannot be placed on a self-induced frustration.”

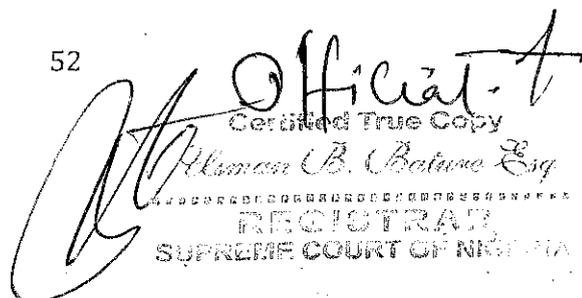
Now, going to the questions posed on the Originating Summons of the Plaintiff, the 1st to the 5th questions on whether the exercise of powers by


Official
Certified True Copy
Othman B. Abiodun Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

the Defendants or any of them to dissolve and truncate democratically elected system of governance at the Local Government level, under any guise, is not unlawful and unconstitutional and amounts to gross misconduct must be answered in favour of the Plaintiff. Such exercise of powers constitutes a grave breach of the provisions of the 1999 Constitution. The reasons adduced by the 1st, 2nd, 3rd, 4th, 5th, 7th, 9th, 10th, 14th, 16th, 22nd, 23rd, 28th, 29th, 31st, 33rd and 36th Defendants for running the Local Government Areas in their respective States with Caretaker Committees, Transition Committees, Interim Administration Committees or Heads of Administration, instead of with a democratically elected Local Government Councils are not tenable. To sanction those reasons is to give room for a possible development of constitutional aberrations in the governance of all the tiers of Government. The Federal Government of Nigeria, charged with conducting elections for the Federal and State tiers of Government before the end of the tenure of serving democratically elected officials, can very well give a myriad of reasons for failing to do so and then replace the elected officials on their expiration of their tenures with Caretaker Committees, Transition Committees, Interim Administration Committees.

As stated earlier, a Constitution is an organic law, a system or body of fundamental principles according to which a nation, a state, body politic or organization is constituted and governed. The Constitution is inviolable. In **Governor of Kwara State Vs Ojibara** (2006) 18 NWLR (Pt 1012) 645, Oguntade JSC at page 660 stated thus:

"I have said this much in the hope that all players in the field of politics will imbibe the culture of paying due reverence and regard to the provisions of the Constitution. This has become necessary because in these times there is an unrestrained inclination to disregard the Constitution and to treat its terms with irreverence and disrespect. The Constitution is the very


Official
Certified True Copy
Alhassan B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

foundation and structure upon which the existence of all organs of governance is hinged. It must be held inviolable.”

There is always a need for the fulfillment of the object and true intent of the Constitution. Therefore, the Constitution must always be construed in such a way that it protects what it sets out to protect, and guides what it is meant to guide - **Adeleke Vs Oyo State House of Assembly** (2006) 6 NWLR (Pt 1006) 608. In interpreting the Constitution, it is the duty of the court to ensure that the words of the Constitution preserve the intendment of the Constitution – **Okogie Vs Attorney General, Lagos State** (1981) 2 NCLR 337, **Abaribe Vs Speaker, Abia State House of Assembly** (2002) 14 NWLR (Pt 788) 466. To accept the reasons given by the mentioned Defendants for not having in place democratically elected system of governance at the Local Government level will amount to this Court interpreting the provisions of the Constitution in a way that it does not protect what it sets out to protect, and not guide what it is meant to guide. It will constitute failure on the part of this Court to preserve the intendment of the Constitution.

The 6th to the 9th questions raised on the Originating Summons are on whether where any of the Defendants fails to put in place democratically elected system of governance at the Local Government level in breach of the provisions of the Constitution, it is entitled to be allocated and to receive and spend the funds meant for its Local Government Areas from the Federation Account for period it is in such breach. Now, the fact of the existence of a democratically elected system of governance at the Local Government level being sacrosanct and non-negotiable and not to be tampered with by State Governments and that it cannot be replaced with Caretaker Committees is not new. It was asserted by the Courts in **Akinpelu Vs Attorney General, Oyo State** (1982) 2 FNR 428 and **Akpan Vs Umar** (2002) 7 NWLR (Pt 767) 701 and it was reiterated in **Attorney General, Plateau State**

Official
Certified True Copy
Usman B. Babatope Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Vs Goyol (2007) 16 NWLR (Pt 1059) 57 and **Attorney General, Benue State Vs Umar** (2008) 1 NWLR (Pt 1068) 311.

Notwithstanding these assertions by the Courts, the Governor of Abia State dissolved the democratically elected system of governance at the Local Government level in his State and replaced them with Caretaker Committees and this led to the case of **Eze Vs Governor of Abia State** (2014) 14 NWLR (Pt 1426) 192 where this Court reiterated the principle. These decisions did not stop the Governor of Ekiti State from similarly tampering with the democratically elected system of governance at the Local Government level in his State and which culminated in the case of **Governor of Ekiti State Vs Olubunmo** (2017) 13 NWLR (Pt 1551) 1. The House of Enugu State too passed a law tampering with the democratically elected system of governance at the Local Government level in the State and this gave birth to the case of **All Progressives Congress Vs Enugu State Independent Electoral Commission** (2021) 16 NWLR (Pt 1801) 1. Not be left out, the Governor of Oyo State too tampered with the democratically elected system of governance at the Local Government level in his State and the challenge against his action was the case of **Ajuwon Vs Governor of Oyo State** (2021) LPELR 55339(SC).

The Governor of Katsina State too joined the bandwagon and he too dissolved the democratically elected system of governance at the Local Government level in his State and it was challenged in Court in **Yantaba Vs Governor of Katsina State** (2022) 1 NWLR (Pt 1881) 259. All these cases came before this Court and the Court made pronouncements reinforcing that democratically elected system of governance at the Local Government level in the States is non-negotiable under the 1999 Constitution. The facts of this present case show that the pronouncements of this Court on the issued have not deterred the Defendants. Hence, while the 31st Defendant disbanded the democratically elected system of governance at the Local

54

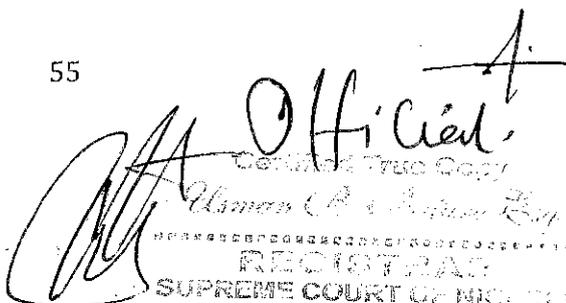
Official
Certified True Copy
Umar B. Balogun Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Government level in his State in 2023 under the guise of suspension, the 1st, 2nd, 3rd, 4th, 5th, 7th, 9th, 10th, 14th, 16th, 22nd, 23rd, 28th, 29th, 33rd and 36th Defendants devised means to sidestep putting in place a democratically elected system of governance at the Local Government level in their respective States. These actions of all the mentioned States were done, and are being done, without any consequences and with no sanctions.

