

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 24TH DAY OF JUNE, 2022
BEFORE THEIR LORDSHIPS

MUSA DATTIJO MUHAMMAD
JOHN INYANG OKORO
AMINA ADAMU AUGIE
MOHAMMED LAWAL GARBA
ABDU ABOKI
IBRAHIM MOHAMMED MUSA SAULAWA
EMMANUEL AKOMAYE AGIM

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

SC/CV/504/2022

BETWEEN:

THE PRESIDENT FEDERAL REPUBLIC OF NIGERIA == **APPELLANT**

AND

1. NATIONAL ASSEMBLY
2. THE SPEAKER, RIVERS STATE HOUSE OF ASSEMBLY
3. ATTORNEY GENERAL RIVERS STATE
(Joined Pursuant to order of court of 19/05/2022)

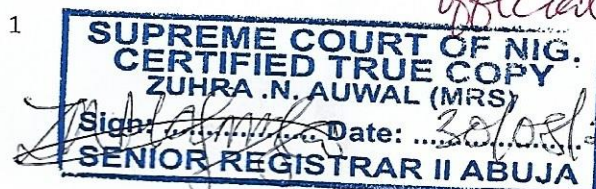
RESPONDENTS

JUDGMENT

(DELIVERED BY EMMANUEL AKOMAYE AGIM JSC)

The legislative power of the National Assembly (NASS) to make laws concerning the internal affairs of a political party is limited by S.228(a) of the Constitution of the Federal Republic

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of Nigeria 1999 (the 1999 Constitution) to the making of a law to provide guidelines and rules to ensure internal democracy within political parties including making laws for the conduct of party primaries, party congress and party conventions, etc.

In the purported exercise of this power, the Electoral Act 2022 was enacted and commenced on 25-2-2022 in accordance with s.58 of the 1999 Constitution which requires in subsection (4) that the President assents or withholds assent to a Bill, and provides in subsection (5) that if he withholds assent, the Bill can become law if passed by $\frac{2}{3}$ of majority of each of the two Houses of the National Assembly and the President's assent would not be required. In our present case, upon the presentation of the Electoral Bill 2022 to the President (1st Plaintiff herein) he assented to it and it became law, to wit, the Electoral Act 2022.

After participating in making the Electoral Act 2022, the 1st plaintiff sought to have S.84(12) of the Act removed or deleted on the ground that while giving his assent, he had entered a caveat expressing reservations about the constitutionality and desirability of the said S.84(12) and followed same by writing a letter to the National Assembly (1st defendant) requesting it to cause the Electoral Act 2022 to be amended to delete the said subsection (12) of S.84 of the Electoral Act.

Following the refusal of the 1st defendant to grant the request, the plaintiffs commenced Suit No SC/CV/504/2022 in this court, invoking the original jurisdiction of this court to determine as follows -

- "1. Whether having regard to separate and or the combined provisions of sections 65, 66, 106, 107, 131, 137, 177, and 182 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), the provision of Section 84 (12) of the Electoral Act, 2022 which ignores Section 84(3) of the same Act has not expanded the scope of the qualifying and disqualifying factors for the National Assembly, House of Assembly, Governorship and Presidential election as enshrined in the provisions of the Constitution thereby rendering the said provision inconsistent with the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, unlawful, null and void?"**

2. Whether the provision of Section 84 (12) of the Electoral Act, 2022 disqualifying political appointees from being a voting delegate, or to be voted for at a Convention or Congress of any political party, for the purpose of the nomination of candidate for any election, even in spite/disregard of Section 84(3) of the same Act, has not disenfranchised a category of Nigerian citizens outside, and without amending, the express qualification and disqualification provisions in each of or by the combined provisions of Sections 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to incorporate appointees as part of or category of persons who cannot contest for elective office?
3. Whether having regard to the clear provision of section 1(3) of the Constitution of the Federal Republic

of Nigeria, 1999 (as amended), read together with Section 4 of the same Constitution, the legislative powers vested in the 1st Defendant permit or empower it to make any inconsistent law with the qualification and disqualification provisions under each or all of Sections 42(1), 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as Article 2 of the African Charter on Human and Peoples Rights?

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4. Whether the provision of Section 84 (12) of the Electoral Act, 2022 disqualifying a political appointee from being a voting delegate or be voted for at a convention or congress of any political party, for the purpose of the nomination of candidates for any election notwithstanding the earlier assurances in Section 84(30 of the same Act, is not inconsistent with

and in violent breach of the provisions of Sections 65, 66, 106, 107, 313, 137, 147, 151, 177, 182, 192 and 196 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and null and void by reason of its inconsistency?

5. Whether the 1st Defendant did not act ultra vires the legislative powers vested in it under the provisions of section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and/or in violation or breach of the provision of Sections 42(1), 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the Constitution of the Federal Republic of Nigeria as well as Article 2 of the African Charter on Human and Peoples Rights by the introduction of the provision of Section 84 (12) of the Electoral Act, 2022 disqualifying political appointee from being a voting delegate or be voted for at convention or congress of any political party for

the purpose of any election even in spite of Section 84(3) of the same Act?"

They sought for the following reliefs -

"1. A DECLARATION that by the joint and or combined reading of Section 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196, of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), the provisions of section 84 (12) of the Electoral Act, 2022 which also ignores Section 84(3) of the same Act, is an additional qualifying and/or disqualifying factors for the National Assembly, House of Assembly, Gubernatorial and presidential elections as enshrined in the constitution, hence unconstitutional, unlawful, null and void;

2. A DECLARATION that having regard to the clear provision of section 1(3) of the Constitution of the Federal

Republic of Nigeria, 1999, as amended, read together with section 4 of the same Constitution, the legislative powers vested in the 1st Defendant do not permit or empower it to make any other law prescribing additional qualifying/disqualifying grounds for election to the National Assembly, House of Assembly, Gubernatorial and Presidential election outside the express constitutional qualification and disqualification provisions as already provided in each or all of Sections 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), and without amendment to any of those sections is for reason of inconsistency, unconstitutional and therefore null and void.

3. A DECLARATION that section 84 (12) of the Electoral Act, 2022 disqualifying a political appointee from being a voting

delegate or be voted for at a convention or congress of any political party for the purpose of the nomination of candidates for any election is discriminatory, inconsistent with and in violent breach of the provision of each or all of sections 42, 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), as well as Article 2 of the African Charter on Human and Peoples Rights and same is null and void by reason of its inconsistency.

- 4. A DECLARATION** that by the introduction of the provisions of section 84(12) into the Electoral Act, 2022, but in disregard of section 84(3) of the same Act, the 1st Defendant has acted ultra vires the legislative powers vested in it under the provision of section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and/or in violation or breach of the provisions of

sections 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196, thereby rendering section 84(12) of the Electoral Act, 2022 unconstitutional, null and void.

- 5. AN ORDER nullifying the provisions of section 84 (12) of the Electoral Act, 2022 by application of the blue pencil rule, for being unconstitutional, illegal, null and void and having been made in excess of the legislative powers of the 1st Defendant as enshrined in section 4 of the 1999 Constitution (as amended).**

SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit and just to make in the circumstances of the suit.”

The originating summons which was later amended, is supported by an affidavit and further affidavits and a written address. The 1st defendant filed a counter affidavit and a written address in opposition to the suit. The 2nd and 3rd defendants also filed a counter affidavit and a written address in opposition to the suit.

The 1st defendant filed and argued a notice of preliminary objection with a written address of same in urging this court to dismiss or strike out this suit. The 2nd and 3rd defendants filed a motion on notice applying for an order of this court dismissing or striking out this suit for incompetence and want of jurisdiction. The motion was accompanied by a written address of same.

The plaintiffs filed counter affidavits and written addresses in response to each of the preliminary objections. The plaintiffs filed replies on points of law to their said written addresses in opposition of the originating summons.

I will determine the two objections before I delve into the merits of this suit if the need to do so remains.

The grounds for their objections are that the requirements for the invocation of the original jurisdiction under S.1 (1) (A) of the Supreme Court (Additional Jurisdiction) Act No. 3 2002 and Order 3 Rule 6(1) of the Supreme Court Rules 2014 do not exist, that only the Federation, States, President, National Assembly and State House of Assembly and no other person can be party in an originating suit before this court, that the dispute giving rise to this suit is not justiciable and cannot warrant the invocation of the additional original jurisdiction given to this court by S. 1 (1) (A) of the Supreme Court

on 25-2-2022 signed the Electoral Bill 2022 into law, namely, Electoral Act 2022, cannot turn around to seek to strike down the amendment by any means including this judicial process, that he cannot a probate and reprobate, that the plaintiffs have no locus standi to bring this suit, that the plaintiffs have no legal right to protect in this suit, that this suit discloses no cause of action, that the suit is an abuse of process by multiplicity of actions on the same subject matter.

I have carefully read and considered the arguments of all sides on each of the above grounds of objection.

Let me start with the ground of objection that the 1st plaintiff cannot challenge the constitutionality of the Electoral Act 2022 having participated in making the Act.

The holder of an office that participated in the making of a law, by virtue of his holding that office, cannot afterwards, as holder of that office, challenge the constitutionality, correctness, justification or desirability of that law. As a participant in the making of the law, the holder of such office has reasonable opportunity to oppose the making of such law as constituted. If the law is enacted inspite of his opposition to its making, he cannot afterwards invoke the judicial process to strike it down for any reason. In our present case, the 1st plaintiff, as the President of the Federal Republic of Nigeria participated in

making Electoral Act 2022 by virtue of S.58 of the 1999 Constitution which provides that-

- (1) "The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and except as otherwise provided by subsection (5) of this section, assented to by the President.**
- (2) A bill may originate in either the Senate or the House of Representatives and shall not become law unless it has been passed and, except as otherwise provided by this section and section 59 of this Constitution, assented to in accordance with the provisions of this section.**
- (3) Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented for assent when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.**
- (4) Where a bill is presented to the President for assent, he shall within thirty days thereof**

signify that he assents or that he withholds assent.

(5) Where the President withholds his assent and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required."

The role of the 1st plaintiff in making an Act of the National Assembly consists of his signification that he assents or that he withholds assent to the bill, when both Houses of the National Assembly have passed the bill and reached an agreement on any amendment made on it and presented it to him for assent. He participates in making the Act by this role irrespective of whether he assents or withholds his assent. In our present case, he assented to the Bill and it became an Act. The President of Nigeria cannot invoke the judicial process to challenge the constitutionality, validity, correctness, desirability, justification of an Act of the National Assembly that he participated in making. The suit by the plaintiff touches on the essence of the powers given to him by S. 58(4) of the 1999 Constitution. The Constitution did not provide for the involvement of the court by the President after exercising his powers under S.58(4) of the Constitution one way or the other. His role in the law-making process ceases after his signification

of assent or withholding of assent. In this case he assented and consented to what the two Houses of the National Assembly had done and presented to him and the Bill became law. The only role the Constitution assigns to the President after the law is made is to comply with or enforce it. There is no room for him to exploit the power given to the courts by S.4(8) of the 1999 Constitution to review the exercise of legislative powers by the National Assembly, a role he had exercised by virtue of S.58 of the 1999 Constitution before the Bill became law, especially having consented to what the two Houses did by his assent.

The decision of this court in **Adesanya V President FRN & Anor (1989) 5SC 69** may be a useful support on how we have determined this issue even though the facts in that case are not exactly similar to the facts of our present case, save that both involve the challenge of the constitutionality of an exercise of legislative power in court by one who virtute officia participated in its making. In that case, a Senator who participated in making the decision of the National Assembly confirming an appointment, filed a suit in court to challenge the constitutionality of the resolution notwithstanding that he voted against the confirmation and was defeated by majority in the House. This court per **Fatayi Williams CJN** held that **"it never was thought that by means of a friendly suit, a**

party beaten on the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act He participated in the debate leading to the confirmation of the appointment of the 2nd defendant/respondent and lost. For him, that should have been the end of the matter. The position would probably have been otherwise if he was not a senator."

Sowemimo JSC in his contribution held that "when legislators either in the National or State Assemblies exercise their right of either making law or in circumstances in which they are authorized by the Constitution to approve or confirm certain actions they are bound by the majority decisions." There is no provision the judicial powers provided in section 6 of the Constitution for any legislators to appeal to any court against the majority decision.....The appellant as senator took part in the decision and I can see no provision in the constitution giving right to a member who happens to be in the minority to sue against such decision.

The 2nd plaintiff facilitated the 1st plaintiffs exercise of the power to assent. Paragraph 9 of the affidavit in support of the originating summons states that "2nd plaintiff is also the

authority that has the duty to ensure that Bills passed by the 1st defendant are scrutinized for error or unconstitutional provision before the President gives his assent thereto and such Bills become law”.

I agree with the argument of learned counsel for the 1st defendant that this suit by the plaintiffs is a reprobation of what the 1st plaintiff had a probated and that this cannot be allowed in law. Having assented to the Electoral Bill 2022 and thereby accepted that it becomes law, the plaintiffs cannot bring this suit contending that the Act resulting from his assent is not constitutional, or desirable or justifiable, thereby retracting from his assent in addition to the trite law against approbation and reprobation, there is no provision of the constitution that vests the president with the power to challenge the validity of an Act of the National Assembly that has come into being after his assent or after he had withheld his assent. Also, his assent to the enactment of the said Act operates to estopp him from challenging the Act as invalid for any reason.

Let me consider the ground of objection that this court lacks the jurisdiction to entertain this suit because there is no basis for the invocation of its judicial power or for the exercise of such powers.

Paragraphs 14 to 19 of the affidavit in support of the amended originating summons stated the facts forming their cause for this suit as follows-

"14. The 2nd and 3rd Defendants were joined as Co-Defendants to this suit by order of this Honourable Court on 19th May 2022.

15. That I am aware that the 1st Defendant in pursuance of its legislative power commenced the amendment of the Electoral Act, 2010 which culminated in the passing of the Electoral Act (Amendment Bill) 2022.

16. After several back-and-forth occasioning delay brought about by the inclusion of numerous provisions in the Electoral Act (Amendment Bill) 2022 the President of the Federal Republic of Nigeria assented to the Electoral Act, 2022 on the 25th February, 2022 under protest and with a caveat that Section 84 (12) therein, be removed or deleted for being unconstitutional.

17. That the President observed that the said Section 84 (12) disenfranchises political appointees in a way and manner outside

the contemplation of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

18. That the President in assenting to the bill expressed the view that *"it is imperative to note that the only constitutional expectation placed on serving political office holders that qualify by extension as public officers within the context of the constitution is resignation, withdrawal or retirement at least 30 days before the date of the election. It will be stretching things beyond the constitutional limit to import extraneous restrictions into the constitution on account of the practical application of section 84 (12) of the bill where political parties' conventions and congresses were to hold earlier than 30 days to the election"*

19. That I am aware the President subsequently wrote to the 1st Defendant, seeking amendment of Section 84(12) of the Electoral Act (Amendment) 2022, that would bring the bill in tune with constitutionality by way of deleting section 84(12) accordingly. But till date,

the 1st Defendant has refused, failed and/or neglected to so act on the request of the President. The President is concerned and wants our democracy safeguard the rule of law preserved, hence this suit."

It is glaring from these depositions in the affidavit in support of their originating summons and the questions for determination and reliefs claimed for that this suit was not brought for the determination of any question as to the civil rights and obligations of any of the plaintiffs. It is not a personal suit of any of the plaintiffs. The suit is brought in their official capacities to safeguard and preserve our democracy and the rule of law and not to seek personal redress in respect of any of their personal rights and obligations. Paragraph 10 of the affidavit in support of their originating summons states that **"the 1st plaintiff by this action is seeking to protect and preserve the constitution from any abuse by the 1st defendant"**.