Questions 6 to 9 on the Originating Summons seek to impose consequences on the failure of any of the Defendants to put in place democratically elected system of governance at the Local Government level in his State in defiance of the provisions of the Constitution and of the pronouncements of this Court. They seek to put a stricture on the recalcitrant attitudes of the Defendants or some of the Defendants where it will hurt the most and to make them accountable to their duty to uphold and enforce the provisions of the Constitution.

A Constitution, in its broadest sense, consists of a collection of rules that limits both the government and the governed with respect to what may or may not be done. The very essence of a constitution is to prevent both tyranny and anarchy. To achieve this, it must sufficiently empower the government to enable it to be strong enough to operate effectively, whilst imposing reasonable restraints on it that do not make it too weak and create the risk of anarchy. Experience has, however, shown that some of constitutional restraints are actually a sham. This is why tyrants and dictators have, whether individually or collectively, often used constitutions as a convenient smokescreen behind which they have dissimulated their despotism.

Thus, for a country to give life to the letters and spirit of its Constitution is must move from having a Constitution to practicing constitutionalism. This concept encompasses the idea that a government should not only be

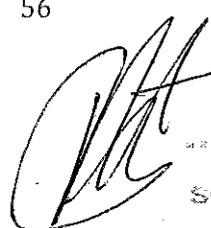

Official
Certified True Copy
Usman C. B. Abdullahi Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

sufficiently limited in a way that protects its citizens from arbitrary rule, but also that such a government should be able to operate efficiently and in a way that it can be effectively compelled to operate within its constitutional limits. In other words, constitutionalism combines the idea of a government limited in its action and accountable to its citizens. The term 'accountability' in the constitutional context is not simply a political jargon or a moral wish. It carries with it moral obligations, political responsibilities and a wide ranging array of legal implications.

In a constitutional democracy like ours, alongside the supremacy of the Constitution and the rule of law, accountability is one of the founding constitutional values. This point was made in the South Africa case of **Nyathi Vs MEC, Department of Health, Gauteng** 2008 (6) SA 94 (CC) Para 80 thus:

'Certain values in the Constitution have been designated as foundational to our democracy. This in turn means that as pillar-stones of this democracy, they must be observed scrupulously. If these values are not observed and their precepts not carried out conscientiously, we have a recipe for a constitutional crisis of great magnitude. In a State predicated on a desire to maintain the rule of law, it is imperative that one and all should be driven by a moral obligation to ensure the continued survival of our democracy.'

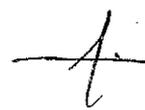
Accountability is therefore a constitutional principle of great importance. As was stated in the case of **Economic Freedom Fighters v Speaker, National Assembly** 2016 (3) SA 580 (CC), accountability stands, along with constitutionalism and the rule of law to "constitute the sharp and mighty sword" ever "ready to chop the ugly head of impunity off its stiffened neck". It is a signpost for good governance and fundamental to that democratic state envisaged by the founders of the 1999 Constitution.


Official
Certified True Copy
Hassan B. Baburao Esq
REGISTRAR
SUPREME COURT OF NIGERIA

The Constitution is only as good as the mechanism provided for ensuring that its provisions are properly implemented and that any violations of it are promptly sanctioned. An important bulwark of constitutionalism is therefore the existence of an efficient and effective mechanism for controlling and compelling compliance with the letter and spirit of the Constitution. In the absence of this, the Constitution is not worth the paper on which it is written and it is probably as good as being non-existent. Besides this, it is the only way in which the supremacy of the Constitution which most Constitutions explicitly or implicitly provide for, has meaning.

A read through the provisions of Section 162 of the 1999 Constitution shows that, as held by this Court in **Attorney General of Lagos State Vs Attorney General of the Federation** *supra*, the President of the Federal Republic of Nigeria has no unilateral power to, either by executive action or by administrative action, withhold the allocations due to the Local Government Areas of a State for an alleged breach of the provisions of the Constitution. However, there is nothing in the provisions that says that the allocations can never be withheld for any reason whatsoever, including from a State that is in breach of the provisions of the Constitution. The Courts must be in the forefront of ensuring that political office holders are held accountable to the pledge of allegiance they make to uphold and abide the provisions of the Constitution in the Oath of Office they take at their swearing in. It is in this light that the appropriate answer to Questions 6 to 9 on the Originating Summons must be in favour of the Plaintiff.

Question 10 on the Originating Summons is on whether any officer of the Defendants who carries out or is instrumental to the dissolution or the tampering with the democratically elected system of governance at the Local Government level in his State in defiance of the provisions of the Constitution should not be liable to criminal prosecution. This is an advisory question. It is not predicated on the interpretation of any provision of the


Official
Certified True Copy
Usman B. Bello Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Constitution. This Court is not aware of any provision of the Constitution that criminalizes non-compliance with the Constitution and it has not been referred to any by the Plaintiff. By the question, all that the Plaintiff seeks is a recommendation from this Court on the proper manner to effect personal punishment on any official of the Defendants involved in truncating democratically elected system of governance at the Local Government level in defiance of the provisions of the Constitution. The question is not deserving of the time of this Court. In the case of **Attorney General of Anambra State Vs Attorney General of the Federation** (2007) 2 NWLR (Pt 1047) 1, Niki Tobi, JSC, made the point that:

"...this court, unlike the International Court of Justice, cannot give advisory opinion in a matter before it. The court has no such jurisdiction conferred on it in either the Constitution or the Act establishing it. Accordingly, where a relief requires the advisory opinion of the court, it cannot grant the relief because it has no jurisdiction to grant it."

Questions 11, 13 and 14 on the Originating Summons are on what should be the relationship between the State Government and the Local Government Councils in respect of the funds due to the Local Government Areas from the Federation Account and paid into the State Joint Local Government Account. Should it be one of trustee and beneficiaries or agent and principals? And whether the State Government is entitled to spend or use any part of the funds or it is only to act as a conduit pipe and pay over the entire sums allocated to each Local Government Area from the Federation Account to the Local Government Councils.

The answer to the first sub-question lies in the interpretation of the provisions of Section 162 (5) of the 1999 Constitution. It reads:

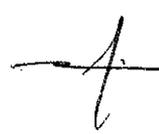
5) The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.

58 Official 
Certified True Copy
 *Umaru B. Babuwa Esq.*
REGISTRAR
SUPREME COURT OF NIGERIA

Now, it is elementary that in interpreting a statute, the duty of a Court is to discover the intention of the law maker and in so doing it must consider the words used in order to discover their ordinary meaning, and then give use their ordinary meaning as they relate to the subject matter – **Alagbaoso Vs INEC & Ors** (2023) LPELR 59702(SC), **Aliyu Vs Namadi** (2023) LPELR 59742(SC), **Abdullahi Vs Argungu** (2023) LPELR 59950(SC), **Carnation Registrars Ltd Vs The President, National Industrial Court of Nigeria** (2023) LPELR 60102(SC). Applying this principle to the above provision, it is obvious that the key words therein are “for the benefit of”. The ordinary meaning of these words, in the context of the above provision, is that the Local Government Councils are the sole beneficiaries of the funds standing to the credit of local government councils in the Federation Account and which are allocated to the States. The States only act as trustees of the Funds for the Local Government Councils and the States cannot spend the funds for their own benefit or to carry out their own statutory functions. The answer to the first sub-question under Questions 11, 13 and 14 on the Originating Summons is in favour of the Plaintiff.