It is obvious from S.6 (6)(b) of the 1999 Constitution that the judicial powers vested in the Courts by S.6 (1) of the 1999 shall be invoked for the determination of only questions as to the civil rights or obligation of a person. The judicial powers of a court cannot be invoked to determine a suit that is filed only for the protection of the Constitution from abuse by 1st

defendant and for the protection of democracy and the rule of law, that raises for determination general questions about the constitutionality of an Act of the National Assembly, that has no nexus with the civil rights and obligations of the plaintiffs. See **Adesanya v. President FRN & Anor. (supra), A-G Bendel State v. A-G FRN & ORS. (1981) LPELR – 605 (SC)** and **A-G Anambra v. AGF (2007) LPELR – 24348 (SC)**.

If a suit is not brought for the purpose of determining the civil right and obligations of the plaintiffs or the questions raised for determination and the reliefs claimed for in the suit have no nexus with the personal rights and obligations of the parties thereto, then the suit has no life and the questions raised for determination therein become general, abstract and academic questions that a court cannot exercise judicial power to determine by virtue of S.6 (6) (b) of the 1999 Constitution. The law is settled by a long line of judicial decisions that courts cannot exercise judicial power to entertain and determine general, abstract and academic questions. See **Imegwu V Okolocha & Ors(2013) LPELR -19886(SC)** and **Bamgboye V University of Ilorin (1999) 6 SC(Pt.ii)72**.

As it is, one of the cumulative requirements in S. 1(1) (A) of the Supreme Court (Additional Jurisdiction) Act 2002 for the invocation of the additional original jurisdiction of this Court to entertain an originating suit between the President and

National Assembly does not exist. The plaintiffs have no legally enforceable legal right or power that gives life to the questions raised for determination in the originating summons and that can be protected or enforced by the reliefs claimed for. S. 1(1)(A) of the Supreme Court (Additional Jurisdiction) Act 2002 provides that –

"1. Additional Original Jurisdiction for the Supreme Court

1) In addition to the jurisdiction conferred upon the Supreme Court of Nigeria by section 232(1) of the 1999 Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between –

- a) the National Assembly and the President;**
- b) the National Assembly and any State House of Assembly; and**
- c) the National Assembly and the State of the Federation,**

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 dispute in this case does not involve any question on which the existence or extent of any legal right depends. Therefore this suit cannot be entertained by this court in exercise of its additional original jurisdiction under S. 1 (1)(A) of the Supreme Court (Additional Original Jurisdiction) Act 2002. See **AGF v. A-G Lagos (2017) LPELR – 42769 (SC)** and **A-G Lagos v. AGF (2014) 9 NWLR (Pt. 1412) 217 at 257**.

Even the original jurisdiction vested in the Supreme Court by S. 232(1) of the 1999 Constitution to determine disputes between the Federation and State or between States cannot be invoked unless the dispute involves any question on which the existence or extent of a legal right depends. See **A-G Bendel State v. AGF (1981) 10 SC**, and **A-G Kano v. AGF (2007) LPELR – 618 (SC)**.

Paragraph 19 of the affidavit in support of the summons state that it is the defendant's refusal or failure to grant the written request by the 1st plaintiff that S.84 (12) of the Electoral Act 2022 be amended by deleting it to bring the Act in conformity with the Constitution, that led to this suit. In Paragraph 10 of the same affidavit it is stated that "the 1st plaintiff by this action is seeking to protect the constitution from abuse by 1st defendant".

The President has no Constitutional or legal right or power to request or compel the National Assembly to amend or make an Act. No part of the Constitution gives him such right or power. One of the hallmarks of our Constitutional democracy is separation of powers of government. The executive, legislative and judicial powers of the government of the Federation or of a State are separated and each vested on each of the three main arms of government by Ss. 4, 5 and 6 of the 1999 Constitution. S.4 of the said constitution vest the legislative power on the legislature. S.5 vests the executive power on the executive and S.6 vests the judicial power on the judicature (the courts). This separation of the said powers and the vesting of each in an arm of government requires that each arm exercises its power separately and independent of the other except where the Constitution expressly provides otherwise. There is no part of the 1999 Constitution that makes the exercise of the legislative powers of the National Assembly subject to the direction and control of the President of Nigeria.

The 1st plaintiff's written request to the National Assembly to amend the Electoral Act 2022 by deleting S.84 (12) therein is a violation of S.4 (1) of the 1999 Constitution. This suit which was filed as a response to the refusal of the National Assembly to grant the said written request is an employment of the judicial process to help realize the said violation. The Courts

cannot be engaged in this kind of unconstitutional and illegal enterprise. The suit is therefore an abusive use of the judicial process.

In the light of the foregoing, I hold that this court lacks the jurisdiction to entertain this suit and that therefore no useful purpose would be served determining the merit of the suit. The suit is hereby struck out.

No order as to costs.


EMMANUEL AKOMAYE AGIM
JUSTICE SUPREME COURT

COUNSEL:

L. O Fagbemi SAN and Tunde Babalola ESQ with Omosanya Popoola ESQ, Bolaji Oyuen and Jenifer Anderson Achelike Esq; for appellant

Dr Olukayode Ajulo with Lasisi Hammed ESQ, with **Tauyyib Kayode Shittu** for the 1st respondent

Emmanuel C. Ukala SAN, C.O Njemanze SAN with O.J Iheko ESQ and V.C Njemanze ESQ and M. L Young-Arney ESQ for the 2nd and 3rd defendants.

FOR PARTY INTERESTED

Dr. Charles Mekwunye SAN with Olukunle Edun ESQ, Emmanuel Usoh ESQ, Olawale Oyebode ESQ, and Godspower Eroga for NBA, party seeking to be joined.

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SUPREME COURT OF NIG.
CERTIFIED TRUE COPY
ZUHRA .N. AUWAL (MRS)
Sign: Date: 20/01/2022
SENIOR REGISTRAR II ABUJA

SC/CV/504/2022

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY 24TH JUNE, 2022
BEFORE THEIR LORDSHIPS

MUSA DATTIJO MUHAMMAD

JUSTICE, SUPREME COURT

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JUSTICE, SUPREME COURT

EMMANUEL AKOMAYE AGIM

JUSTICE, SUPREME COURT

SC/CV/504/2022

BETWEEN:

1. **THE PRESIDENT FEDERAL REPUBLIC OF NIGERIA**
2. **ATTORNEY GENERAL OF THE FEDERATION** } **PLAINTIFFS**

AND

1. **NATIONAL ASSEMBLY**
 2. **THE SPEAKER, RIVERS STATE**
 3. **ATTORNEY GENERAL RIVERS STATE**
- (Joint Pursuant to order of court of 19/05/2022)
- DEFENDANTS**

JUDGMENT

(Delivered by MOHAMMED LAWAL GARBA, JSC)

I have read a draft of the Lead Judgment written by my Learned Brother,

Hon. Justice, Emmanuel Akomaye Agim, JSC in this suit and found that

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it represents my views on the competence of both the plaintiffs to initiate and the court to adjudicate over the suit in its original jurisdiction vested under the provisions of section 232 (1) and pursuant to sub-section (2); under the Additional Jurisdiction.

This Court has firmly settled and established the law that where the issue of the competence or jurisdiction of a court of law to entertain/adjudicate over a matter is raised by any of the parties, it should be considered and determine first before a consideration of other issues or other steps are taken in the proceedings. *Oputa, JSC, in A.G., Lagos State v. Dosunmu* (1989) 3 NWLR (pt. 111) 552 at 566 restated the law that when a court's jurisdiction is challenged:-

“it is neater and far better to settle that issue one way or another before proceeding to hearing of the case on the merits. The reason is that jurisdiction is a radical and crucial question of competence. Either the court has jurisdiction to hear the case or it has not.”

See also *Okoye v. N.C. & F.C. Ltd.* (1991) 7 SC (pt. 111) 33, (1991) 6 NWLR (pt. 199) 501, *Petrojessica Ent. Ltd. v. Leventis Tech. Co. Ltd.*

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(1992) 1 NWLR (244) 675, *Odofin v. Agu* (1992) NWLR (pt. 299) 350, *Lekwot v. Judicial Tribunal* (1997) 8 NWLR (pt. 515) 22.

This position of the law is based on the recognised, very fundamental and crucial nature of and fatal consequence of the absence or defect in the jurisdiction of a court to adjudicate over a matter which has been described as both intrinsic and extrinsic to judicial proceedings of a court of law.

In the famous case of *Utih v. Onoyivwe* (1991) 1 SC (pt. 1) 61, (1991) 1 SCNJ, 25, (1991) 1 NWLR (pt. 166) 166, Muhammad Bello, CJN in his usual proficiency, said, of the jurisdiction of a court of law:-

“Moreover, jurisdiction is the blood that gives life to the survival of an action in a court of law and without jurisdiction, the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise.”

On the authority of *Madukolu v. Nkemdilim* (1962) 1 All NLR, 587, (1962) 2 SCNLR 341, all proceedings conducted by a court of law, along with every outcome thereof, without the requisite jurisdiction,

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would be an exercise in legal futility for being null, void and of no judicial effect, at all.

I totally agree with the Lead Judgment that this Court lacks the original jurisdiction to entertain and adjudicate on the merit of this suit for the primary reason that the Plaintiffs have not, by the facts placed before the court, shown the existence of a real dispute between them and the Defendants which involves any question or issue of fact or law on which the existence or extent of any cognisable legal right/s of theirs, depends.

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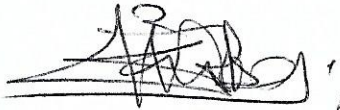
With the declaration of lack of jurisdiction on the part of the court to entertain the suit on the ground that it is incompetent, the only course open to the court in the circumstances, is to strike out the suit, being the final court in the land, with the final decision against which there is no right of appeal. See *Utih v. Onoyivwe* (supra), *Obi v. INEC* (2007) 7 SC, 268.

In the absence of the requisite jurisdiction to adjudicate over the suit on the merit, no legal and judicial duty exists for the court to consider the

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other issues raised in the suit for that would amount to embarking on an exercise in futility, needless waste of precious judicial time and resource, that will end up in nullity.

In the above premises, I join in striking out the suit on ground of incompetence.



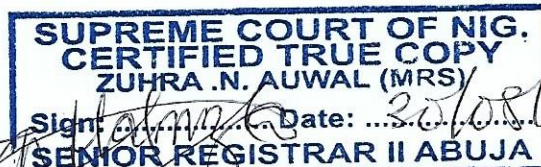
MOHAMMED LAWAL GARBA
JUSTICE, SUPREME COURT

APPEARANCES:

L. O. Fagbemi, SAN, with Tunde Babalola, Esq., Omosanya Popoola, Esq. Bolaji Oyuen and Jennifer Anderson Achilike Esq., for Plaintiff.

Olukayode Ajulo with Lasisi Hammed Esq., Tauyyib Kayode Shittu Esq. and Hameed Lasisi Esq. for the 1st Respondent.

Emmanuel C. Ukala SAN, and K. C. O. Njemanze SAN with U. C. Njemanze Esq. and M. L. Young-Arney Esq. for the 2nd and 3rd Defendants.



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IN THE SUPREME COURT OF NIGERIA
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ON FRIDAY, THE 24TH DAY OF JUNE, 2022
BEFORE THEIR LORDSHIPS

<u>MUSA DATTIJO MUHAMMAD</u>	<u>JUSTICE, SUPREME COURT</u>
<u>JOHN INYANG OKORO</u>	<u>JUSTICE, SUPREME COURT</u>
<u>AMINA ADAMU AUGIE</u>	<u>JUSTICE, SUPREME COURT</u>
<u>MOHAMMED LAWAL GARBA</u>	<u>JUSTICE, SUPREME COURT</u>
<u>ABDU ABOKI</u>	<u>JUSTICE, SUPREME COURT</u>
<u>IBRAHIM M. M. SAULAWA</u>	<u>JUSTICE, SUPREME COURT</u>
<u>EMMANUEL AKOMAYE AGIM</u>	<u>JUSTICE, SUPREME COURT</u>

SC/CV/504/2022

BETWEEN:-

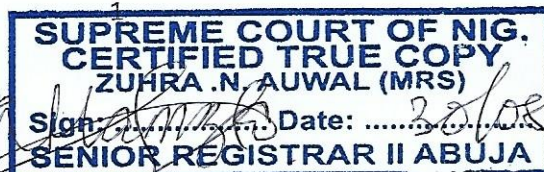
THE PRESIDENT FEDERAL REPUBLIC OF NIGERIA APPELLANT
AND

1. NATIONAL ASSEMBLY
 2. THE SPEAKER, RIVERS STATE HOUSE OF ASSEMBLY
 3. ATTORNEY GENERAL RIVERS STATE (Joined pursuant to order of court of 19/05/2022)
- } RESPONDENTS

JUDGMENT

(Delivered by JOHN INYANG OKORO, JSC)

I am in agreement with the leading judgment just delivered by my learned brother, Emmanuel Akomaye



Official

Agim, JSC and in support of his reasoning and conclusion reached therein, I shall make a few comments.

The issue of court's jurisdiction has been well established to be a threshold issue such that whenever it is raised, it must be addressed at the earliest opportunity because where a court lacks jurisdiction to entertain a matter, the entire proceedings no matter how well conducted is a nullity. See *Elugbe v Omokhafa (2004) 18 NWLR (pt. 905) 319.*

A plethora of decision on the principle abound that before a court can assume jurisdiction in respect of any matter, this court inclusive, it must be satisfied of the existence of the following conditions:-

- (i) That the court is properly constituted with regard to the number and qualification of its members and no member is disqualified for one reason or the other;***

(ii) That the subject matter of the case is within the court's jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(iii) The case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

See *Madukolu v Nkemdilim* (1962) 2 SCNLR 341; (1962) 1

All NLR (pt 4) 587; Skenconsult (Nig) Ltd v Ukey (1981) 1

SC 6; Dangana & anor v Usman & 4 ors (2012) 2 SC (pt.

111) 103; (2013) 6 NWLR (pt.1349) 50.

It must be emphasized that this court, just as every other court in this country, is a creation of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and its jurisdiction is donated and circumscribed by the 1999 Constitution, and the Supreme Court Act. See *Obiweubi v Central Bank of Nigeria* (2011) 7 NWLR (pt. 1247) 465 at

506; Adelekan v Ecu – Line NV (2006) 12 NWLR (pt. 993) 1 at 13.

It follows therefore that in this case, the jurisdiction of this court is restricted to the mandate given to it by the statute, that is to say, the additional jurisdiction of the Supreme Court as prescribed by section 1(1)(a) of the Supreme Court (Additional Jurisdiction) Act 2002. The core of that provision is *in pari materia* with the mandate prescribed for this court by section 232 of the 1999 Constitution, to the effect that the original jurisdiction of this court can only be activated by either of the parties named therein where the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. It definitely does not extend to cover a situation where a party named therein seeks to protect any of the

provisions of Constitution from being contradicted by a perceived conflicting Act of the National Assembly, as in this case.


Furthermore, the doctrine of separation of powers between the three arms of government is very prominent in the 1999 Constitution. Section 4 vests the legislative powers of the Federal Republic of Nigeria in the National Assembly, Section 5 vest the executive powers of the Federation in the President of the Federal Republic of Nigeria while Section 6 vests the judicial powers of the Federation in the court. Their functions and responsibilities are clearly defined such that whereas the legislature makes the laws, the executive administers the laws so promulgated by the legislature and the courts interpret the laws.

Nowhere in section 4 of the Constitution, or any other provision of the Constitution, is the legislative power of the Federation vested in either the President or the court and vice versa. The Constitutional responsibilities do not overlap from one organ to another. The doctrine of “filling the gap”, which advocates that in judicial activism, the court may fill in the gap where there is a lacuna in the statute is not permissible under the 1999 Constitution, and the plaintiff cannot use this court to achieve that purpose. See *Attorney General, Ogun State v Attorney General of the Federation (1982) 3 NCLR 166; Lakanmi v Attorney general Western Nigeria (1971) 1 UILR 201; Coca Cola (Nig) Ltd v Akinsanya (2017) 17 NWLR (pt. 1593) 74 at 128*. That is to say that, where there is a perceived offensive law, as in the instant case, there are procedures and

mechanisms available within the legislature for an amendment of such provision or an entire repeal of the law but not for another organ to interfere.

I hold the opinion, and firmly so, that the plaintiff in this action has no power to interfere with the Constitutional responsibilities of the 1st Defendant or in any manner seek to influence the performance thereof.

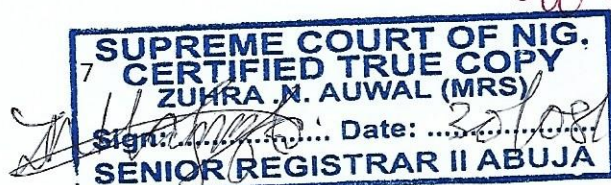
For the above and the fuller and better reasoning in the lead judgment, I too strike out the suit for lack of jurisdiction. I also make no order as to costs.



**JOHN INYANG OKORO
JUSTICE, SUPREME COURT**

APPEARANCES:-

L. O. Fagbemi SAN and Tunde Babalola Esq with Omosanya Popoola Esq, Bolaji Oyuen and Jennifer Aderson Achilike Esq for the Plaintiffs.



Olukayode Ajulo with Lasisi Hammed Esq, Tauyyib Kayode Shittu and Hammeed Lasisi Esq for the 1st Respondent.

Emmanuel C. Ukala SAN, K.C.O. Njemanze SAN with and U.C. Njemanze Esq, M. L. Young-Arney Esq for the 2nd and 3rd Defendants.

FOR PARTY INTERESTED

Dr. Charles Mekwunye SAN with Olukunle Edun Esq, Emmanuel Usuh Esq, Olawale Oyebode Esq, and Godspower Eroga for NBA party seeking to be joined.

Kelechi Anwu, Esq for party seeking to be joined.

TheNigerialawyer

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 24TH DAY OF JUNE, 2022
BEFORE THEIR LORDSHIP

MUSA DATTIJO MUHAMMAD

JOHN INYANG OKORO

AMINA ADAMU AUGIE

MUHAMMED LAWAL GARBA

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JUSTICE, SUPREME COURT

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SC/CV/504/2022

BETWEEN:

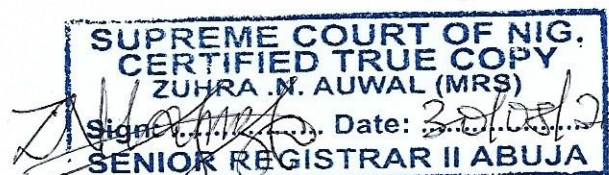
THE PRESIDENT FEDERAL REPUBLIC OF NIGERIA

APPELLANT

AND

1. NATIONAL ASSEMBLY
2. THE SPEAKER, RIVERS STATE HOUSE OF ASSEMBLY
3. ATTORNEY GENERAL, RIVERS STATE
(Joined Pursuant to order of court of 19/05/2022)

RESPONDENTS



JUDGMENT

(Delivered by MUSA DATTIJO MUHAMMAD, JSC)

I was obliged a preview of the lead judgment of my learned brother **EMMANUEL AKOMAYE AGIM, JSC** just delivered. It represents my view on the issues raised by the plaintiffs in the matter. I imbibe them.

By an amended originating summons taken out pursuant to Order 3 Rule 6 of the Supreme Court Rules, Section 1(I) A Supreme Court (Additional) Jurisdiction Act 2002 and the inherent powers of this Court as preserved under Section 6(6) of the 1999 Constitution (as amended), the plaintiffs seek the court's nullification of Section 84(12) of the Electoral Act 2022 which they assert not only ignores Section 84(3) of the same Act but jointly and severally stand in breach of Sections 42(1) 65, 66, 106, 107, 131, 137, 177, 182, 192 and 196 of the 1999

Constitution as well. The plaintiffs further aver that by virtue of Sections 1(3) and 4 of the 1999 Constitution Section 84(12) of the Electoral Act 2022 is ultra vires the legislative powers vested in the defendant. The abhorrent section is, in addition, a breach of Article 2 of the African Charter on Human and Peoples Rights.

The three defendants on record, by their respective notices of preliminary objection, challenge the jurisdiction of this Court to proceed on the plaintiffs' suit as constituted.

A challenge to a court's jurisdiction must necessarily be determined first. The procedure saves the time of both the court and the parties since in the absence of the required jurisdiction any decision eventually arrived at remains fruitless and unenforceable. See **AG ANAMBRA V. AG FEDERATION (1993) 6 NWLR (PT 302) 692.**

This Court in **MADUKOLU & ORS V. NKEMDILIM (1962) 2 SCNLR 341 at 348** per Bairamian J, as he then was, stated the conditions on which a court is competent to exercise jurisdiction in relation to an action before it as follows:-

- (1) When it is properly constituted as regard numbers and qualifications of the members of the bench and no member is disqualified for one reason or another.
- (2) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction and
- (3) The case comes before the court initiated by the due process of the law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Firstly, I entirely agree with learned senior counsel for the 2nd and 3rd defendants that the combined effect of the 2nd and 3rd conditions mentioned above is that this Court's jurisdiction abates where the plaintiff's in his claim, fails to disclose a cause of action.

It is now indeed settled law that a cause of action is the entire factual situation the existence of which entitles one person to obtain from court, a remedy against another person. It is this factual scenario that forms the basis of invoking the jurisdiction of court in a suit. See **AG KWARA STATE V. OLAWOLE (1993) 1 NWLR (PT 272) 645 at 663, NWORIKA V. ONONEZE-MADU & ORS (2019) LPELR – 46521 (SC) and ADEYEMI V. OPEYORI (1960) 9-20 SC 31.**

Learned senior counsel to the defendants/objectors cannot be faulted that by their affidavits in support of their originating summons, the plaintiffs are not political appointees in respect of whom Section 84(12) of the Electoral Act, the National Assembly in the exercise of its legislative powers pursuant to Sections 5(1) and 58(1), (2) and (3) has been put in place. In particular subsections 4 and 5 of Section 58 provides as follows:-

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- (4) Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assent.
- (5) Where the President withholds his assent and the bill is again passed by each House by two-third majority, the bill shall become law and


the assent of the President shall not be required.

It is evident from available facts in this matter that the 1st plaintiff herein on being presented the Electoral bill did not withhold his assent as he is empowered to under Section 58(4). Rather, he signified his assent thereby passing the way for the bill to become the very Act he now asks should be nullified. I hasten to firmly state that the plaintiffs are precluded from asserting the facts on which basis they seek the reliefs in their matter. Where a party is under a duty to speak but fails to do so, estoppels arises in that situation to prevent the party from asserting a right he refrained to enforce. See

**HALIMA HASSAN TUKUR V. GARBA UMAR UBA & ORS
(2012) LPELR – 9337 (SC), UKAEGBU & ORS V. UGOJI &
ORS (1991) LPELR – 3338 (SC).**

In the case at hand, the 1st plaintiff having voluntarily signed the Electoral bill cannot in law be allowed to undo the very Act he had the opportunity of opposing but decided not to. See **ADESANYA V. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA (1989) 5 SC 9.**

It is for the foregoing and more so the fuller reasons adumbrated in the lead judgment that I also strike out the plaintiffs' incompetent suit.


Musa Dattijo Muhammad,
Justice, Supreme Court.

Appearances:

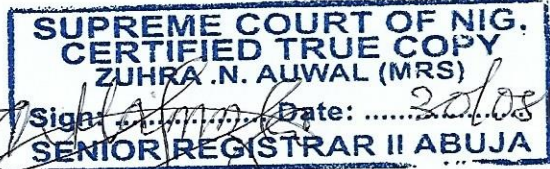
LATEEF O. FAGBEMI, SAN, with Tunde Babalola, Esq., Omosanya Popoola, Esq., Bolaji Oyuen and Jennifer Anderson Achilike, Esq., for Appellant.

OLUKAYODE AJULO with lasisi Hammed, Esq., Tauyyib Kayode Shittu, Esq., for the 1st Respondent.

EMMANUEL C. UKALA, SAN, K.C.O. NJEMANZE, SAN with O. J. Iheko (Miss), U. C. Njemanze, Esq., and M. L. Young-Arney, Esq., for the 2nd and 3rd Defendants.

FOR PARTY INTERESTED

DR. CHARLES MEKWUNYE, SAN with Olukunle Edun, Esq., Emmanuel Ushoh, Esq., Olawale Oyebode, Esq., and Godspower Eroga for NBA (Party seeking to be joined).


Date: 20/08/2022
Official

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 24TH DAY OF JUNE, 2022
BEFORE THEIR LORDSHIPS

MUSA DATTIJO MUHAMMAD
JOHN INYANG OKORO
AMINA ADAMU AUGIE
MOHAMMED GARBA LAWAL
ABDU ABOKI
IBRAHIM MOHAMMED MUSA SAULAWA
EMMANUEL AKOMAYE AGIM

JUSTICE, SUPREME COURT
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SC. /CV/504/2022

BETWEEN:

1. THE PRESIDENT FEDERAL REPUBLIC OF NIGERIA
2. ATTORNEY GENERAL OF THE FEDERATION

PLAINTIFFS

AND

1. NATIONAL ASSEMBLY
2. THE SPEAKER, RIVERS STATE HOUSE OF ASSEMBLY
3. ATTORNEY GENERAL RIVERS STATE

DEFENDANTS

JUDGEMENT

(DELIVERED BY IBRAHIM MOHAMMED MUSA SAULAWA, JSC)

On April 29, 2022, the two plaintiffs herein instituted the present suit vide an originating summons, thereby seeking the determination of various questions and declaratory reliefs against the 1st Defendant. However, pursuant to the order of this court, duly granted on 19/5/2022, both the 2nd and 3rd Defendants were jointed as such parties to the suit.

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Official

I.M.M. SAULAWA, JSC



SC.CV.504/2022

By the Amended Originating Summons, filed on 20/5/2022, the plaintiffs seek the determination of a total of five fundamental questions, viz:

- (1) *WHETHER having regard to separate and or the combined provisions of section 65,66,106,107,131,177, and 182, of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), the provision of section 84 (12) of the Electoral Act, 2022 which ignores section 84(3) of the same Act has not expanded the scope of the qualifying and disqualifying factors for the National Assembly, House of Assembly, Governorship and presidential elections as enshrined in the provisions of the Constitution thereby rendering the said provision inconsistent with the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, unlawful, null and void?*
- (2) *WHETHER the provision of section 84 (12) of the Electoral Act, 2022 disqualifying political appointees from being a voting delegate, or to be voted for at a Convention or Congress of any political party, for the purpose of the nomination of candidate for any election, even in spite/disregard of section 84(3) of the same Act, has not disenfranchised a category of Nigerian citizen outside, and without amending, the*

express qualification and disqualification provisions in each of or by the combined provisions of sections 65,66,106,107,131,137,147,151,177,182,192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to incorporate appointees as part of or category of person who cannot contest for elective office?

(3) *WHETHER having regard to the clear provision of section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with section 4 of the same Constitution, the legislative powers vested in the 1st Defendant permit or empower it to make any inconsistent law with the qualification and disqualification provisions under each or all of sections*

42(1)

65,66,106,107,131,137,147,151,177,182,192 and 196 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as Article 2 of the African Charter on Human and people's Rights?

(4) *WHETHER the provision of section 84 (12) of the Electoral Act, 2022 disqualifying a political appointee from being a voting delegate or be voted for at a convention or congress of any political party, for the purpose of the nomination of candidates for any*

election notwithstanding the earlier assurances in section 84(3) of the same Act, is not inconsistent with and in violent breach of the provisions of sections 65,66,106,107,131,147,151,177,182,192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and null and void by reason of its inconsistency?

- (5) *WHETHER the 1st Defendant did not act ultra vires the legislative powers vested in it under the provisions of section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and/or in violation or breach of the provision of sections 42(1),65,66,106,107,131,137,147,151,177,182,192 and 196 of the Constitution of the Federal Republic of Nigeria as well as Article 2 of the African Charter on Human and Peoples Rights by the introduction of the provision of section 84 (12) of the Electoral Act, 20222 disqualifying political appointee from being a voting delegate or be voted for at convention or congress of any political party for the purpose of any election even in spite of section 84(3) of the same Act?*

Accordingly, the plaintiffs have urged upon the court to grant the following five declaratory reliefs in favour thereof:

(1) *A DECLARATION that by the joint and or combined reading of section 65,66,106,107,131,137,151,177,182,192 and 196, of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), the provisions of section 84 (12) of the Electoral Act, 2022 which also ignores section 84(3) of the same Act, is an additional qualifying and/or disqualifying factors for the National Assembly, House of Assembly, Gubernatorial and Presidential elections as enshrined in the said constitution, hence unconstitutional, unlawful, null and void;*

(2) *A DECLARATION that having regard to the clear provision of section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, read together with section 4 of the same Constitution, the legislative powers vested in the 1st Defendant do not permit or empower it to make any other law prescribing additional qualifying/disqualifying grounds for election to the National Assembly, House of Assembly, Gubernatorial and presidential election outside the express constitutional qualification and disqualification provisions as already provided in*

each or all of sections 65,66,106,107,131,137,147,151,177,182,192,and 196 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), and without amendment to any of those sections is for reason of inconsistency, unconstitutional and therefore null and void.

(3) A DECLARATION that section 84 (12) of the Electoral Act, 2022 disqualifying a political appointee from being a voting delegate or be voted for at a convention or congress of any political party for the purpose of the nomination of candidates for any election is discriminatory, inconsistent with and in violent breach of the provision of each or all of sections 42,65,66,106,107,131,147,151,177,182, 192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), as well Article 2 of the African Charter on Human and Peoples Rights and same is null and void by reason of its inconsistency.

(4) A DECLARATION that by the introduction of the provisions of section 84(12) in to the Electoral Act, 2022, but in disregard of section 84(3) of the

same Act, the 1st Defendant has acted ultra vires the legislative power vested in it under the provision of section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and/ or in violation or breach of the provision of section 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196, thereby rendering section 84(12) of the Electoral Act, 2022 unconstitutional, null and void.

(5) AN ORDER nullifying the provisions of section 84 (12) of the Electoral Act, 2022 by application of the blue pencil rule, for being unconstitutional, illegal, null and void and having been made in excess of the legislative powers of the 1st Defendant as enshrined in section 4 of the 1999 Constitution (as amended).

The Amended Originating Summons is predicated upon a total of 22 grounds. In support there is a 26 paragraphed Affidavit deposed to by Ekodimuo Ekene Vincent, Esq. a principal state counsel in the chambers of the 2nd plaintiff. Attached to the said Affidavit is the plaintiffs' Written Address settled by prince Lateef Fagbemi, SAN.