The second sub-question arising from Questions 11, 13 and 14 on the Originating Summons is whether the States can spend the funds on behalf of the Local Councils for the benefit of the Local Government Councils or they must hand over the funds en bloc to the Local Government Councils. Honestly, this is not, and should not be, the business of the Plaintiff neither is it, and it should not be, the business of the Court. It is, and should be, a matter strictly between the States and the democratically elected members of the Local Government Councils. The Local Government Areas superintended over by the Local Government Councils are component parts of the States. There is no provision in the Constitution stipulating or regulating how the democratically elected members of the Local Government Councils should spend the funds allocated to them from the

59

 Official 
Certified True Copy
Honourable B. Abubakar Egi
REGISTRAR
SUPREME COURT OF NIGERIA

Federation Account. If they choose to cede part of the funds to the States to spend on their behalf on common services that are for their benefit, how is that the concern of the Plaintiff or of the Courts? The Constitution did not grant the Federal Government of Nigeria any oversight functions over how the democratically elected members of the Local Government Councils spend the funds allocated to them.

As stated earlier, the Nigerian democracy is a constitutional democracy based on the rule of law. Where the rule of law reigns, political expediency ought to be sacrificed on the altar of the rule of law so as to guarantee the continued existence of democratic institutions fashioned to promote social values of liberty, orderly conduct and development, particularly in a republic founded on the principles of federalism where power is not only apportioned between the Federal and State Governments, but also the Local Governments with checks and balances. The bedrock of federalism lies in each tier of government being a master in its own domain – **Attorney General, Ogun State Vs Attorney General, Federation** (1982) 3 NCLR 202, **Attorney General, Ogun State Vs Alhaja Ayinke Aberuagba** (1985) 1 NWLR (Pt 3) 395. Speaking in similar circumstances as the instant case, this Court in **Attorney General of Abia State Vs Attorney General of the Federation** (2006) 16 NWLR (Pt 1005) 265 stated thus:

“The intendment of the provisions in the 1999 Constitution is to grant power and autonomy to a State Government in its relationship with Local Government Councils in a State and to subordinate Local Government Councils to a State Government. That explains why sections 7(6) and 162(5) of the Constitution only give the power to allocate funds from the federation account to a Local Government Council to the National Assembly through a State, and to leave the distribution of such funds to the State Government while confining the National Assembly only to allocation of funds. Under the Nigerian Constitution, the Federal and State Governments are sovereign when acting within the limits of the power granted them by the Constitution. The notion that allocation of funds from

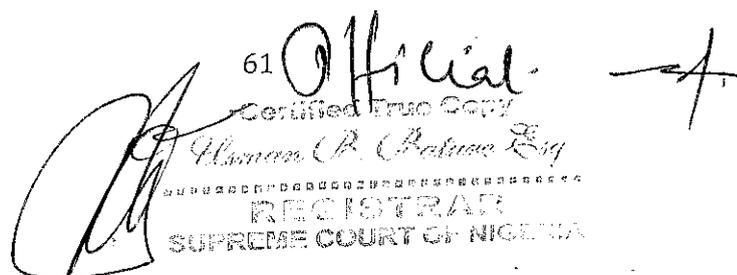
60
Official
Certified True Copy
Ulsman B. Babatope Esq
REGISTRAR
SUPREME COURT OF NIGERIA

the federation account in a Constitution fashioned on federalism can be construed to confer a right on the National Assembly to ascertain whether or not a State Government has transmitted the funds sent through it to a Local Government is untenable. The National Assembly ought to leave the Local Government Councils which if they feel shortchanged by a State Government to themselves can bring an action to compel a State Government concerned to pay over to them their entitlements. The Constitution as it stands enables Local Government Councils on their own to fight for their entitlements. In the instant case, the National Assembly by enacting the 2005 Act into law in relation to States had unwittingly engaged in a cause that is a hindrance to the autonomy granted a State Government in its power to control the Local Government Council."

The Plaintiff admitted knowledge of the above quoted decision of this Court and urged this Court in Paragraph 11.10 of his written arguments on the Originating Summons not to follow the decision in the present case. According to the Plaintiff, the "decision has aggravated the already existing ugly situation in the various Local Government Areas/Councils, as Governors use arm-twisting tactics to allocate ridiculously low sums of money to various Councils within their domain from the sums of money allocated for the benefit of those Councils, thereby asphyxiating them." The Plaintiff stated that the questions posed on the Originating Summons "therefore seek a review of the wide discretion enjoyed by the States through their various Governors in the sharing formula of funds allocated to the States for the benefit of the Local Government Council."

Reading through the facts deposed in the affidavit and the further affidavit of the Plaintiff in support of the Originating Summons there are no facts deposed to therein to support the allegations of arm twisting tactics, allocation of ridiculously low amounts to Local Government Councils leading to their asphyxiation leveled against the Defendants in the written arguments, as the basis for praying this Court to depart from its decision in **Attorney General of Abia State Vs Attorney General of the Federation** *supra*.

61 Official
Certified True Copy
Wamara B. Badua Esq
REGISTRAR
SUPREME COURT OF NIGERIA



It is elementary that address of Counsel, no matter how brilliant, cannot take the place of evidence. A Counsel cannot tacitly give evidence on an issue of fact under the guise of making submissions in his brief of argument – **Nwa-Anyajike Vs Independent National Electoral Commission** (2023) 12 NWLR (Pt 1897) 1, **V. F. Worldwide Holdings Ltd Vs Dana Services Ltd** (2023) 15 NWLR (Pt 1908) 573. The judgments and statements of this Court are binding on this Court and they cannot be discountenanced with and cannot be departed from just for the asking. In **Adigun Vs Governor of Osun State & Ors** (1995) LPELR-178(SC), Uwais, JSC, (as he then was) made this point thus:

“The finality of the decisions of the Supreme Court in civil proceedings is absolute unless specifically set aside by a later legislation. The justices that man the Court are of course fallible but their judgments are, as the Constitution intends, infallible. Therefore any ingenious attempt by counsel to set aside or circumvent the decision of the Supreme Court will be met with stiff resistance.”

Therefore, a party seeking this Court to depart from its previous decision must adduce cogent and exceptional reasons for such a request – **Disu Vs Ajilowura** (2006) 14 NWLR (Pt 1000) 283 and **Ndifon Vs Commissioner of Police** (2022) 18 NWLR (Pt 1862) Pg 421 at 449B-G. In **Oli Vs Independent National Electoral Commission** (2023) 60587(SC), this Court explained thus:

“The interesting point made by the Appellant that this Court should depart from its position held in numerous cases on this point is completely unwarranted. No doubt as stated in *AbdulKarim Vs Incar Nigeria Ltd* (1992) 7 SCNJ Page 366, although this Court will respect its previous decisions as a Court of last resort which is bound by its precedents, the Court will not hesitate to overrule any decision of its own which was reached on wrong principles since that is the only way to keep the streams of justice pure. Thus, where it is shown or demonstrated that the earlier decision is either erroneous in law, or given *per incuriam* or that it has

62

Official
Certified True Copy
Honourable B. (Babatope) Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

become an instrument of injustice, the Supreme Court may depart from previous decisions in subsequent cases...