On the part thereof, the 1st Defendant filed: a Notice of preliminary Objection to the **AMENDED ORIGINATING SUMMONS**, which is

predicated upon a total of 25 grounds. In support of the Notice of preliminary objection, is a 10 paragraphed Affidavit, deposed to by Charles Yoila, a Deputy Director, Legal Services of the 1st Defendant. Attached to the said Affidavit is a Written Address settled by Dr. Kayode Ajulo, SAN. On 24/5/2022, the 2nd Defendant equally filed a motion on Notice, thereby urging upon this court for the following relief:

“An Order Dismissing or striking out the plaintiff’s suit No. SC/CV/504/2022, for incompetence and want of jurisdiction.”

The said motion is predicated upon a total of 6 grounds. In support thereof is a 13 paragraphed Affidavit deposed to by Chukwuma Eke, a legal practitioner and special Assistant to the 3rd Defendant. Attached to the Affidavit are various processes, marked as Exhibits A-D, D1:

- (i) ***EXHIBIT A: NOTICE AND GROUNDS OF APPEAL (PDP AND I. CHIEF NDUKA EDEDE, 2(AG FEDERATION) filed in the court of Appeal Owerri Judicial Division on 12/04/2022.***
- (ii) ***EXHIBIT B: THE 2ND RESPONDENT’S (2ND PLAINTIFF) BRIEF in the said appeal:***
- (iii) ***EXHIBIT C: The judgment of the court of Appeal in Appeal No. CA/OW/87/2022, delivered on 11/05/2022.***

- (iv) *EXHIBIT D: APPEAL OF CROSS APPEAL TO APPEAL NO. CA/OW/87/2022;*
- (v) *EXHIBIT D1: NOTICE OF APPEAL 13/5/2022 in Appeal No. CA/OW87/2022 by Chief Nduka Edede.*

In response to the Defendants' processes, the plaintiffs deemed it expedient to file Replies along with written Addresses in support.

On **26/05/2022**, when the originating summons came up for hearing, the parties were accorded the opportunity of addressing the court, thereby identifying and adopting the extant processes vis-à-vis the Written Addresses thereof. Thus, resulting in the court to reserve judgment *sine die*.

DETERMINATION OF THE DEFENDANTS'
PRELIMINARY OBJECTIVES

As alluded here-to-fore, the Defendants herein have deemed it expedient to vehemently challenge the competence of the instant suit vide a Notice of Preliminary Objection and Motion on Notice, respectively.

By the extant rules of this court, it's incumbent upon the court to first and foremost deal with the said Preliminary Objection and motion of preliminary objections of the Defendants, before proceeding to determine the suit on the merits, if at all necessary.

I have accorded an amply critical, albeit dispassionate, consideration upon the complex constitutional nature of the present suit the objections canvassed by the 1st, 2nd and 3rd Defendants challenging the jurisdictional competence of this court to entertain and determine the suit, the Plaintiffs' replies there to vis -a -vis the far -reaching submissions of the respective learned senior counsel thereupon. Most interestingly, the issues raised by the learned senior counsel in their respective written Addresses are not at all mutually exclusive. Thus, I have deemed it expedient to adopt the two issues thrown up by the 1st Defendant for the determination of the objections, viz:

(1) Whether from the facts and circumstances of this case, this suit as presently constituted by the 1st and 2nd plaintiffs/Respondents is not liable to be struck out for having been brought in flagrant violation of section 1(1) (A) of the Supreme Court (Additional Jurisdiction) Act. No. 3 2002; and Order 3 Rules 6(1) of the Supreme Court Rules (As Amended 2014) in relation to the invocation of the Original jurisdiction of this Honourable Court.

(2) Whether form the facts and the circumstances of this case there exists a dispute within the contemplation of section 1(1) (A) of the Supreme Court (Additional Jurisdiction) Act No. 3 2002; and Order 3 Rule 6 (1) of

the Supreme Court Rules (As Amended 2014) which discloses or raises the existence or extent of any legal right in favour of the 1st and 2nd plaintiffs/ Respondents to warrant the invocation of the original jurisdiction of this Honourable Court.

ISSUES NO.1

The first issue raises the vexed question of whether or not from the facts and circumstances of this case, the suit as presently constituted is not liable to be struck out for having been brought in flagrant violation of section 1(1) (A) of the Supreme Court (Additional Jurisdiction) Act No. 3, 2002, and Order 3 Rule 6 (1) of the Supreme Court Rules (As Amended, 2014) in relation to the invocation of the original jurisdiction of the apex court

Likewise, the second issue raises the question of whether or not from the facts and circumstances of the case, there exists a dispute within the contemplation of section 1 (I) (A) of the Supreme Court (Additional Jurisdiction) Act No.3, 2002, and Order 3 Rule 6(1) of the Supreme Court Rules (As Amended 2014) which discloses or raises the existence or extent of any legal right in favour of the 1st and 2nd Plaintiffs/Respondents, to warrant the invocation of the Original 'jurisdiction' of the apex court.

Instructively, the term 'jurisdiction' denotes an authority to entertain, hear and determine a case (matter, action, appeal, et al). Indeed, jurisdiction has equally been defined as:

Capacity to decide the matter in issue, capacity to hear the controversy, command, control, decision-making power over the case; domain, domination, extent of authority, grasp, legal authority, legal power to decide a case, reign, sovereignty...territorial range of authority, territory.

See. **BURTON'S LEGAL THESAURUS**, 3RD Edition, 1998@ 321.

Jurisprudentially, the term jurisdiction is universally understood to mean the court's power to entertain, hear and decide a case or issue a decree (order). Also termed competent jurisdiction; coram judice; adjudicatory jurisdiction: **BLACK'S LAW DICTIONARY** 11TH Edition 2019 @ 1017. According to Fleming James Jr. et al, the Rules of jurisdiction of courts are to large extent constitutional rules:

The provisions of the US Constitution specify the outer limits of the subject matter jurisdiction of the Federal courts and authorities congress, within those limits, to establish by the organization and jurisdiction of the Federal courts. Thus, Article III of the constitution defines the judicial power of the United States to include cases arising under

Federal law and cases between parties of diverse state citizenship as well as other categories. The US Constitution, particularly the Due process clause, also establishes limits on the jurisdiction of the state courts. These due process limitations traditionally operate in two areas: jurisdiction of the subject matter and jurisdiction over persons. Within each state, the court system is established by state Constitutional provisions or by a combination of such provisions and implementing Legislation, which together define the authority of the various courts within the system.

See. FLEMING JAMES Jr. et al: CIVIL PROCEDURE 5TH Edition, (2001) @ 55; BLACK'S LAW DICTIONARY 2019 op cit @ 1017.

There's no-gainsaying the fact, that the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is a model of the American Constitution which cherishingly had been structured on the fundamental principles of separation of powers between the Congress (Legislature), Executive and the Judicature (Judiciary). Under Articles I, II and III of the American Constitution, it's provided:

ARTICLE I

SECTION I. *All the legislative powers herein granted shall be vested in a congress of the United States which shall consist of a Senate and House of Representatives.*

...

ARTICLE II

SECTION I. The executive power shall be vested in a president of the United States of America. He shall hold his office during the Term of four years, and, together with the Vice president chosen for the same Term, be elected...

...

ARTICLE III

SECTION I. The Judicial power of the United States, shall be vested in one Supreme Court and in such inferior courts as the congress may from time to time ordain and establish. The judges both of the Supreme Court and inferior courts, shall hold their offices during good behavior and shall at state Times, receive for their Services a compensation, which shall not be diminished during their continuance in office.

Comparatively, under the 1999 Constitution (supra), the separation of powers is cherishingly provided under chapter I, part II; sections 4.5 and 6:

4-(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National for the Federation

which shall consist of a senate and House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislatives List set out in Part I of the second schedule to this Constitution.

5 – (1) Subject to the provisions of this constitution, the executive powers of the Federation -

(a) Shall be vested in the president and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by here either directly or through the vice – president or Ministers of the Government of the Federation or other officers in the public service of the Federation; and

(b) shall extend to the execution and maintenance of this constitution all laws made by the National Assembly and to all matters with respect to which the National Assembly has for the time being, power to make laws.

6. (1) *The judicial powers of the Federation shall be vested in the Courts to which this section relates being, courts established for the Federation.*

(6) the judicial powers vested in accordance with the foregoing provisions of this section-

(a) shall extend notwithstanding anything to the contrary in this Constitution to all inherent powers and sections of the court of law.

(b) shall extend to all matters between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligation of that persons;

(c) shall not except as otherwise provided by this constitution extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and Directive's principles of state policy set out in chapter II of this constitution and

(d) shall not as from the date when this section comes in force, extend to any action or proceeding relating to any existing law made on or after 15th January, 1966

for determining any issue or question as to competence of any authority or person to make any such law.

Now, as copiously alluded to above, the Defendants' preliminary objections vehemently challenge the competence of the plaintiffs' suit hay the jurisdiction of this court to entertain and determine same. The objections (especially that of the 1st Defendant) is predicated upon a total of 29 grounds, the Affidavits in support and the various Exhibits attached there to. Most particularly, ground I of the objection raises the very fundamental question that:

(1) *This Honourable Court lacks the jurisdiction to hear and determine this suit same having been filed flagrant violation of the Supreme Court (Additional jurisdiction) Act, No. 3 2002 and order 3 Rule 6 (1) of the Supreme Court Rules (As amended 2014)"*

In my considered view, the starting point ought to be the provision of section 1 (1) (A) of the Supreme Court (Additional Jurisdiction) Act No. 3, 2002, viz:

1. ADDITIONAL ORIGINAL JURISDICTION FOR THE SUPREME COURT

(1) *In addition to the jurisdiction conferred upon the Supreme Court of Nigeria by section 232(1) of the 1999 Constitution, the Supreme Court shall, to*

the exclusion of any other court have original jurisdiction in any dispute between-

- (a) The National Assembly and the President;*
- (b) The National Assembly and any State House of Assembly; and*
- (c) The National Assembly and the State of the Federation, 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.*

Pursuant to the forgoing unequivocal provisions of section 1 (1) – (5) of the Supreme Court (Additional Jurisdiction) Act No, 3, 2002, there is no controversy, at all, that the two Houses of the National Assembly (the Senate and House of Representatives) had a cause to pass a bill, the Electoral Bill which was sent to the 1st plaintiff for his assent. And that, the 1st Plaintiff dutifully deemed it expedient on February 25, 2022 to assent and sign the Bill in to law (Electoral Act, 2022) in accordance with the provision of section 58 of the 1999 Constitution (supra). The provisions of section 58 of the 1999 Constitution are to the following effect:

- (1) The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and,*

except as otherwise provided by subsection (5) of this section, assented to by the President.

- (2) *A bill may originate in either the Senate or the House of Representatives and shall become law unless it has been passed and, except as otherwise provide by this section and section 59 of this Constitution, assented to in accordance with the provisions of this section.*
- (3) *Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other Houses on any amendment made on it.*
- (4) *Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assent.*
- (5) *Where the President withholds his assent and the bill is again passed by each House by two-third majority, the bill shall become law and the assent of the President shall not be required.*

The above provisions of section 58 of the 1999 Constitutions are crystal, clear, and rather unambiguous. The 1st plaintiff had exercised his constitutional power as President of the Federation by according his

assent, thereby signing the Electoral Bill, 2022 in to law (Electoral Act, 2022). Thus, having signed the said Bill in to law, it would be not only difficult but utterly impossible for him to now seek to undo what he had voluntarily done – the signing of the said Electoral Bill, 2022 in to law (Electoral Act, 2022). See *ADESANYA VS. PRESIDENT FEDERAL REPUBLIC OF NIGERIA* (1989) 5 SC 9 per *Fatai William, CJN*.

As alluded to above, the judicial powers of the Federation shall be vested in the courts, as cherishing provided under section 6 of the 1999 constitution, as amended:

6. – (1) *The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.*

(2) *The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provide by this Constitution for a State.*

(3) *The courts to which this section relates established by this Constitution for the Federation and for the States specified in subsection (5) (a) to (i) of this section shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of*

Assembly of a State, each court shall have all the powers of a superior court of record.

(4) Nothing in the foregoing provisions of this section shall be construed as precluding-

(a) the National Assembly or any House of Assembly, from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court;

(b) the national Assembly or any House of Assembly which does not require it from abolishing any court which it has power to establish or which it has brought into being.

(6) the judicial powers vested in accordance with the foregoing provisions of this section-

(a) shall extend notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law;

(b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

Cherishingly, section 6 of the 1999 Constitution, as amended, has maintained the removal of the anachronism that the **king** (meaning the state in this country), ***'could do no wrong'***. Indeed, it's a luxury which this country could ill-afford ever since the coming in to force of the Constitution of the Federal Republic of Nigeria, 1979, the precursor to the extant 1999 Constitution, as amended. As aptly stated by this court in **OLUFUNMILAYO RANSOME-KUTI VS. AG FEDERATION (1985) 6 SC 246; (1985) 2 NWLR (pt. 6 211**, it's a prerogative which Bacon described ***"as a galand of prerogatives woven around the pleadings and proceedings of the King's suits"***, per Eso, JSC.

It's trite, that ***Henry Bracton (c1220 – 1268)*** was a great man in the common law history. He lived well over seven centuries ago. As a judge of the King's Bench, Bracton was equally an ecclesiastic – as most judges were then. Interestingly, the red robe which High Court judges still wear was originally a cassock. He was acclaimed to have been the first jurist to make the common law into science. Recall Bacon's famous treatise- ***THE LAWS AND CUSTOMS OF ENGLAND*** –wherein he made references to previous cases (authorities), just as we do now. As aptly remarked by Lord Denning, MR:

By using decided cases in this way, he started the English system of precedent. In his note book he says:

'Si tamen similia evenerint, per simile judicentier, cum borasit occasio a similibus procedere ad

similia (if however similar things happen to take place, they should be adjudged in a similar way: for it is good to proceed from precedent to precedent)'

Tennyson took up that phrase when he wrote of England, that it is a land where a man may speak the thing he will,

A land of settled government.

A land of just and old renown.

Where Freedom slowly broadens down.

From Precedent to precedent.

See *DENNING: WHAT NEXT IN THE LAW*, Oxford University Press Inc. 1982; First Indian Edition, 2011 @ 5-6.

Remarkably, Bracton equally left his foot prints in the sands of time, when he wrote in his treatise:

Quod Rex Non Debet esse sub Homine, sed sub Deo Lege'. (That the King should not be under man but under God and the law.)

The aforementioned epitaphs of Bracton were throughout the centuries quoted, most especially during the despotic reigns of the Stuart Kings who claimed to rule by divine right. I think it was King James 1 of

England who once had the audacity to declare: **“Then I am to be under the law. It is treason to affirm it”**. To which Sir Edward Coke replied: Thus wrote Bracton: “The King is under no man, but under God and the Law”.

Recall when Charles 1 was put on trial for treason before the specially constituted High Court of justice, the President of the court (John Bradshaw) repeatedly quoted Bracton: “The King is under no man but under God and the Law. “However, King Charles 1 defiantly refused to plead, thereby vehemently denying that the court was competent to try him for treason. Nonetheless, the King was tried, convicted, sentenced to death, and executed (by heading). As Andrew Marvell aptly captured the solemn scene:

“He is a common did or mean upon that memorable scene: but with his leaner eye. The axe’s edge did try ...

But bowed his comely head Down as upon a bed

See Denning: *WHAT NEXT IN THE LAW, op cit @ 6-7.*

Most instructively, under section 232 of the 1999 Constitution as amended (supra), the Supreme Court is cloaked with the following far-reaching original jurisdiction:

232 (1) The Supreme Court shall, to the exclusion of any other courts have original jurisdiction in any dispute between the Federation and a state or between State 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.

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly.

Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.

As copiously alluded to above, apart from the forgoing provision of section 233 of the 1999 Constitution, Section 1 (1) (A) of the Supreme Court (Additional Jurisdiction) Act No. 3, 2002 (supra) has graciously accorded this court with additional original jurisdiction:

In any dispute between-

- (a) The National Assembly and the president;*
- (b) The National Assembly and any State House of Assembly; and*

- (c) *The National assembly and the State of the Federation, 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.*

Arguably, by virtue of the foregoing unequivocal provisions of section 232 (1) & (2) of the 1999 Constitution (as amended), for the court's original jurisdiction to be invoked, the plaintiffs have an onerous burden to show that the dispute which they would want the court to resolve or determine involves any question upon which the existence or extent of their legal right depends. See *AG BENDEL STATE. AG FEDERATION (1981) 10 SC*; *AG KANO STATE VS AG FEDERATION (2007) LPELR – 618, (SC)*.

Indeed, it has long been settled by this Court in a plethora of authorities, that before the original jurisdiction of the Supreme Court can be invoked under the Constitution (Section 232 of 1999 Constitution, as in the instant case), there are certain preconditions that must be satisfied, viz:

- (1) *There must be a justiciable dispute involving any question of law or fact;*
- (2) *The dispute must be-*

(a) between the Federation and a State in its capacity as one of the constituent units of the Federation; or

(b) between the Federation and more states than (six) are in their capacities as members of the constituent units of the Federation, or

(c) between states in their aforesaid capacities, and the dispute must be one on which the existence or extent the, of a legal right in the aforesaid capacity is involved.

See *AG. LAGOS STATE VS AG. FEDERATION (2004) 18 NWLR (Pt. 904) 1 @ 125 – 126 paragraphs G – A; AG. FED. VS. AG. IMO STATE (1983) 4 NWLR 178; AG. KANO STATE VS. AG. FED. (2007) 6 NWLR (PT. 1028) 164 C-D; 182 E-H; AG. LAGOS STATE VS. AG. FED. (2014) LPELR – 22701(SC)Per. Kekere-Ekun, JSC @ 128-129 paragraphs B-H.*

I have critically, albeit dispassionately, considered the plaintiffs' averments contained in the Affidavits thereof. Most particularly, paragraph (15), (16), (17), (18) (19) (23) and (24) of the Affidavit in support of the Amended Originating Summons, deposed to by Elodimiuo Ekene Vincent, Esq., a principal state counsel in the chambers of the 2nd plaintiff, aver:

(15) *That I am aware that the 1st Defendant in pursuance of its legislative power commenced the amendment of the Electoral Act, 2010 which culminated in the passing of the Electoral Act (Amendment Bill) 2022.*

(16) *After several back-and-forth occasioning delay brought about by the inclusion of numerous provisions in the Electoral Act (Amendment Bill) 2022, the President of the Federal Republic of Nigeria assented to the Electoral Act, 2022 on the 25th February, 2022 under protest and with a caveat that Section 84 (12) therein, be removed or deleted for being unconstitutional.*

(17) *That the President observed that the said Section 84 (12) disenfranchises political appointees in a way and manner outside the contemplation of the Constitution of Federal Republic of Nigeria, 1999 (as amended).*

(18) *That the President in assenting to the bill expressed the view that “it is imperative to note that the only constitutional expectation placed on serving political office holders that qualify by extension as public officers within the context of the constitution is*

resignation, withdrawal or retirement at least 30 days before the date of the election. It will be stretching things beyond the constitutional limit to import extraneous restrictions in to the constitution on account of the practical application of section 84 (12) of the bill where political parties' convention and congresses were to hold earlier than 30 days to the election”

(19) That I am aware the president subsequently wrote to the 1st Defendant seeking amendment of section 84 (12) of the Electoral Act (amendment) 2022, that would bring the bill in tune with constitutionality by way of deleting Section 84(12) accordingly. but till date the 1st Defendant has refused/ failed and /or neglected to so act on the request of the President.

The president is concerned and wants our democracy safeguard the rule of law preserved hence this suit.

(23) That I know as a fact that the introduction of the provision of Section 84(12) in to the Electoral Act, 2022 is an attempt to take away the constitutionally guaranteed rights of political appointees to vote and be voted for.

(24) That I know as a fact that unless the 1st Defendant is restrained, and the said provision of Section 84(12) of Electoral Act 2022, struck down, the said provision if implemental portends a grave danger to the constitutional democracy of Nigeria as a country.

I am unable to appreciate, let alone uphold, the foregoing preposterous and rather a sheer after thought averments. It would amount to the 1st Plaintiff having the cake thereof and eating it simultaneously. Most interestingly, it is a popular English Idiomatic proverb: **“YOU CAN’T HAVE YOUR CAKE AND EAT IT TOO”**. That’s to say – you cannot simultaneously retain your cake and eat it. See **WIKIPEDIA**.

Invariably, the word ‘assent’ denotes an agreement, approval, or permission, especially verbal or non-verbal conduct (action) reasonably interpreted (construed) as willingness (consent). Under the law of contract, for instance, assent, is a fundamental requirement to the formation of a binding contract. Thus, ‘assent’ generally implies that both parties to an exchange shall have a reasonably clear conception of what they are actually getting, and what they are giving up in return. See **MARVIN A. CHIREISTEIN: CONCEPTS AND CASE ANALYSIS IN THE LAW OF CONTRACTS (1990) @ 66; BLACK’S LAW DICTIONARY op cit @ 143.**

As alluded to above, the Electoral Bill, 2022 (like any other Bill of the National Assembly) requires the Assent of the President (1st plaintiff) by virtue of section 58(1) of the 1999 Constitution (supra):

58 (1) The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and except as otherwise provided by subsection (5) of this section, assented to by the President.

By virtue of subsection (5) of section 58 (supra), it is provided that:

(5) where the President withholds his assent and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required.

Thus, by virtue of the foregoing unequivocal provisions of Section 58 (1) & (5) of the 1999 Constitution (supra), once a Bill passed by the National assembly is duly assented to by the President pursuant to section 58 (1) of the 1999 Constitution supra, (as in the instant case), the Bill is deemed an Act of the National Assembly. In the instant case, the Electoral Act of 2022 became law on the very date the president assented (signed), to same on 25/02/2022. See **ODUA OGBORU VS. UDUAGHAN (2011) 17 NWLR (pt. 1277); (2011 LPELR-8236 (SC))**,

I have deemed it expedient to reiterate, that the Supreme Court has an onerous duty to jealously and courageously guard its jurisdiction with a view to preserving the sanctity (sacredness) of the rule of law and its inviolable independence. It is trite, that of the foremost characteristics of the rule of law, is the absolute supremacy or predominance of regular courts as opposed to arbitrary power. In the sense, that no man is above the law, duly established in the ordinary legal manner before the law courts. Secondly, the equality before the law:

[T]he equally subjection of all classes to the ordinary law of the land administered by the ordinary courts; the Rule of Law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or form the jurisdiction of ordinary tribunals.

See *ALBERT VENN DICEY: LAW OF THE CONSTITUTION (1885) @ 202,203.*

Arguably, the concept of justice has dramatically changed over the years. See the Federal Constitutions of 1960, 1963, 1979 and lately the extant 1999 Constitution as amended or altered. Under Section 17 of the 1999 Constitution, it is provided:

17. The state social order is founded on ideals of Freedom, Equality and Justice.

(2) In furtherance of the social order-

(a) every citizen shall have equality of right, obligations and opportunities before the law;

(b) the sanctity of human person shall be recognized and human dignity shall be maintained and enhanced;

(c) government actions shall be humane;

(d) exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented; and

(e) the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

(3) The State shall direct its policy towards ensuring that-

(a) all citizens without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;

(b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life:

(c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;

- (d) there are adequate medical and health care facilities for all persons;*
- (e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;*
- (f) children, young persons, the aged are protected against any exploitation whatsoever, and against moral and material neglect;*
- (g) provision is made for public assistance in deserving cases or other conditions of need; and*
- (h) the evolution and promotion of family life is encouraged.*

It is my considered view, that the Supreme Court has cherishingly not abdicated its fundamental duty of upholding and applying the supremacy of the directives of the Rule of Law. See. **Governor of Lagos State vs Ojukwu (1986) 1 NWLR (Pt. 18)**, Wherein this court held, inter alia:

There is no doubt that we are under a military Regime but it is a regime that had pledged itself to observe and abide by the Rule of law. The rule poses-

- 1. That the State (including the Lagos State Government) is subject to the law.*

2. *That the judiciary is a necessary agency of the Rule of Law.*
3. *That Government (including the Lagos State Government) should respect the rights of individual citizens under the Rule of Law.*
4. *That to the Judiciary is assigned both by the Rule of Law and our Constitution the determination of all action and proceedings relating to matters in dispute between persons and between government or an authority and any person in Nigeria,*

Per Oputa, JSC @ 647-648.

Recall, exactly eight decades ago (in 1942), Lord Atkin had the audacity to state in the notorious case of **LIVERSIDGE VS ANDERSON (1942) AC 206**:

In this country amid the clash of arms, the laws are not silent. They may be changed but they speak the same language in war as in peace. It has always been one of the principles of liberty for which on recent authority we are now fighting, that judges are no respecter of persons and stand between the subject and any attempted encroachment on the liberty by the

Executive, alert to see that any coercive action is justified in law.

Per Lord Atkin, LJ @ 244.

Most interestingly, the horrible war condition under which Lord Atkin, LJ alluded to in *LIVERSIDGE VS. ANDERSON* (supra) was graphically captured by no other than the legendary Lord Denning, MR:

*But when I was appointed a judge, it was the time of the flying bombs. On one occasion in the basement after lunch, two witnesses turned up to give evidence- their faces cut by splinters from the bombs. One morning I got to my room in the courts and found the windows blasted and broken glass everywhere. At home back in Cuckfiel we were in the flight path of enemy bombers. They dropped their unused bombs on to us. One afternoon we had a grandstand view of the first flying bomb shot down by a spitfire. We carried on as usual of course. As Lord Atkin said in *Liversidge V. Adersion*:*

'In this country, amid the clash of arms, the laws are not silent: they may be changed, but they speak the same language, in war as in peace.'

See Lord Denning, **MR: THE DUE PROCESS OF LAW**, OXFORD UNIVERSITY PRESS, FIRST PRINT 1980; REPRINTED 2012 @ 188-189.

It ought to be reiterated, that the Grund-norm itself (i.e the 1999 Constitution, as amended), from which all other laws derive their validity, is fundamentally founded on the doctrine of the Rule of Law. As aptly pontificated by this court in the case of **GOVERNOR OF LAGOS STATE V. OJUKWU (Supra)**:


The Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law it means also that government should be conducted within the framework of recognised rules and principles which restrict discretionary power which Coke, colour fully spoke of as golden and straight met wand of law as opposed to the uncertain and crooked cord of discretion. More relevant to the case in hand, the rule of law means that disputes as to the legality of acts of government are to be decided by judges who are wholly independent of the executive. The judiciary cannot shirk its sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all

persons in Nigeria. The law should be even handed between the government and citizens.

Per Obaseki, JSC @ 638.

Hence, against the back ground of the foregoing reasoning, and the elaborative reasoning and conclusion ably reached in the judgment just delivered by my learned brother **Hon. Justice Emmanuel Agim, JSC.** I too hereby deem it imperative to strike out the instant suit for being devoid of competence. The suit is struck out.

No order as to costs.


IBRAHIM MOHAMMED MUSA SAULAWA,
JUSTICE SUPREME COURT.

APPEARANCES:

I. O. Fagbemi SAN and Tunde Babalola Esq. with Omosanya Popoola Esq, Bolaji Oyun and Jenifer Anderson Achilike, Esq; for Appellant.

Dr Olukayode Ajulo with Lasis Hammed Esq. with Tauyyib Kayode Shittu for the 1st Respondent.

Emmanuel C. Ukala, SAN, C.O. Njemanze, SAN with O.J Iheko, Esq. and V.C. Njemanze, Esq and M. L. Young-Arney Esq. for the 2nd and 3rd Defendants.

For party interested

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official

SC.CV.504/2022

I.M.M. SAULAWA, JSC



Dr. Charles Mekwunye SAN with Olukunle Edun, Esq., Emmanuel Usoh Esq., Olawale Oyebode Esq., and Godspower Eroga for NBA party seeking to be joined.

TheNigerialawyer

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY THE 24TH DAY OF JUNE 2022
BEFORE THEIR LORDSHIPS

Musa Dattijo Muhammad

JUSTICE, SUPREME COURT

John Inyang Okoro

JUSTICE, SUPREME COURT

Amina Adamu Augie

JUSTICE, SUPREME COURT

Mohammed Lawal Garba

JUSTICE, SUPREME COURT

Abdu Aboki

JUSTICE, SUPREME COURT

Ibrahim Mohammed Musa Saulawa

JUSTICE, SUPREME COURT

Emmanuel Akomaye Agim

JUSTICE, SUPREME COURT

SC/CV/504/2022

BETWEEN:

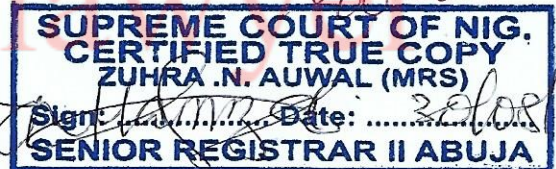
1. The President, Federal Republic of Nigeria
2. Attorney General of the Federation

PLAINTIFFS

AND

1. National Assembly
2. The Speaker, Rivers State House of Assembly
3. The Attorney General of Rivers State
(Joined Pursuant to Order of Court of 19/5/2022)

DEFENDANTS



JUDGMENT

(Delivered by **AMINA ADAMU AUGIE, JSC**)

I had a preview of the lead Judgment just delivered by my learned brother, Agim, JSC, and without any hesitation, I adopt his reasoning and conclusion.

The position of the law regarding jurisdiction and its importance as the nerve center and foundation of adjudication, which a Court must first decide on before delving into the merits of a Suit or action, cannot be over-emphasized, because *jurisdiction* is the authority a Court has to decide matters, and where the Court has no jurisdiction, with respect to any matter before it, the juridical basis for the exercise of any power with respect to such matter is also absent – see **Ajomale V. Yaduat (No. 1) (1991) 5 NWLR (Pt. 191) 257 SC.**

But there is a difference between an exercise of power and the exercise of jurisdiction. Simply put, jurisdiction cannot be equated with powers – see **Ajomale V. Yaduat (No. 1)** (*supra*) wherein Karibi-Whitye, JSC, explained that:

This is because power can only be exercised where the Court has the jurisdiction to do so - - Jurisdiction is not to be equated with powers. Whereas jurisdiction is the right in the Court to hear and determine the dispute between the Parties, the power in the Court is the authority to make certain orders and decisions with respect to the matter before the Court.

So, a Court must first have jurisdiction before it can proceed to exercise power, and a Court is said to have original jurisdiction in a particular matter when that matter can be initiated before it – see **Sule V. Nigerian Cotton Board (1978)** 6 SC 62 and **Utih V. Onoyivwe & Ors (1991)** 1 NWLR (Pt. 166) 166 SC.

In this case, the two sets of Defendants; that is the first Defendant and the second and third Defendants, who were joined as Parties to this Suit by an Order of Court made on 19/5/2022, are right that this Court has no jurisdiction of any kind whatsoever to entertain this Suit, not to mention original jurisdiction.