There is nothing demonstrated and no convincing argument that gross miscarriage of justice has been occasioned by the interpretation given to the provisions which narrows down litigation to actual aspirants who participated at the primary election and seeks to exclude busy bodies who want to insert themselves into the electoral process”

It is my candid view that the Plaintiff failed woefully to give this Court any exceptional or cogent and/or credible reason to depart from its finding in **Attorney General of Abia State Vs Attorney General of the Federation** *supra*, that the Constitution only gives the power to allocate funds from the Federation Account to a Local Government Council to the Federal Government through a State, and it leaves the distribution of such funds to the State Government and that the Federal Government cannot inquire into whether or not a State Government has transmitted the funds sent through it to a Local Government. The facts of this case do not support an affirmative answer to the second sub-question arising from Questions 11, 13 and 14 on the Originating Summons. The answer to the second sub-question is in favour of the Defendant.

This leaves the last set of the questions on the Originating Summons, Questions 12 and 15. These questions are on whether the funds due to the Local Government Areas of States from the Federation Account could be distributed directly to the Local Government Councils or whether the Local Government Council is not entitled to a direct payment from the Federation Account of the amount standing to its credit where a State Government has persistently refused to pay to it the amounts received on its behalf. Section 162(5) and (6) of the 1999 Constitution stipulates the mode of payment of the funds due to the Local Government Areas of States from the Federation Account. They read:

Official
Certified True Copy
Umaru B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

(5) The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.

(6) Each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.

These provisions are explicit and self explanatory. They do not admit, accommodate or concede the direct payment of the funds due to the Local Government Council from the Federation Account to the Local Government Councils. This Court has consistently held that where a statute provides a procedure for carrying out a duty, that procedure must be followed in carrying out the duty, and no other procedure is acceptable – **Dongtoe Vs Civil Service Commission, Plateau State** (2001) LPELR 959(SC), **Orakul Resources Limited Vs Nigerian Communications Ltd** (2022) LPELR 56602(SC), **Ila Enterprises Limited Vs Umar Ali & Company Nigeria Ltd** (2022) LPELR 58067(SC), **Alagbaoso Vs INEC & Ors** (2023) LPELR 59702(SC), **Ajayi Vs Securities & Exchange Commission** (2023) LPELR 59729(SC).

The drafters of the Constitution must have had a good reason for laying down this mode of the payment of the funds in the Constitution. Every provision in the Constitution has a meaning and intent and was inserted for a purpose and cannot be treated with disdain and levity and willy-nilly overridden and departed from. In **Attorney General of the Federation Vs Attorney General, Abia State** (2001) LPELR 24862, this Court stated thus:

"It must be remembered that the fountain of all our laws is the Constitution; it is also the composite document setting out how the country is to be held together. It is not a document to be read with levity or disdain; every section has meaning and not devoid of adequate interpretation. It is the very foundation of nation's existence ..."

Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

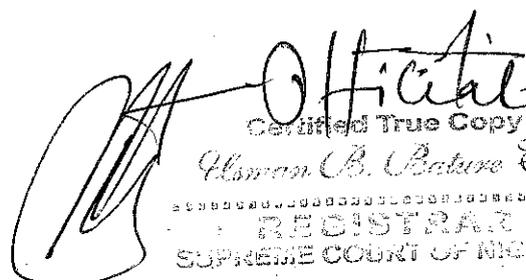
It is my understanding, on reading the provisions of Section 7 of the Constitution along with those of Section 162 of the Constitution together, that the essence of the mode of payment of the funds due to the Local Governments Areas of a State through the State provided for in the Constitution is in recognition of the fact that the Local Government Areas are constituents parts of and are subordinate to the State and to protect the concept of federalism contained in the Constitution. As stated by this Court in **Attorney General of Abia State Vs Attorney General of the Federation** *supra*, "the intendment of the provisions in the 1999 Constitution is to grant power and autonomy to a State Government in its relationship with Local Government Councils in a State and to subordinate Local Government Councils to a State Government."

Section 2(2) of the 1999 Constitution recognizes only the States and the Federal Capital Territory as the federating units making up the Nigerian Federation, not the Local Government Areas. Sections 4, 5 and 6 of the Constitution shares powers, legislative, executive and judicial, between the Federal Government and the States only; no power is shared to the Local Government Councils. Thus, the federalism conceptualized in the Constitution shares powers only between two tiers of Government, the Federal Government and the State Government, and in such a way that each exists as a government separately and independent from the other operating directly on persons or property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs. This statement was confirmed by this Court in the cases of **Attorney General of Ondo State Vs Attorney General, Federation** (2002) 9 NWLR (Pt 772) 222, **Attorney General of Abia State Vs Attorney General, Federation** *supra*, **Attorney General of Lagos State Vs Attorney General, Federation** (2013) 16 NWLR (Pt 1380) 349. This underscores the subordination of the Local Government Councils to the State Government by the Constitution.

 Official
Certified True Copy
Usman B. Chikwe Esg
REGISTRAR
SUPREME COURT OF NIGERIA

The Constitution did not envisage a situation where the Local Government Areas would be on equal footing with the States and/or where the Federal Government will deal with the Local Government Councils directly, without going through the States. This is why it is the State, and not the Federal Government, that is saddled by Section 7(1) of the Constitution with the responsibility of ensuring the existence of democratically elected system of governance in the Local Government Areas in the State and is given power to legislate for the establishment, structure, composition, finance and functions of democratically elected Local Government Councils to manage the Local Government Areas. It is the House of Assembly of the State, and not the National Assembly, that is required by Section 7(3) of the Constitution to legislate the setting up of Economic Planning Boards to enable the Local Government Councils participate in the economic planning and development of their Local Government Areas. There is no provision anywhere in the Constitution that saddles the Federal Government with anything concerning the Local Government Areas.

The prayer of the Plaintiff that this Court should order direct payments of the funds due to the Local Government Areas from the Federation Account to the Local Government Councils by the Federal Government, and thus bypassing the States, is in, my view, an invitation to this Court to engage in judicial legislation and to interpret the provisions of the Constitution in a manner that will undermine the very foundation of the nature of the federalism upon which the provisions of the Constitution were constructed. The Local Government Areas of a State are what make up a State. There is no portion of a State that does not fall within a Local Government Area. To make direct payments of funds due to the Local Government Areas of a State from the Federation Account to the Local Government Councils is tantamount to setting up the Local Government Councils as equal partners with the State Government in the management of the affairs of a State. This


Official
Certified True Copy
Olufemi A. Babalola Esq
REGISTRAR
SUPREME COURT OF NIGERIA

can only be a recipe for anarchy, for, as the saying goes, 'there cannot be two captains in a ship'. This could never have been the intention of the drafters of the Constitution. The situation that was under a Military regime, where Chairmen of Local Government Council collected the funds allocated for their Local Government Areas from the Federation Account directly, cannot be used or referred to in interpreting the provisions of the Constitution in a democracy.