Section 232 (1) of the 1999 Constitution, as amended, provides as follows –

*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 the dispute involves any question of law or fact on which **the existence or extent of a legal right** depends.*

Section 1(1) of the Supreme Court (Additional Jurisdiction) Act 2002, also says:

In addition to the jurisdiction conferred upon the Supreme Court of Nigeria by Section 232(1) of the 1999 Constitution, the Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute between:

- (a) The National Assembly and the President;
- (b) The National Assembly and any State House of Assembly; and
- (c) The National Assembly and the State of the Federation, is 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 operative words, as far as this Suit is concerned, which I highlighted, are “*the existence or extent of a legal right*” because that is the crux of the matter.

“Legal right”, as defined in Black’s Law Dictionary, 9th Ed., is, “a right created or recognized by law; the capacity of asserting a legally recognized claim against one with a correlative duty to act”. In this case, the Plaintiff has asked this Court to determine *inter alia* whether the first Defendant did not act *ultra vires* the powers vested in it “by the introduction of Section 84(12) of the Electoral Act 2022 disqualifying political appointee from being a voting delegate or be voted for at Convention or Congress of any Political Party for the purpose of any election, even in spite of Section 84(3) of the Act?” He also prayed for:

An Order nullifying the provisions of Section 84(12) of the Electoral Act, 2022 by application of the Blue Pencil Rule, for being unconstitutional, illegal, null and void and having been made in excess of the legislative powers of the 1st Defendant as enshrined in Section 4 of the 1999 Constitution (as amended).

In addition to the averment in paragraph 10 of his supporting Affidavit that the “1st Plaintiff by this action is seeking to protect the Constitution from abuse by 1st Defendant”, it was further averred as follows in the said supporting Affidavit:


16. After several back-and-forth - - **the President assented to the Electoral Act, 2022 on 25/2/2022 under protest and with a caveat that Section 84(12) therein, be removed or deleted for being unconstitutional.**
17. The President observed that the said Section 84(12) disenfranchises political appointees in a way and manner outside the contemplation of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
18. The President in assenting to the Bill expressed the view that – “It is imperative to note that the only constitutional expectation placed on serving political office holders that qualify by extension as public officers within the context of the Constitution, is resignation, withdrawal or retirement at least 30 days before the date of the election. It will be stretching things beyond the constitutional limit to import extraneous restrictions into the Constitution on account of the practical application of Section 84(12) of the Bill where political Parties’ Conventions and Congresses were to hold earlier than 30 days to the Election”.
19. The President subsequently wrote to the 1st Defendant, seeking amendment of Section 84(12) of the Electoral Act (Amendment) 2022 that would bring the Bill in tune with constitutionality by way of deleting Section 84(12) accordingly. But till date, the 1st Defendant has refused, failed and or neglected to so act on the request of the President. The President is concerned and wants our democracy safeguard the rule of rule preserved, hence this Suit.

Yes, it is true that this Court has original jurisdiction in any dispute between the Plaintiff and the first Defendant, however, any such dispute between them must involve any question “*on which the existence or extent of a legal right depends*”.

My learned brother dealt extensively with this Issue in the lead Judgment and I adopted his reasoning earlier. Let me just say that I agree with him that the dispute in this case does not involve any question on which the existence or extent of any legal right depends, therefore, this Suit cannot be entertained by this Court in the exercise of its additional original jurisdiction under the said Section 1 (1) (a) of the Supreme Court (Additional Jurisdiction) Act, **2002**.

It is a well-established principle that where a Court finds that it has no jurisdiction to entertain a matter presented to it for adjudication, the matter must be struck out – see **Adelekan V. Ecu-Line Consortium** (2006) 12 NWLR (Pt. 993) 33, **Okoye & Anor V. Centre Point Merchant Bank Ltd.** (2008) 15 NWLR (Pt. 1110) 335, and **Lakanmi V. Adene** (2003) 10 NWLR (Pt. 828) 353.

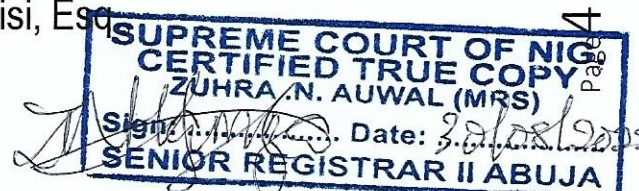
In the circumstances of this case, wherein this Court lacks jurisdiction to entertain the Suit filed by the Plaintiff, the said **Suit No. SC/CV/504/2022** has no business being on this Court’s Cause List, and it is accordingly struck out.


Amina Adamu Augie,
Justice, Supreme Court

APPEARANCES

L. O. Fagbemi, SAS, **with** Tunde Babalola, Esq.,
Omosanya Popoola, Esq., Bolaji, Oyuen, Esq., **and**
Jennifer Anderson Achilike, Esq., for the **Plaintiffs**

Olukayode Ajulo, Esq., **with** Lasisi Hameed, Esq.,
Tauyyib Kayode Shittu, Esq., **and** Hameed Lasisi, Esq.
For the **First Defendant**



Emmanuel C. Ukala, SAN, **AND**
K.C.O. Njemanze, SAN, **with**
U. C. Njemanze, Esq., **and**
M. L. Yoing-Arney, Esq., for the
Second and Third Defendants

PARTIES INTERESTED

Dr. Charles Mekwunye, SAN, **with**
Olukunle Edun, Esq.,
Emmanuel Usoh, Esq.,
Olawale Oyebode, Esq., **and**
Godspower Eroga, Esq., for the **NBA**
(*Party seeking to be joined*)

Kelechi Anwu, Esq., for **APGA**
(*Party seeking to be joined*)

TheNigerialawyer

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY, THE 24TH DAY OF JUNE, 2022

BEFORE HIS LORDSHIPS

MUSA DATTIJO MUHAMMAD

JUSTICE, SUPREME COURT

JOHN INYANG OKORO

JUSTICE, SUPREME COURT

AMINA ADAMU AUGIE

JUSTICE, SUPREME COURT

MOHAMMED LAWAL GARBA

JUSTICE, SUPREME COURT

ABDU ABOKI

JUSTICE, SUPREME COURT

IBRAHIM MOHAMMED MUSA SAULAWA

JUSTICE, SUPREME COURT

EMMANUEL AKOMAYE AGIM

JUSTICE, SUPREME COURT

SUIT NO: SC/CV/504/2022

TheNigeriaLawyer

BETWEEN

- 1. THE PRESIDENT, THE FEDERAL
REPUBLIC OF NIGERIA
- 2. ATTORNEY GENERAL OF THE
FEDERATION

**PLAINTIFFS/
RESPONDENTS**

AND

- 1. THE NATIONAL ASSEMBLY
- 2. THE SPEAKER, RIVERS STATE HOUSE OF ASSEMBLY
- 3. ATTORNEY GENERAL, RIVERS STATE

= DEFENDANTS

Official

ABDU ABOKI, JSC

SUPREME COURT OF NIG.
 CERTIFIED TRUE COPY
 ZUHRA M. AUWAL (MRS)
 Sign: *[Signature]* Date: *30/06/2022*
 SENIOR REGISTRAR II ABUJA

JUDGMENT

(DELIVERED BY ABDU ABOKI, JSC)

I had the benefit of reading in Draft, the Lead Judgment prepared by My Learned Brother **EMMANUEL AKOMAYE AGIM, JSC**, just delivered. I agree entirely with the reasoning and conclusion reached and to underscore my support, I shall make some remarks.

By an Amended Originating Summons, filed on the 20th of May, 2022, brought pursuant to **Order 3 Rule 6 of the Supreme Court Rules**, and **Section 1(1)(A) of the Supreme Court (Additional Jurisdiction) Act, 2002** and the inherent powers of this honourable Court, as preserved by **Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999, as amended**, the Plaintiffs sought for the determination of the following questions:

1. Whether having regard to separate and or combined provisions of Sections 65, 66, 106, 107, 131, 13, 177 and 182 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, the provisions of Section 84(12) of the Electoral Act, 2022 which ignores Section 84(3) of the same

Act, has not expanded the scope of the qualifying and disqualifying the factors for the National Assembly, House of Assembly, Governorship and Presidential Elections as enshrined in the provisions of the Constitution, thereby rendering the said provision inconsistent with the Constitution of the Federal Republic of Nigeria, 1999 as amended, and therefore unconstitutional, unlawful, null and void?

2. Whether the provision of Section 84(12) of the Electoral Act, 2022 disqualifying political appointees from being a voting delegate, or to be voted for at a Convention or Congress of any political party, for the purpose of the nomination of candidate for any election, even in spite/disregard of Section 84(3) of the same Act, has not disenfranchised a category of Nigerian citizens outside, and without amending, the express qualification and disqualification provisions in each of or by the combined provisions of Sections 65, 66, 106, 107, 131, 147, 151, 177, 182, 192 and 196 of the Constitution of

the Federal Republic of Nigeria, 1999 as amended, to incorporate appointees as part of or category of persons who cannot contest for elective office?

3. Whether having regard to the clear provision of Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, read together with Section 4 of the same Constitution, the legislative powers vested in the 1st Defendant permit or empower it to make any inconsistent law with the qualification and disqualification provisions under each or all of Sections 42(1), 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, as well as Article 2 of the African Charter on Human and Peoples' Rights?
4. Whether the provision of section 84(12) of the Electoral Act, 2022 disqualifying a political appointee from being a voting delegate or be voted for at a Convention or Congress of any political party, for the purpose of the nomination

of candidates for any election, withstanding the earlier assurances in Section 84(3) of the same Act, is not inconsistent with and in violent breach of the provisions of Sections 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, and null and void by reason of its inconsistency?

5. Whether the 1st Defendant did not act ultra vires the legislative powers vested in it under the provisions of Section 4 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, and/or in violation or breach of the provisions of Sections 42(1), 65, 66, 106, 107, 131, 147, 151, 177, 182, 192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, as well as Article 2 of the African Charter on Human and Peoples' Rights by the introduction of the provisions of Section 84(12) of the Electoral Act, 2022 disqualifying political appointee from being a voting delegate or be voted for at Convention or Congress of any political party for the purpose

of any election, even in spite of Section 84(3) of the same Act?

And upon the determination of these questions, the Plaintiffs sought for the following reliefs against the 1st Defendant:

1. A DELARATION that by the joint and or combined reading of Sections 65, 66, 106, 107, 131, 147, 151, 177, 182, 192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, the provisions of Section 84(12) of the Electoral Act, 2022 which ignores Section 84(3) of the same Act, is an additional qualifying and/or disqualifying factors for the National Assembly, House of Assembly, Gubernatorial and Presidential Elections as enshrined in the sad Constitution, hence unconstitutional, unlawful, null and void.
2. A DECLARATION that having regard to the clear provision of Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, read together with Section 4 of the same Constitution, the legislative powers vested in the 1st Defendant do not permit or empower it to

make any other law prescribing additional qualifying/disqualifying grounds for elections to the National Assembly, State House of Assembly, Gubernatorial and Presidential Election outside the express constitutional qualification and disqualification provisions as already provided in each or all of Sections 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, and without amendment to any of those sections, is for reason of inconsistency, unconstitutional and therefore null and void?

3. A DECLARATION that Section 84(12) of the Electoral Act, 2022 disqualifying a political appointee from being a voting delegate or be voted for at a Convention or Congress of any political party, for the purpose of the nomination of candidates for any election, is discriminatory, inconsistent with and in violent breach of the provisions of each or all of Sections 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the 1999 Constitution of the Federal Republic of

Nigeria, as amended, as well as Article 2 of the African Charter on Human and Peoples' Rights and same is null and void by reason of its inconsistency?

4. A DECLARATION that by the introduction of the provisions of Section 84(12) into the Electoral Act, 2022, but in disregard of Section 84(3) of the same Act, the 1st Defendant has acted ultra vires the legislative powers vested in it under the provisions of Section 4 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, and/or in violation or breach of the provisions of Sections 65, 66, 106, 107, 131, 147, 151, 177, 182, 192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, thereby rendering Section 84(12) of the Electoral Act, 2022 unconstitutional, null and void?
5. AN ORDER nullifying the provisions of Section 84(12) of the Electoral Act, 2022 by application of the blue pencil rule, for being unconstitutional, illegal, null and void and having been made in excess of the legislative powers of the 1st

Defendant as enshrined in Section 4 of the 1999 Constitution, as amended.

SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit and just to make in the circumstances of this case

The grounds in support of the Originating Summons are as follows:

- i) The Constitution of the Federal Republic of Nigeria provides for qualifications and disqualifications of the offices of the President and Vice president, Governor and Deputy-Governor, Senate and house of Representatives, and House of Assembly, ministers, Commissioners and Special Advisers;
- ii) By provision of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the qualifying factors for election into the office of President, Vice President, Governor, Deputy-Governor,

Senate, House of Representatives, House of Assembly and ministers are as follows:

- a) Nationality;
 - b) Age as prescribed by the provisions of the constitution;
 - c) Educational qualification; and
 - d) Sponsorship by a political party.
- iii) The disqualifying factors for the election into offices of President, Vice President, Governor, Deputy-Governor, Senate, House of Representatives and Houses of Assembly as provided for under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) are as follows:
- a) If the aspirant has allegiance to a country other than Nigeria;
 - b) If the aspirant is adjudged or declared to be of unsound mind;
 - c) If the aspirant has been sentenced;
 - d) If the aspirant has been convicted and sentenced for an offence involving

dishonesty or he has been found guilty of a contravention of the Code of Conduct within a period of less than 10 years;

e) If the aspirant is an undischarged bankrupt;

f) If the aspirant is a public servant and has refused to resign 30 days before the election date;

g) If the aspirant is a member of any secret society;

h) If the aspirant has presented a forged certificate to the Independent National Electoral Commission.

iv) By the provision of section 84(12) of the said Electoral Act, 2022, political appointees are not eligible as voting delegates or aspirants for the purpose of nomination of candidate for any election, even inspite of the policy guideline provision of Section 84(3) of the same Act;

- v) The provision of section 84(12) of the Electoral Act, 2022 constitutes a disenfranchisement of serving political office holders from voting or being voted for at Conventions of Congresses of any political party, for the purpose of the nomination of candidates for any election;
- vi) Being a political appointee is not a disqualifying factor to be eligible for voting as a delegate or contest as an aspirant for nomination as a candidate for any election under the Constitution of the Federal Republic of Nigeria;
- vii) 1st Defendant has introduced Section 84(12) to the Electoral Act, 2022, as to disqualification for election into the offices of the President and Vice President, Governor and Deputy-Governor and Membership of the Senate, the House of Representatives and House of Assembly of

- each States of the Federation, outside the provisions of the Constitution;
- viii) Political appointees, or office holders have the right to freedom from discrimination under the Constitution and African Charter on Human and people's right;
- ix) Political appointees, or office holders are recognized by the Constitution and (they) have the right to vote and to be voted for which is inalienable under African Charter on Human and people's Rights and the Political and Civil Rights Convention;
- x) Nigeria has domesticated both the African Charter on Human and People's Rights;
- xi) The right of Political appointees to freedom from discrimination and to vote and to be voted for guaranteed by the provision of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) have been taken away by section 84(12) of the Electoral Act, 2022;

- xii) The Federal Republic of Nigeria is a strong member of the United Nations Organization and has ratified the Universal Declarations of Human Rights, adopted unanimously by the United Nations General Assembly in 1948;
- xiii) The Universal Declarations of Human Rights, 1948, recognizes that every citizen has the right "... to vote and to be elected at periodic elections;
- xiv) The Federal Republic of Nigeria is a pioneer and strong member of the African Union and a signatory to African Charter on Human and people's Rights;
- xv) The provision of section 84(12) of the Electoral Act, 2022 is inconsistent within the extant provisions of sections 65, 66, 106, 107, 131, 137, 177 and 182 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and unconstitutional;

- xvi) The 1st Defendant acted ultra vires its legislative power as guaranteed under the Constitution by the introduction of the new section 84(12) into the Electoral Act, 2022;
- xvii) There are adequate provisions existing in the constitution with regards to qualification and disqualification factors for election offices under the Constitution;
- xviii) Sections 66(1)(f), 137(1)(g), 182(1)(g) of the 1999 Constitution have been amended to include political appointees as part of category of persons to resign or retire from their appointments before contesting election;
- xix) It is unconstitutional and discriminatory for the 1st Defendant to legislate to ban political appointees from voting or seeking vote at the convention or congress of political parties when the 1999 Constitution has not forbidden them from doing so;

- xx) The Supreme Court as the court of last resort is in the best position to quickly take this suit and resolve the constitution issues put forward;
- xxi) The decision of the Supreme Court on the constitutional issues involve in this case will guide to all the lower courts in any matter that may be filed or pending before them on the same or similar case (s) (if any); and
- xxii) There is no lacuna in the 1999 Constitution which Section 84(12) of the Electoral Act, 2022 can fill.

Attached to the Amended Originating Summons is a 26 Paragraph affidavit, deposed to by one Elodimuo Ekene Vincent, an Employee of the Federal Ministry of Justice, Abuja; as well as a written address in support.

In opposition to the amended Originating Summons, the 1st Defendant filed a Counter Affidavit of 12 Paragraphs, deposed to by one Charles Yoila, a Legal Practitioner in the employment of the 1st Defendant; as well as a written address. The 1st Defendant also

filed a Notice of Preliminary Objection to the Amended Originating Summons.

The Plaintiffs filed a further Affidavit in support of the amended Originating Summons against the 1st Respondent's Counter affidavit, as well as the Plaintiffs' reply on points of law, in support of the Plaintiffs' Amended Originating Summons.

The 1st Defendant thereafter filed a Reply on points of law, to the Plaintiffs' written address in opposition to the 1st Defendant's notice of Preliminary Objection.

Also, in opposition to the amended Originating Summons, the 2nd and 3rd Defendants filed a Counter Affidavit of 13 Paragraphs, deposed to by one Chukwuma Eke, a Legal Practitioner and Special Assistant to the 3rd Defendant; to which was attached Exhibit RS1, and a written address. The 2nd and 3rd Defendants also filed a Motion on Notice, for an Order Dismissing or striking Out the Plaintiffs' suit, for incompetence and want of jurisdiction. Attached to the Motion on Notice was a 13-paragraph affidavit, also deposed to by Chukwuma Eke, with Exhibits A, B, and C, annexed thereto, as well as a written address.

The Plaintiffs' filed a Counter Affidavit of 8 paragraphs, in opposition to the 2nd and 3rd Defendants' Motion on Notice, and a written address.

Thereafter, the 2nd and 3rd Defendants filed a Reply Address, in response to the Counter Affidavit and written address of the Plaintiffs on the challenge of jurisdiction.

It is also worthy of note that the Nigeria Bar Association (NBA) is an Amicus Curiae in the instant Suit. A Counter Affidavit in opposition to the Amended Originating Summons, was filed on its behalf on the 24th of May, 2022. The 33-paragraph Counter Affidavit, deposed to by one B. Lawal, Esq; the Secretary of the Nigerian Bar Association Public Interest Litigation Committee, has some annexures, as well as a written address.

1ST DEFENDANT'S NOTICE OF PRELIMINARY OBJECTION

By a Notice of Preliminary Objection, dated the 12th of May, 2022, and filed on the 13th of May, 2022, and brought pursuant to **Section 1(1)(A) of the Supreme Court (Additional Jurisdiction) Act, No. 3, 2002; Order 6 Rule 1 of the Supreme Court Rules, 2014**, as amended, and under the inherent jurisdiction of this Court, the 1st Defendant challenged the

competence of this Suit, and sought for an Order of this Court dismissing or otherwise striking out this Suit.

The grounds upon which the Preliminary Objection is brought, are as follows:

1. This Honourable Court lacks the requisite jurisdiction to hear and determine this Suit, same having been filed in flagrant violation of Section 1(1)(a) of the Supreme Court (Additional Jurisdiction) Act, No.3, 2002 and Order 3 Rule 6(1) of the Supreme Court Rules, (as amended 2014).
2. Section 1(1)(a) of the Supreme Court (Additional Jurisdiction) Act, No.3, 2002, only permits the invocation of the original jurisdiction of this Honourable Court where there is a dispute between the President and the National Assembly, which involves any question of law or fact on which the existence or extent of a legal right depends.
3. The proper parties in any action where the original jurisdiction of the Supreme Court is

invoked are persons listed in Section 232(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, and Section 1(1)(a) of the Supreme Court (Additional Jurisdiction) Act, No.3, 2002, and no other person whatsoever, whether natural or artificial, is allowed to be a party to that Suit under any guise whatsoever.

4. The condition precedent for the activation of the original jurisdiction of the Supreme Court as stipulated by section 232 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and the Supreme Court (Additional Jurisdiction) Act, No.3, 2002 has not been complied with.
5. The Suit as presently constituted neither discloses nor raises the existence of any dispute which may warrant the invocation of the original jurisdiction of this Honourable Court.
6. The 1st Plaintiff/Respondent having on Friday, 25th February, 2022 signed the Electoral Bill,

2022 into Law, in accordance with the Constitution, cannot approbate and reprobate at the same time by making a U-turn, by using the machinery of this Honourable Court as enshrined in Section 232 of the CFRN 1999, as amended, and the Supreme Court (Additional Jurisdiction) Act, No.3, 2002, to partly undo that which by the provision of Section 58 of the CFRN as amended, has been done.

7. That by assenting to the passage of the Electoral Bill 2022 into Law, the 1st Plaintiff has conclusively discharged his duty under the Constitution and there is no basis to attempting to undo that which he has done by virtue of his powers under 58 of the CFRN 1999, as amended.

8. The Act complained is a joint and voluntary act of the 1st Plaintiff/Respondent in the exercise of his powers to Assent to a Bill for an Act of the National Assembly, under Section 58(4) and (5) of the CFRN 1999, as amended.

9. The suit is an attempt by the 1st Plaintiff/Respondent to make a U-turn or otherwise deviate from its earlier Assent to the Bill, which gave rise to the Electoral Act, 2022.

10. Section 58 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) did not provide for a conditional assent to a Bill for an Act of the national Assembly and assent once given signifies the acceptance of and concurrence of the President to the entirety of the Bill to become an Act of the National Assembly.

11. The original jurisdiction of the Supreme Court cannot be invoked to amend the provision of any law validly made by the National Assembly in the exercise of the legislative powers granted it by the Constitution of the Federal Republic of Nigeria 1999 (as amended).

12. The suit as constituted neither disclose nor raises any question of law or fact which may

give rise to the existence or extent of a legal right in favour of the office of the 1st Plaintiff/Respondent.

13. The Plaintiffs/Respondents merely seek to enforce the fundamental rights of political appointees who are natural persons and in whose favour the Plaintiffs/Respondents herein seek to invoke the original jurisdiction of this Honourable Court contrary to the provisions of the Supreme Court (Additional Jurisdiction) Act 2002.

14. The original jurisdiction of the Supreme Court as contained in Section 232(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 1(1)(A) of the Supreme Court (Additional Jurisdiction) Act No. 3 2002 cannot be invoked to institute an action for the enforcement of fundamental human rights as entrenched in the African Charter of Human and Peoples Rights, International Covenant on Civil and Political Rights and the United Nations' Universal

Declaration of Human Right or any other law validly made by the National Assembly for the applicability and enforcement of the rights contained in these international instruments.

15. The legal right contemplated in Section 232(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 1(1)(A) of the Supreme Court (Additional Jurisdiction Act. No. 3 2002 relates to the legal right of States concerned and the offices specifically mentioned in therein; and not a blanket authority or invitation for the said office or persons to make themselves vanguard for the protection of the right of others.

16. Section 84(12) of the Electoral (Amendment) Act 2022 did not create any legal right or duty in the office of the 1st of Plaintiff/Respondent the breach of which could have warranted the invocation of the original jurisdiction of the Supreme Court as contemplated by Section 1(1)(A) of the

Supreme Court (Additional Jurisdiction) Act.
No. 3 2002.

17. The subject matter of this suit does not fall within the original jurisdiction of this Court and as such the decision of this Honourable Court cannot be binding on all Courts, persons and authorities.
18. The hearing and entertainment of this suit as presently constituted in the original jurisdiction of this Honourable Court will not only set a bad precedent but also lead to a floodgate of actions instituted via the original jurisdiction of this Honourable Court contrary to the intendment of Section 232 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Supreme Court (Additional jurisdiction) Act 2002 by person not listed designated or contemplated by the said laws.
19. The 2nd Plaintiff/Respondent is not a proper party and has no *locus standi* to institute this action before this Honourable Court.

20. The Government of the Federation is not a party to this suit as provided for under the Supreme Court (Additional Original Jurisdiction) Act, 2002 and as such the 2nd Plaintiff/Respondent has no part whatsoever to play in this suit.
21. The suit is strictly between the 1st Plaintiff/Respondent and the 1st Defendant as provided for under the Supreme Court (Additional Original Jurisdiction) Act, 2002.
22. The purported legal right which the 1st Plaintiff/Respondent seeks to protect in the instant case does not ensure to it in any way in his official capacity but to political appointees who have exercise their personal right to accept political appointment.
23. The 1st Plaintiff is not a political appointee.
24. There is no dispute to be resolved by this Court as between the 1st Plaintiff/Respondent and the 1st Defendant/Applicant.

25. This Honourable Court is not the appropriate forum for the determination of this suit.
26. Sections 84(12) of the Act is not in conflict with the provisions Sections 147, 151, 192 and 196 of the Constitution.

The Preliminary Objection was supported by an affidavit of Ten (10) Paragraphs, sworn to by one Charles Yoila, a Legal Practitioner in the employment of the 1st Defendant, and a written address, wherein the following issues were submitted for determination, as follows:

1. Whether from the facts and circumstances of this case, this Suit as presently constituted by the 1st and 2nd Plaintiffs/Respondents is not liable to be struck out, for having been brought in flagrant violation of Section 1(1)(a) of the Supreme Court (Additional Jurisdiction) Act, No.3, 2002 and Order 3 Rule 6(1) of the Supreme Court Rules, (as amended 2014), in relation to the invocation of the original jurisdiction of this Honourable Court?

2. Whether from the facts and circumstances of this case, there exists a dispute within the contemplation of Section 1(1)(a) of the Supreme Court (Additional Jurisdiction) Act, No.3, 2002 and Order 3 Rule 6(1) of the Supreme Court Rules, (as amended 2014), which discloses or raises the existence or extent of any legal right in favour of the 1st and 2nd Plaintiffs/Respondents to warrant the invocation of the original jurisdiction of this Honourable Court?

In arguing together, the two Issues raised, it is submitted for the 1st Defendant that jurisdiction being the bedrock of all judicial proceedings, any decision reached in the absence of jurisdiction, is null and void, and of no legal effect whatsoever.

Learned Counsel argued that in the instant case, by virtue of **Section 232 of the 1999 Constitution, as amended**, and **Section 1(1)(A) of the Supreme Court (Original Jurisdiction) Act, No.3 of 2002**, the original jurisdiction of this Court to hear matters specified therein is not only original, but also by extension, exclusive to the persons and parties identified in the

Sections of both laws. Reliance was placed on **A.G. of Rivers State & Ors v. Lagos Chamber of Commerce & Industry (2018) LPELR 45944 SC.**

He listed the conditions that must exist, for a successful invocation of the original jurisdiction of this Court, and stated that the first hurdle which the Plaintiffs/Respondents must cross is the identification of the existence of a dispute between the 1st Plaintiff and the 1st Defendant. He cited the case of **A.G. Anambra State v. A.G. Federation (2007) LPELR 234**, and submitted that going by the dictum in the case under reference, there is no dispute between the 1st Plaintiff and the 1st Defendant, over the subject matter of the Suit, that is, the enactment of the Electoral Act, 2022, as both parties acted in line with **Section 58 of the 1999 Constitution, as amended.**

Learned Counsel contended that the jurisdiction of this Court cannot be invoked to amend any law validly made by the National Assembly, in the exercise of the legislative powers granted it by the Constitution of the Federal Republic of Nigeria, 1999 as amended. He opined that a cursory look at the issue raised and the reliefs sought by the 1st Plaintiff/Respondent on the face of the Originating Summons, would reveal that the issues and reliefs are centered on the legal and fundamental right of Political Appointees

to vote and be voted for, and not the legal right accruing to the office of the 1st Plaintiff in any material particular. He cited the case of **A.G. Federation v. A.G Imo State & Ors (1982) LPELR 24941 SC.**

He pointed out that the proper parties in any action where the original jurisdiction of this Court is invoked, are persons listed in **Section 232(1) of the 1999 Constitution, as amended** and **Section 1(1)(A) of the Supreme Court (Original Jurisdiction) Act 2002**; the implication of which is that the Plaintiffs, as constituted, particularly, the 2nd Plaintiff, are not among the persons so listed and therefore cannot invoke this Court's original jurisdiction.

In response to the Preliminary Objection, the Plaintiffs filed an Eight (8) Paragraph Counter affidavit, deposed to by Elodimuo Ekene Vincent, a Principal State Counsel at the Federal Ministry of Justice. In the written address attached thereto, two issues were raised for determination. They are:

1. **Having regard to the fact and circumstances and the law, whether the Honourable Supreme Court has the requisite jurisdiction to entertain this Suit as presently constituted?**

2. Having regard to the circumstances of this Suit, whether the instant application is meritorious to warrant the grant of the reliefs sought by the Defendant/Applicant?

It is submitted for the Plaintiffs that contrary to the arguments of the 1st Defendant, there is indeed a dispute between the Plaintiffs and the 1st Defendant. Learned Senior Counsel insisted that this Court, by virtue of **Section 232(1) of the 1999 Constitution, as amended, and Section 1(1)(A) of the Supreme Court (Original Jurisdiction) Act 2002;** has the jurisdiction to hear and determine this Suit as presently constituted.

He argued that contrary to the contentions of the 1st Defendant there is a legal dispute for which this Court is called upon to determine. Learned Silk reproduced some portions of the affidavit in support of the amended originating summons and maintained that there is a legal dispute that involves a question of both law and facts on which the existence or extent of a legal right depends.

Relying on **A.G. Bendel State v. A.G. Federation (supra)**, Learned Silk submitted that the assent by the President of the Bill,

cannot prevent the Court from declaring the Act a nullity, where applicable, and urged this Court to invoke its original jurisdiction, to hear and determine this Suit.

The Nigerian Bar Association (NBA), also raised an objection to the competence of this Suit, arguing in the main, that the Suit is grossly incompetent, in that the Plaintiffs have no reasonable cause of action. It contended that the Suit is an abuse of judicial process and official privilege and the Plaintiffs lack the requisite locus standi, adding that the Suit is academic and speculative. In support of its stance, the NBA relied on a plethora of authorities, inter alia:

Inakoju & Ors v. Adeleke & Ors (2007) Vol. 143 LRCN 1;

Orakul Resources Ltd & Anor v. NCC & Ors (2022) LPELR 56602 SC;

Plateau State & Anor v. A.G. Federation & Anor (2006) LPELR 2921 SC.

This Court is urged to strike out this Suit, in the interest of justice.