In **Attorney General of Abia & Ors Vs Attorney General Federation & Ors** (2022) LPELR 57010(SC) this Court, per Ogunwumiju, JSC, in re-asserting the position of Nigeria as a Federation reiterated its earlier decision in **Attorney General of Abia & Ors Vs Attorney General Federation & Ors** (2006) 7 SCNJ 1, that it was improper for the Federal Government to legislate on the distribution of funds allocated to Local Government and it reaffirmed the autonomy of States in the Nigerian Federation and stated that allocation of funds to the Local Governments is the function of the State Government. The Constitution is supreme and the Court cannot, in interpreting the provisions of the Constitution undermine the very essence of the Constitution. The Court cannot, in interpreting the Constitution, throw overboard the federal structure contained in the Constitution and it must work within the parameters of that federal structure, irrespective of its imperfections. The Court must give effect to the intention of the framers of the Constitution. The Court cannot amend the Constitution and it cannot change its words and/or its essence in the exercise of its interpretative jurisdiction – **Attorney General of Ondo State Vs Attorney General, Federation** *supra*, **The Governor of Kwara State Vs Ojibara** (2006) LPELR 3178(SC).

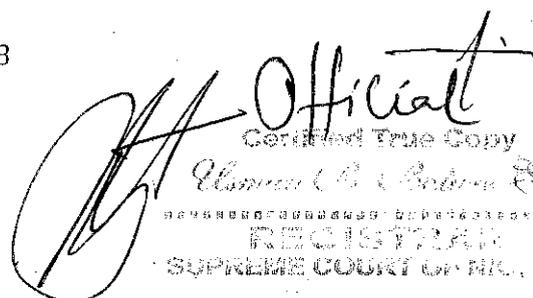
Going forward and leaving aside my above stated views, I concede that it is a plausible argument that if adhering to the laid down procedure for the payment of the funds to the Local Government Councils, *i.e.* through the


Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

State Governments, will defeat the very purpose for which the Constitution provided for the allocation of funds from the Federation Account to the Local Government Councils, the Court may, in the exercise of its interpretative power of the provisions of the Constitution, depart from the laid down procedure and institutionalize another procedure that would better serve the purpose of the Constitution. This is in line with the laid down principles on interpretation of the provisions of the Constitution as espoused by this Court in several cases. In **Sky Bank Plc Vs Iwu** (2017) 16 NWLR (Pt 1590) 24, this Court, per Nweze, JSC, stated thus:

“One of the guiding posts in the interpretation of the provisions of the Nigerian Constitution is that the principles upon which the Constitution was established, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions. Further, a narrow interpretation that would do violence to its provisions and fail to achieve the goal set by the Constitution must be avoided. Thus, where alternative constructions are equally open, the construction that is consistent with the smooth working of the system, which the Constitution, read as a whole, has set out to regulate, is to be preferred. The principle that underlies this construction technique is that the Legislature would legislate only for the purpose of bringing about an effective result. This approach is consistent with the “living tree” doctrine of constitutional interpretation, which postulates that the Constitution “must be capable of growth to meet the future”.

In other words, it is a permissible contention that this Court possesses the power under its interpretative jurisdiction to treat the word “shall” in the provisions of Section 162(5) and (6) of the 1999 Constitution as meaning “may” and thus institutionalize another mode of payment of the funds due to the Local Government Councils from the Federation Account. The Plaintiff did make this argument, but what he is asking for, in effect, is that this Court should nullify the direct meaning of the provisions of Section 162(5) and (6) of the 1999 Constitution and reconfigure it to admit another


Official
Certified True Copy
Umaru B. Babangida Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

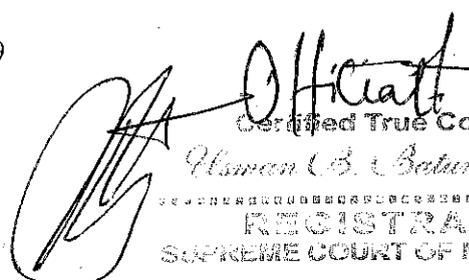
mode of payment. It is my view that to go down this route and ditch or nullify a specific provision of the Constitution cannot just be for the asking.

The Court must be convinced with explicit, clear, cogent and credible facts showing that the need to exercise such interpretative jurisdiction has arisen. It must be shown that the use of the laid down procedure has been made so unworkable and in such a manner that it is not satisfying the purpose of the Constitution. Without such credible and cogent facts, this Court will only be acting on the whims of the Plaintiff. In **Attorney General of Bendel State Vs Attorney General of the Federation** (1981) 9 SC (Reprint) 1 at Page 78, Obaseki, JSC, made the point that in interpreting the provisions of the Constitution, effect should be given to every word and a construction nullifying a specific clause will not be given to the Constitution unless absolutely required by the context and the circumstances.

In other words, a Court is not allowed to use the principle that the provisions of Constitution should be interpreted liberally or broadly to disregard a clear and unambiguous provision of the Constitution, without any clear case presented for it. In **Fawehinmi Vs Inspector General of Police** (2002) LPELR 1258(SC), Uwaifo, JSC, explained that:

“It cannot be suggested that clear and unambiguous terms of our Constitution may be rewritten or construed beyond what they mean in the guise of liberal or broad interpretation. That was never the aim of Sir Udo Udoma JSC in his observation in *Nafiu Rabiu v. The State* (1981) 2 NCLR 293 at p.326. What he said was no more than that in construing our Constitution, mere technical rules of interpretation more suitable to ordinary statutes should not be applied in a way as to defeat the principles of government enshrined in the Constitution; and that:

‘where the question is whether the Constitution has used an expression in the wider or in the narrower sense, this court should wherever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in


Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.’

... The whole essence is to approach the interpretation of the Constitution in order to uphold it to meet the purpose of the framers and the aspirations held out by it for the larger society primarily by looking at the words used until there is the need to take other factors into consideration. When the terms are plain and involve no ambiguity they must be given their meaning upon the ordinary surrounding circumstances.”

Again, in **Attorney General of Lagos State Vs Eko Hotels Plc** (2006) LPELR 3161(SC), Tobi, JSC, at 86-87 opined thus:

“... Another principle is that Courts are enjoined to give a liberal interpretation to the language of the Constitution in order to achieve the desired purpose of the maker of the Constitution. The Court will not embark upon such an exercise where the language is exact, precise and concise and therefore not able to admit a liberal interpretation, the Court will succumb to the clear meaning. The Court takes this position of least resistance because it cannot wear gloves for battle with the makers of the Constitution as that will vex or annoy their intention. After all, the law of statutory interpretation is clear that Courts invoke their interpretative jurisdiction to vindicate the intention of the law makers. They cannot plant their judicial mind or thought in place of the intention of the law makers.”

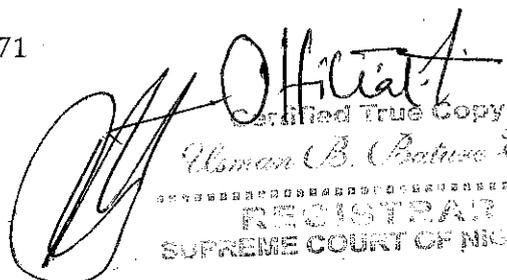
So, what are the facts put forward by the Plaintiff to show the need for this Court to exercise its interpretative jurisdiction as requested? In the affidavit in support of the Originating Summons, the Plaintiff made no assertion of fact to support the notion that the laid down procedure for payment of the funds of the Local Government Councils was not meeting the constitutional purpose for which the payment was designated. In the further affidavit on the Originating Summons, the Plaintiff did depose to facts that some of the Defendants have not been remitting promptly and on a monthly basis the amounts standing to the Local Government Councils from the Federation

Official A
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

Account. They were however bare assertions, not backed up any documentary evidence of the alleged non-remittance of the funds and/or by any evidence from the Local Government Councils concerned. Meanwhile, all the Defendants responded that they make prompt and monthly remittances of the allocated funds to their respective Local Government Councils and some of them exhibited documents evidencing the remittances. Rather than meet the assertions, the Plaintiff complained about the Defendants who did not exhibit documents in support of their assertions. The Plaintiff obviously forgot that it is he who asserts that has the onus of proof and that there is no onus on the person that negates the assertion – **Ojo Vs Federal Republic of Nigeria** (2023) LPELR 59970(SC), **Obaje Vs Nigerian Airspace Management Authority** (2023) LPELR 61645(SC).

Additionally, the further affidavit was deposed to by one Kelechi Ohaeri, who described himself as a litigation officer in the Civil Appeals Department of the Federal Ministry of Justice, a position that cannot ordinarily grant him access to the information on the non-remittance of funds by any of the Defendant to the Local Government Councils. The deponent did not state the source of the information of even the bare facts deposed in the further affidavit. The further affidavit was in clear breach of the provisions of Section 115(1), (3) and (4) of the Evidence Act and the law is that those facts must be discountenanced by the Court – **Jimoh Vs Minister of Federal Capital Territory** (2019) 5 NWLR (Pt 1664) 45, **Oboh Vs The Nigerian Football League** (2020) LPELR 55520(SC).

It is settled that in a civil proceeding the Plaintiff must succeed on the strength of its case and not on the weakness of the defence – **Abalaka Vs Akinsete** (2023) LPELR 60349(SC), **Baba Vs Independent National Electoral Commission** (2024) LPELR 62230(SC). This is particularly more so in the instant case where the reliefs sought by the Plaintiff are declaratory in nature. A plaintiff must prove his entitlement to a declaratory relief and

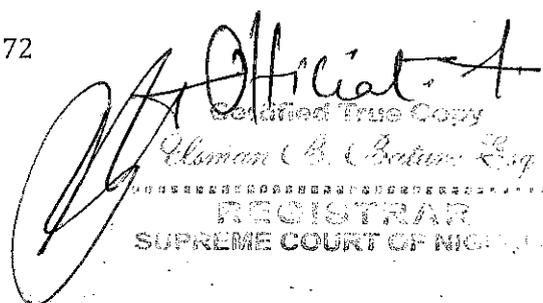

Official
Certified True Copy
Usman B. Patience Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

such a relief cannot be granted even on the admission of a defendant – **Ani Vs Otu** (2023) LPELR 59602(SC), **Isa Vs All Progressives Congress** (2023) LPELR 60150(SC). The strength of the case of the Plaintiff lies in the quality of facts pleaded in support of his claims. A case is decided on the facts before the court. It is now an *axiom* or an *aphorism* to say that facts are the fountain head of the law. Decisions of cases are related to facts and they should be construed in their factual milieu – **Attorney General, Bendel State Vs Attorney General, Federation** (1983) 1 SCNLR 239, **Attorney General, Abia State Vs Attorney General, Federation** *supra* at 361. The duty of a trial Court is to determine cases based on the facts established at trial and it must not impair the evidence either with its personal knowledge of matters not placed before it – **Peacocks Educational Consult Vs Etonyeaku** (2018) LPELR 46113(CA).

The point must be made that sentiments, speculative facts and conjectures cannot be used by the Court in interpreting the Constitution under the guise of seeking to achieve fairness and social justice in the polity. This is not the job of the Courts in interpreting the Constitution. In **Global Excellence Communications Ltd Vs Duke** (2007) LPELR 1323(SC), Onnoghen, JSC, (as he then was) stated that:

“That apart, I had earlier in this judgment reproduced some of the important principles of law guiding the courts in interpretation of our constitution and as can be gleaned there from there is nothing like the principle of equity, fairness, social justice and equality in the conduct of judicial affairs as canons of interpretation of the Constitution. The submission of learned counsel for the appellants in that respect, though very persuasive on moral grounds, has no foundation in law and is consequently discountenanced by me. The duty of the court is not to deal with the law as it ought to be but as it is.”

Further, a Court cannot use liberal or broad interpretation principles to fill in perceived gaps in the provisions of the Constitution; that is the job for


Certified True Copy
Olusola B. Babalola Esq.
REGISTRAR
SUPREME COURT OF NIGERIA

the legislature. In **Attorney General of the Federation Vs Atiku** (2007) LPELR 3(SC), Akintan, JSC, held that:

"For the court to enact or write into the Constitution what its makers failed to insert would amount to the court enacting laws and as Lord Simmons described such an act "a naked usurpation of legislative functions under the thin disguise of interpretation, and it is the less justifiable when it is guess work with what material the legislature would if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act."

I have not seen any cogent and credible facts presented by the Plaintiff to support the notion that the stipulated procedure for payment of the funds due to Local Government Areas from the Federation Account was not meeting the purpose for which the funds were allocated by the Constitution. There is thus no basis given for this Court deviating from the constitutionally laid down mode of payment of the funds and directing another mode of payment. The answer to Questions 12 and 15 on the Originating Summons must be in favour of the Defendants.

Dovetailing from the above resolution of the questions for determination and the findings thereon, I will grant Prayers 1, 2, 3, 4, 5, 6, 7, 8, 11, 16 and 18 as prayed on the Originating Summons. I will grant Prayer 13 but with some amendments. I will dismiss Prayers 9, 10, 12, 14, 15 and 17 on the Originating Summons. In conclusion, I order as follows:

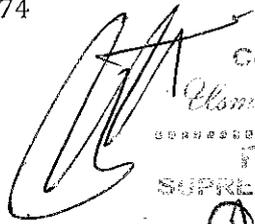
1. It is hereby declared that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 read together with Section 318(1), thereof, the 36 States of Nigeria, or anyone of them, acting through their/its respective State Governors and or State House of Assembly, are/is under obligation to ensure


Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Official

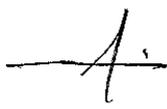
democratic governance at the third tier of government in Nigeria, namely, at the Local Government level.