2ND AND 3RD DEFENDANTS' MOTION ON NOTICE

By a Motion on Notice, brought pursuant to **Section 17(B) of the Supreme Court Act, 2004, Order 3 Rules 1, 14 – 17**

of the Supreme Court Rules, 1999 as amended and the inherent jurisdiction of this Court, as prescribed by **Section 6(6)(A)&(B) of the 1999 Constitution as amended**, the 2nd and 3rd Defendants sought for:

“An Order dismissing or striking out the Plaintiffs’ Suit No: SC/CV/504/2022, for incompetence and want of jurisdiction.”

The application was supported by an affidavit of 13-paragraph, sworn to by Chukwuma Eke, Esq; a Legal Practitioner and Special Assistant to the 3rd Defendant, as well as some documentary exhibits. A sole issue was distilled for determination by the 2nd and 3rd Defendant, to wit:

“Whether this Honourable Court has the requisite jurisdiction and can exercise its original jurisdiction to entertain and determine the Plaintiffs’ suit as presently constituted, in all the circumstances of this case?”

In canvassing this sole issue, learned Senior Counsel for the 2nd and 3rd Defendants restated the well settled conditions that must be satisfied, before a Court of law can have and properly exercise jurisdiction to hear and determine a case before it. He

cited the case of **Madukolu v. Nkemdilim (1962) 2 SCNLR 342**, amongst others.

Learned Senior Counsel argued that the Plaintiffs' suit cannot be accommodated within the original jurisdiction of this Court, adding that the Plaintiffs lack the requisite competence or locus standi to institute and maintain the claim against the Defendants.

In further elucidation, learned Silk posited that the Plaintiffs claim falls outside the original jurisdiction of this Court, citing the case of **Inajoku v. Adeleke (2007) 4 NWLR (Pt. 1025) 423 at 588 – 589**.

He invited this Court's attention to **Paragraphs 1 – 25 of the Plaintiff's affidavit in support of the amended originating summons**, which according to him, shows that the subject matter of this suit is all about the Plaintiffs' displeasure with the provisions of **Section 84(12) of the Electoral Act, 2022** enacted by the 1st Defendant and assented to by the 1st Plaintiff.

Learned Silk contended that the Plaintiffs are seeking to invoke the original jurisdiction of this Court to construe and interpret the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria, as amended. He noted that the matters raised by the Plaintiffs' suit, which relates to issues of validity and

constitutionality of the provisions of **Section 84(12) of the Electoral Act, 2022**, or the interpretation of the 1999 Constitution of Nigeria, as amended, are matters which border on the operation and interpretation of the Constitution, as it affects the Federal Government of Nigeria and its Agencies or Organs like the National Assembly, and therefore fall within the exclusive jurisdiction of the Federal High Court, vide **Section 251 of the 1999 Constitution, as amended**. Reliance was placed on these cases:

A.G. Lagos State v. A.G. Federation & Ors (2014) LPELR 22701 SC;

A.G. Federation v. A.G. Anambra State (2018) 6 NWLR (Pt. 1615) 314.

It is the opinion of learned Silk that the Plaintiffs have failed to demonstrate and show by their affidavit evidence, that this suit was brought on behalf of the Federal Government or that the legal rights of the Federation of Nigeria (as a corporate whole) are in issue in this case.

Furthermore, it is the view of Learned senior Counsel that the though the Plaintiffs predicated their claim on the provisions of **Section 1(1)(A) of the Supreme Court (Additional**

Jurisdiction) Act, 2002, the presence of the 2nd Defendant, has removed this case from the compass of the provisions of **Section 1(1)(A) of the Supreme Court (Additional Jurisdiction) Act**, and placed it squarely within the jurisdiction of the Federal High Court, vide **Section 251 of the CFRN 1999, as amended**. The case of **Elelu-Habeeb v. A.G Federation (2012) All FWLR (Pt. 629) 1011 at 1049**, was relied on.

Secondly, it is submitted for the 2nd and 3rd Defendants that the case put forward by the Plaintiffs, is that they want this Court to construe and interpret the provisions of **Section 84(12) of the Electoral Act, 2022**, vis-à-vis the provisions of **Sections 42(1), 65, 66, 106, 107, 131, 137, 147, 151, 177, 182, 192 and 196 of the Constitution of the Federal Republic of Nigeria, 1999, as amended**, which in the view of the 2nd and 3rd Defendants, is outside the original jurisdiction of this Court.

Learned Silk contended that the case of the Plaintiffs is not within the ambit of **Section 1(1)(A) of the Supreme Court (Original Jurisdiction) Act, 2002**, adding that the Plaintiffs have not demonstrated the existence of any cognizable legal dispute between the National Assembly and the person or Office of the President or that such a dispute involves a question of law or fact on which depends the existence or extent of a legal right

claimed by the Plaintiffs. He called in aid, the case of **BHS Int'l Ltd v. A.G. Lagos State & Ors (2016) LPELR 40084 CA**

Learned SAN maintained that a critical look at the amended originating summons will show that it failed to disclose the existence of any legal rights and obligations of the Plaintiffs in relation to the provisions under review, that had been violated or that is in danger of being violated by the 1st Defendant. That it did not disclose any cognizable legal interest of the Plaintiffs in the subject matter of the originating summons. That the 1st Plaintiff did not in any way or manner claim to be a "Political Appointee" or even an Attorney to any Political Appointee. That he (the 1st Plaintiff) did not claim to represent any disclosed political appointee. That the consequence of all that has been said is that the 1st Plaintiff comes across as a busy body, or meddlesome interloper seeking to protect the interest of any or all political appointees at large, who, in the view of the 1st Plaintiff, is being precluded from voting at any congress or convention by virtue of **Section 84(12) of the Electoral Act, 2022**. He added that the Plaintiffs are seeking declaratory and injunctive reliefs for the benefit of persons who are not parties before this Court, which he submitted, is not permissible under the law, citing in aid, the case

of **A.G. Kaduna State v. Mallam Umaru Hassan (1985) LPELR 617 SC.**

Learned Senior Counsel submitted that in so far as no civil rights and obligations of the Plaintiffs are called in issue in the amended originating summons, they lacked the competence and *locus standi* to institute and maintain the claim against the Defendants.

This Court is urged to hold that it lacks the jurisdiction to entertain the Plaintiffs' Suit, and same should be struck out and/or dismissed for want of jurisdiction. The case of **UBN Plc v. Ntuk (2003) 16 NWLR (Pt. 845) 183**, was relied on.

Arguing in response, it is submitted for the Plaintiffs that this Court has the substantive additional original jurisdiction, to entertain and determine the instant Suit as presently constituted, to the exclusion of any other Court, vide **Section 232 of the 1999 Constitution, as amended**, and **Section 1(1)(A) of the Supreme Court (Additional Jurisdiction) Act, No.3 of 2002**. The case of **A.G. Federation v. A.G. Lagos State (2017) 8 NWLR (Pt. 1556) 20**, was relied on.

Learned Senior Counsel for the Plaintiffs contended that there is a legal dispute, as well as a reasonable cause of action in the

instant suit, which basically is the constitutionality or otherwise, of **Section 84(12) of the Electoral Act, 2022**, relying on the case of **A.G. Bendel State v. A.G Federation (1981) 10 SC 1**.

He opined that the joinder of the 2nd Plaintiff to the Suit, is not fatal to the case and in any case, assuming, but without conceding that the 2nd Plaintiff is misjoinder in this suit, such a situation has been cured by the provision of Order 9 Rule 14 of the Federal High Court (Civil Procedure) Rule, 2019.

This Court is urged to dismiss this application, in the interest of justice.

The case of the Plaintiffs, simply put, is that Section 84(12) of the Electoral Act, 2022 is unconstitutional, null and void, being discriminatory against political appointees and therefore violates the provisions of Section 42(1) of the Constitution, the African r Charter on Human and Peoples' Rights and the United Nations Declarations on Human Rights.

I have thoroughly perused the arguments of all Counsel in both the Preliminary Objection and the Motion of Notice, the crux of which is whether or not, this Suit as constituted, falls within the ambit of **Section 232(1) of the CFRN 1999, as amended**, as

well as **Section 1(1)(A) of the Supreme Court (Original Jurisdiction) Act, 2002.**

Section 232(1) of the 1999 Constitution, as amended provides thus:-

"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."

Subsection 2 of Section 232 of the same Constitution reads as below:-

"In addition to the jurisdiction conferred upon it by Subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly."

Section 1(1)(A) of the Supreme Court (Additional Original jurisdiction) Act 2002 states as follows:

"In addition to the original jurisdiction conferred upon the Supreme Court of Nigeria by Section 232(1) of the 1999 Constitution, the Supreme Court shall to the exclusion of other Courts, have original jurisdiction in any dispute between:-

- (a) The National Assembly and the President.
- (b) The National Assembly and any State House of Assembly, and
- (c) The National Assembly and any State of the Federation in so far as that dispute involves any question (whether of law or fact) which the existence or extent of a legal right depends."

In **A-G., Federation v. A.G. Lagos State (2017) LPELR-42769(SC)**, this Court, commenting on instances where its original jurisdiction can be invoked, held inter alia, as follows:

".....From the wordings of the above quoted provisions, the Supreme Court has jurisdiction to the exclusion of any Court in Nigeria, to entertain, hear and determine any dispute between the Federation and State or between

States, if and in so far as, such dispute involves any question on which the existence or extent of a legal right depends. In addition, it has original jurisdiction as the National Assembly pursuant to Section 232(2) may confer upon by any Act of the National Assembly. See *AG Kano State vs AG Fed* {2007} 6 NWLR (pt. 1029)164; *AG Lagos State v AG, Federation* (2004) 18 NWLR (pt. 904) 1; *AG, Federation v AG Imo State* (1983) 4 NCLR 178; *Kaduna State v President of the Federal Republic of Nigeria* (1981) 2 NCLR 781."

See also *A-G of Fed. v. A-G of Imo State & Ors* (1982) LPELR-24941(SC) where it was held that:

"With regard to the issue as to whose legal right is intended to be involved in the dispute under the section, the Court further held that it must be the legal right of the State invoking the original jurisdiction of the Court. The dispute has to involve either a constitutional right vested in that State or affect its existing or prospective legal right or interest: See *Attorney-General of Bendel*

State v. Attorney-General of the Federation (supra) at pp. 24, 51, 80, 157 and 228. I think it is significant to mention Attorney-General of Eastern Nigeria v. Attorney-General of the Federation (1964) 1 All NLR 224 which was exhaustively considered and particularly by Idigbe, JSC., at pp. 74-77 in Attorney-General of Bendel State v. Attorney-General of the Federation (supra). Interpreting the provisions of Section 114(1) of our Republican Constitution, which is in pari materia with Section 212(1) of the current Constitution, the Court decided in that case that the State which invoked the original jurisdiction of the Court must show that its vested legal right had been involved. It follows from the foregoing that where the Federation, as in the case at hand, invokes the original jurisdiction of the Court under Section 212(1) of the Constitution it must be shown that there is a justiciable dispute between the Federation and the Defendants/States and that the dispute must involve a legal right of the Federation. The

Federation as Plaintiff must show that it has such right or interest which is affected or is likely to be affected by the action complained of."

I have thoroughly perused the depositions in the affidavit in support of the amended Originating Summons. Of particular interest to me are **Paragraphs 10, 16, 19 and 20**. They state thus:

"10 – Section 84(12) of the Electoral Act 2022, is a detraction from both Section 84(3) of the same Act and from the 1999 Constitution of the Federal Republic of Nigeria, and the 1st Plaintiff by this action is seeking to protect and preserve the Constitution from any abuse by the 1st Defendant.

16 – After several back and forth occasioning delay brought about by the inclusion of numerous provisions in the Electoral Act (Amendment Bill) 2022, the President of the Federal Republic of Nigeria assented to the Electoral Act, 2022 on the 25th February, 2022, under protest and with a caveat that Section

84(12) therein, be removed or deleted for being unconstitutional.

19 – That I am aware the President subsequently wrote to the 1st Defendant, seeking amendment of Section 84(12) of the Electoral Act (Amendment) 2022, that would bring the Bill in tune with constitutionality, by way of deleting Section 84(12) accordingly. But till date, the 1st Defendant has refuse, failed and/or neglected to so act on the request of the President. The President is concerned and wants our democracy safeguard the rule of law preserved, hence this suit.

20 – That I have read the provisions of the Electoral Act, 2022 and I know as a fact that the new provisions introduced therein, include Section 84(12), which provides thus:

“No political appointee at any level shall be voting delegate or be voted for at the Convention or Congress of any political party, for the purpose of the nomination of Candidates for any

election.” Even inspite of the policy guideline promises in **Section 84(3) of the same Act.**”

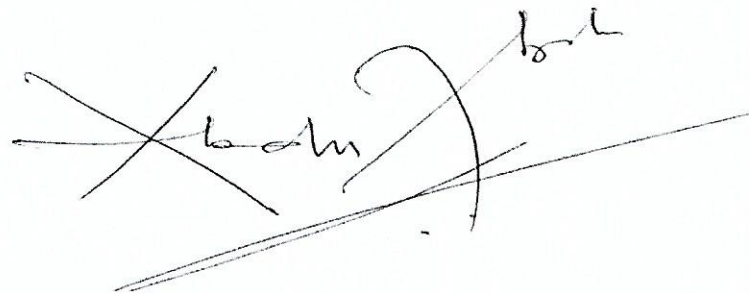
It is manifest from the depositions highlighted above, that this case does not involve any question on which the existence or extent of any legal right depends, or the civil rights and obligations of the Plaintiffs; and therefore, does not fall within the ambit of **Section 232(1) of the CFRN 1999, as amended**, as well as **Section 1(1)(A) of the Supreme Court (Original Jurisdiction) Act, 2002.**

Moreover, by **Section 58 of the 1999 Constitution**, as amended, once there is an Assent to a Bill, it signifies the acceptance and concurrence of the Presidency to the entirety of the Bill to become an Act of the National Assembly. Having given his Assent to the Bill, the 1st Plaintiff cannot under any guise, turn around to invoke the judicial process to challenge the constitutionality, validity or otherwise of an Act of the National Assembly, duly made in the exercise of its legislative powers. This goes against the spirit and letter of **Section 4 of the 1999 Constitution, as amended.**

It is in view of the above reasons and the reasons contained in the Lead Judgment written by my brother, **EMMANUEL**

AKOMAYE AGIM, JSC, that I also hold that the original jurisdiction of this Court cannot be invoked in the circumstances of this Suit. The Suit is accordingly struck out.

I abide by the consequential Orders in the Lead Judgment, including the Order as to Cost.



**ABDU ABOKI
JUSTICE, SUPREME COURT**

TheNigeriaLawyer

APPEARANCES

L.O. FAGBEMI, SAN with **TUNDE BABALOLA, ESQ;**
OMOSANYA POPOOLA, ESQ; **BOLAJI OYUEN, ESQ** and
JENNIFER ANDERSON ACHILIKE, ESQ; for the Plaintiffs.

Dr. OLUKAYODE AJULO with **LASISI HAMMED, ESQ;** and
TAUYYIB KAYODE SHITTU, ESQ; for the 1st Defendant.

SUPREME COURT OF NIG.
CERTIFIED TRUE COPY
ZUHRA .N. AUWAL (MRS)
Sign:  Date: 30/08/2022
SENIOR REGISTRAR II ABUJA

official
ABDU ABOKI, JSC

EMMANUEL C. UKALA, SAN; C.O. NJEMANZE, SAN; with **O.J. IHEKO, ESQ; V.C. NJEMANZE, ESQ;** and **M.L. YOUNG-ARNEY, ESQ;** for the 2nd and 3rd Defendants

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