2. It is hereby declared that, by the combined reading of Sections 1 (1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), 2(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, acting through their/its respective State Governors and or State Houses of Assembly cannot, using State power derivable from laws enacted by the State Houses of Assembly (anyhow so called) lawfully dissolve democratically elected Local Government Councils within the said State/State.
3. It is hereby declared that, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) (4) of the Constitution of the Federal Republic of Nigeria, 1999 read together with section 318(1) thereof, the 36 States of Nigeria, acting through their respective State Governors and or State Houses of Assembly, none of the 1st to 36th Defendants can, using State power derivable from Laws enacted by the State Houses of Assembly (anyhow so called) lawfully dissolve any of the democratically elected Local Government Councils within the said States/State and replace them/it with Caretaker Committees (anyhow so called).
4. It is hereby declared that, by the combined reading of Sections 1(1), (2) and (3) 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, the dissolution of democratically elected Local Government Councils by the 36 States of Nigeria, or anyone of them, using State powers derivable from Laws enacted by the State Houses of Assembly (anyhow so called) is unlawful, unconstitutional, null and void.



 Certified True Copy
Umar B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Official

5. It is hereby declared that, in the face of violation of the provision of the 1999 Constitution of the Federal Republic of Nigeria by reason of failure to put in place a democratically elected locally elected Local Government Council guaranteed by Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal Government/Federation is not obligated under Section 162(5) and (6) of the Constitution to pay/allocate to a State funds standing to the credit of the Local Government when no democratically elected Local Government Councils guaranteed under the Constitution vide Section 7 of the 1999 Constitution are/is in place.
6. It is hereby declared that, having regard to the effect of Section 7 of the 1999 Constitution and Section 162(5) and (6) of the 1999 Constitution, a State which is in breach of Section 1(1), (2) and 7 of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution is not entitled to receive and spend funds meant for the Local Government Councils by virtue of Section 162(5) and(6) of the 1999 Constitution while still in breach of the Constitution by not putting in place a democratically elected local government system/councils.
7. It is hereby declared that, by the combined reading of Sections 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 read together with section 318(1), thereof, any of the elected or other officials of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of any of the democratically elected Local Government Councils of their/its State has gravely breached the provision of the Constitution of the Federal



Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Official

Republic of Nigeria, 1999, hence by that token has committed a gross misconduct.

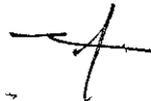
8. It is hereby declared that, by the combined reading of Sections 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and (3)(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) and 162(3), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, acting through any of their elected or other officials that dissolve democratically elected Local Government Councils within its domain is not entitled to the revenue allocation and operation of a Joint Account as stipulated in section 162(3), (5), (6) (7) and (8) of the said Constitution until such a State reverts to the status quo.
9. I refuse the declaration sought that any money, including statutory allocations, grants, financial interventions or palliatives that accrues to any of the State for/to the benefit of its Local Government or Local Government Councils shall, on being received by any such States or its organs or officials, be remitted immediately into the coffers of the Local Government Councils of the State without any deductions and delays or excuses, and same is dismissed.
10. I refuse the declaration that, by the combined reading of Sections 1(1) and (2) and (3), 4 (7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, read together with section 318(1), thereof, any elected or other official of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of democratically elected Local Government Councils of their State is liable to be arraigned during or at the end of his tenure (as the case may be) for criminal offences bordering on breach of the Constitution/contempt

Official
Certified True Copy
Usman B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA

of court and or breach of applicable criminal and penal laws, and same is dismissed.

11. I hereby declare that, by the combined reading of Sections 1(1), (2) and (3), 2, 7(1) and 7(3), 14(1), (2)(a), (c) and (4) and 162 (2), (3) (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the States do not have unbridled and unrestricted discretion to operate the "State Joint Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government Councils within those States, rather than for the greater benefit of those Councils, which are the third tier of Government in Nigeria.
12. I refuse the declaration that by virtue of S. 162 (3) and (5) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of Local Government Councils in the Federation account should be distributed to them and be paid directly to them, same is dismissed.
13. It is hereby also declared that by virtue of Section 162(5) of the Constitution of the Federal Republic of Nigeria 1999, a State Government is merely a trustee of the Local Government Councils in the State to collect the amount standing to the credit of the Local Governments in the Federation Account and has no power to spend the funds for its own benefit or to fulfill its statutory functions.
14. I refuse the declaration that by virtue of S. 162 (3), (5) and (6) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of a Local Government Councils in the Federation Account and received by a State on its behalf, and paid into a State Joint Local Government Account is liable to be paid directly to each Local Government without further delay, and same is dismissed.

77

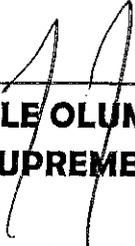
Official - 
Certified True Copy
Ulsman B. Babire Esq
REGISTRAR
SUPREME COURT OF NIGERIA

15. I refuse the declaration that a Local Government Council is entitled to a direct payment from the Federation Account of the amount standing to its credit in the said Federation Account, where the State Government has persistently refused or failed to pay to it the said amount received by the State Government on its behalf, and same is dismissed.
16. I hereby enter an order of injunction restraining the Defendants, by themselves, their privies, agents, officials, or howsoever called from receiving, spending or tampering with funds released from the Federation Account for the benefit of Local Government Councils when no democratically elected local government system is put in place in the State.
17. I refuse the order that the Federation through its relevant officials shall pay to Local Government in a State directly from the Federation account the amount standing to their credit therein, where the said State has refused or failed to pay to each of the or anyone of them, the amount it received or has been receiving on their/its behalf, and same is dismissed.
18. I refuse the order directing immediate compliance by the States, through their elected or appointed officials and public officers, with the terms of the judgment and orders made in this Suit; and successive compliance by successive State Government officials and public officers, save when the applicable provisions of the Constitution of Nigeria, 1999 as amended here interpreted are otherwise subsequently amended as superfluous and unnecessary, and same is struck out.

These shall be my orders in this matter.



Certified True Copy
Alamin B. Bature Esq
REGISTRAR
SUPREME COURT OF NIGERIA
Official


HABEEB ADEWALE OLUMUYIWA ABIRU
JUSTICE, SUPREME COURT

Lateef O. Fagbemi, SAN, Attorney General, Federation,
Prof Yusuf Ali, SAN, S. T. Hon, SAN, T. A. Gazali, SAN,
Acting Director, Civil Appeals, with O. A. Oloruntogbe,
ACSC, Federal Ministry of Justice for the Plaintiff

Ikechukwu Uwanna, Attorney General, Abia State, with
Mrs. Nkeiru Akinola, Director, Ministry of Justice Abia
State, Mrs. Ihuoma Omokwe, Director, Ministry of Justice
Abia State, Mrs. Nkolika Ubani, S. A. to the Governor and
Chinedu Amanamba, ACSC, Ministry of Justice Abia State for 1st Defendant

A. K. Jingi, Attorney General, Adamawa State, with
J. A. Waya, Acting DCL and Z. Y. Usman, SSC
Ministry of Justice, Adamawa State for 2nd Defendant

Essien Essien Udom, SAN, and Emmanuel Enoidem, SAN,
with Samuel Akpabio, Oluwole Akindutire & Bassey J. Ekanem for 3rd Defendant

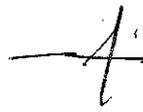
Dr. Onyechi Ikpeazu, SAN, and P. I. N. Ikwueto, SAN with
Julius Mba, Nwamaka Ofoegbu and Emeka Chinwuba for 4th Defendant

Hassan Usmau El-Yakub, SAN with M. U. Usman, DDPP,
and S. M. Toro, CSC, Ministry of Justice Bauchi State for 5th Defendant

Emmanuel Yinfaowei, Solicitor General, with Lugard Tare-Otu,
Erebi Ebiboye and Michelle Zuokumor, Ministry of Justice,
Bayelsa State for 6th Defendant

F. B. Mnyim, Attorney General, Benue State, with E. Enyikwola,
Director Citizen Rights, Z. O. Onum, ACSC, J. T. Gwa, ACSC
and E. N Agoh, SSC, Ministry of Justice, Benue State for 7th Defendant

J. J. Usman, SAN, with Bulus Adamu, DCL, Ministry of Justice,
Borno State, C. O. Ogbu, Asma'u Ahmed and I. Q. Abbey for 8th Defendant


Official
Certified True Copy
Usman B. Bature Esq.
REGISTRAR
SUPREME COURT OF NIGERIA
18/7/16

Ededem C. Ani, Attorney General, Cross River State, with Anthony Effiom, DCL, Gregory I. Okem, DPP, John Ogba, Director Appeals and Udenyi Omaji, SSC I, Ministry of Justice, Cross Rivers State

for 9th Defendant

Omamuzo Erebe, Solicitor General, with S. O. Monye, DCL, I. G. Eze-Owenz, Director, Advisory Services, U. P. Okolotu, PSC and O. B. Okonye, PSC, Ministry of Justice, Delta State

for 10th Defendant

Dr. Ben Uruchi Odoh, Attorney General, Ebonyi State, with Israel Ikechukwu Alobu, Director, Ikenna Michael Nwidagu, ACSC and Sylvia Nnena Nworie, SSC, Ministry of Justice, Ebonyi State

for 11th Defendant

Oluwole Osaze-Uzzi, Attorney General, Edo State, with Prof Faith Osadolor, Solicitor General, Ministry of Justice, Edo State, Dr. Solomon Agbohulu, Mrs. Esosa Osula, DPPRS, Ministry of Justice, Edo State, Chukwuemeka Achugbu and Frederick N. Ogbe

for 12th Defendant

Dayo Akpata, SAN, Attorney General, Ekiti State, with Gbemiga Adaramola DCL, Olalekan Suleiman, ACLO, Ministry of Justice, Ekiti State, O. M. Atibioke & A. D Adeleye

for 13th Defendant

Dr. Kingsley T. Udeh, Attorney General, Enugu State, with I. I. Eze, Director Appeals, S. U. Madu, Deputy Director Appeals, Lillian Ogar, SLO and C. V. Asogwa-Ugwueze, LO, Ministry of Justice Enugu State

for 14th Defendant

Umar Musa Pada, SSC, Ministry of Justice, Gombe State, with Muzzammil Yahaya

for 15th Defendant

Chief C. O. C. Akaolisa, Attorney General, Imo State, with A. B. U. Chikwe, PSC, Ministry of Justice, Imo State and Mrs. Ifeoma Charles Umeh

for 16th Defendant

Bello A. Famini, Attorney General, Jigawa State, with Aliyu Abdullahi, DDCL and Aliyu Hassan Hassan, CSC, Ministry of Justice, Jigawa State

for 17th Defendant

Sule Shu'aibu, SAN, Attorney General, Kaduna State, with Jummai Adamu Dan'Azumi, Solicitor General, Mohammed Tajudeen Mohammed, Salvation Zainabu Kyari, SSC, and Sadiya Nasir, SSC, Ministry of Justice, Kaduna State	for 18 th Defendant
Ahmed Raji, SAN, with Ibrahim Tukur Elsudi, Bimbo Atilola, AbdulKarim Maude and Peter Nwatu	for 19 th Defendant
Kamal O. Fagbemi, with A. A. Ibrahim, DCL, Ministry of Justice, Katsina State, Opeyemi Adeyemi and Khalil Ajana	for 20 th Defendant
Olanrewaju Osinaike	for 21 st Defendant
J. B. Daudu SAN, A. M. Aliyu, SAN, Ibrahim Sani Muhammad SAN and Aliyu O Saki, SAN with P. B. Daudu	for 22 nd Defendant
Senior Ibrahim Sulyman, Attorney General, Kwara State, with A. M. Bello, DCL and Isiaq AbdulRasheed Olorundare, SC, Ministry of Justice, Kwara State	for 23 rd Defendant
Ade Ipaye with Hameed Oyenuga, DCL, Ministry of Justice, Lagos State, A. P. Ameh, O Akinsola and A. A. Okuribido	for 24 th Defendant
S. M. Labaran, Attorney General, Nasarawa State with Y. Y. Ede DCL, E. U. Aliyu DD, Legal Drafting, M. J. Abokee, DD, Law Reform, Ministry of Justice Nasarawa State, B. A. Junkat	for 25 th Defendant
M. S. Abdul-Aziz, CSC, Ministry of Justice, Niger State, with D. O. Atita, U. I. Ujah and N. U Usman	for 26 th Defendant
Kehinde Ogunwumiju, SAN, O. M. Atoyebi, SAN, Tunde Afe-Babalola, SAN, and Eko Ejembi Eko, SAN, with Opemipo Owotumi	for 27 th Defendant
Dr. Olukayode Ajulo, SAN, Attorney General, Ondo State, with Emmanuel Patrick, Eniola Oyelami, Margaret Aguocha, Lasisi Hameed, Michael Okejini and O. F Bosun-Kwadjo, PLO, Ministry of Justice Ondo State	for 28 th Defendant
Oluwole Jimi-Bada, Attorney General, Osun State, with John E. Opaluwa, Nurudeen Hakeem and Jide Obisakin	for 29 th Defendant

Abiodun Aikomo, Attorney General, Oyo State, with N. A. Abiola, Director Legal Drafting and Ministerial Counseling, and Adeola Ige Adeleke, ACSC, Ministry of Justice, Oyo State for 30th Defendant

P. A Daffi, Attorney General, Plateau State, with J. I. Mantu, Assistant Director, Ministry of Justice, Plateau State for 31st Defendant

I. D. Ibiroma, SAN, Attorney General, Rivers State, with Ibiwari Clapton-Ogolo, Uzor Ikenga, R. O. Adakole, U. P. Ogo and T. C. Shalom for 32nd Defendant

Mohammed Nasiru Binji, Attorney General, Sokoto State, with L. S. Wali, DCL, Ministry of Justice, Sokoto State and Amanzi F. Amanzi for 33rd Defendant

G. A. Idiagbonya with Mrs. P. N. David, PSC, Ministry of Justice, Taraba State for 34th Defendant

Saleh Samanja, Attorney General, Yobe State, with Baba Dala Fika, Isma'il Usman and Muhammad Dan'azumi for 35th Defendant

AbdulAziz Sani, SAN, Attorney General, Zamfara State, with Mustapha Aikawa for 36th Defendant


Official
Certified True Copy
Usman B. Bedure Esq
REGISTRAR
SUPREME COURT OF NIGERIA
18/7/24

