

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

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

**JUSTICE, SUPREME COURT**  
**JUSTICE, SUPREME COURT**  
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**SC/CV/343/2024**

**BETWEEN**

Attorney General of the Federation = = = **PLAINTIFF**

**AND**

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

**DEFENDANTS**

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

## **JUDGMENT**

### **(DELIVERED BY EMMANUELAKOMAYE AGIM, JSC)**

On 24-5-2024, the plaintiff filed an originating summons commencing this Suit No. SC/CV/343/2024 in this court. The originating summons raised the following questions for determination -

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

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(2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 State of Nigeria, or anyone of them, acting through their/its respective state Governors and or State House of Assembly, are/is not under obligation to ensure democratic governance at the third tier of government in Nigeria, namely, at the Local Government level?

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

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States of Nigeria, or anyone of them, acting through their/its respective State Governors and or State House of Assembly, the 1<sup>st</sup> – 36<sup>th</sup> Defendants, or anyone of them can, using state powers derivable from Laws enacted by the State Houses of Assembly (anyhow so called) or Executive Orders/other actions (anyhow so called), lawfully dissolve democratically-elected Local government Councils within the said States and replace them with Caretaker Committees (anyhow so called)?

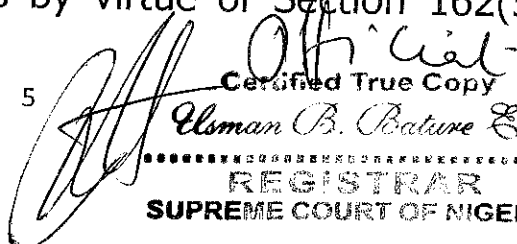
4. Whether, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and (c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the dissolution of democratically-elected Local Government Councils by the 36 States of Nigeria, or anyone of them, using state powers derivable from Laws enacted by the State Houses of Assembly (anyhow so called) or Executive Orders/other actions (anyhow so called), is lawful and constitutional?
5. Whether, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2) (a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), who, through the

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instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of democratically-elected Local Government Councils of their States has not gravely breached the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); hence has committed gross misconduct?.

6. Whether in the face of a violation of the Constitution and the unconstitutionality of a structure of administration of local government council other than a democratically elected local government council guaranteed by Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal government/Federation is obligated un Section 162(5) and (6) of the credit of the local government, when no democratically elected local government guaranteed under the constitution vide Section 7 of the 1999 Constitution, is in place?
7. Whether having regard to the effect of Section 7 of the 1999 Constitution and Section 162(5) and (6) of the 1999 Constitution, a State which is in breach of Section 1(1), (2) and 7 of the 1999 Constitution of the Federal Republic of Nigeria is entitled to receive and spend funds meant for the local government councils by virtue of Section 162(5) and

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- (6) of the 1999 Constitution while still in breach of the Constitution by not putting councils?
8. Whether, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2) (a) and (b) and 3(c), 7(1) and (3) and 14(1), (2) (a), (c) and (4) and 162(3), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, acting through any of their elected or other/its officials that dissolves democratically Local Government Councils within its domain is still entitle to the revenue allocation and operation of a joint Account as stipulated in section 162(3), (5), (6), (7) and (8) of the said Constitution until such a status quo ante bellum?
9. Whether the failure of the Defendants or anyone of them to put in place a democratically elected local government system mandatorily provided for in Section 7 of the 1999 Constitution is not a breach and subversion of Sections 1(1), (2) and 7(1) of the Constitution as to create an interregnum in local government system and render inoperable Section 162(5) of the 1999 Constitution regarding allocation of fund standing to the credit of local government in Federal Account to the State?

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10. Whether, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2) (a) and (b) and 3(c), 7(1) and (3) and 14(1), (2) (a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), any elected or other official of the 36 States of Nigeria, (or anyone of them) through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of democratically-elected Local Government Councils of their/its States is liable to be arraigned during or at the end of his tenure (as the case may be) for criminal offences bordering on breach of the Constitution/contempt of court and or breach of applicable criminal and penal laws?
11. Whether, by the combined reading of sections 1(1), (2) and (3), 2, 7(1) and 7(3), (2) (a) (c) and (4) and 162(2), (3) (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the States or anyone of them have/has unbridled and unrestricted discretion to operate the "State Joint Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government Councils within those States, rather than for the greater benefit of those Councils, which are the third tier of Government in Nigeria?

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12. Whether by virtue of Section 162 (3) and (5) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of a Local Government Council in the Federation account should be distributed to it, and if so whether it can be paid directly to it?
13. Whether by virtue of Section 162, (5) of the Constitution of the Federal Republic of Nigeria 1999, a state Government is not merely an agent of the Local Governments in the State to collect the amount standing to the credit of a Local Government in the Federation account and pay directly to the Local Government and as such agent has no power or right to spend or use any part of it for any purpose?
14. Whether by virtue of Section 162 (3), (5) and (6) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of a local Government Council in the Federal account and received by a State on its behalf, and paid into a State Joint Local Government Account is liable to be paid directly to each Local government without delay?
15. Whether a Local government Council is not entitled to a direct payment from the Federation account of the amount standing to its credit in the said Federal account, where the State

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Government has persistently refused or failed to pay to it the said amount received by the State Government on its behalf?

The reliefs claimed for in the originating summons are as follows -

1. A DECLARATION that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2) (a) and (b) and 3(c), 7(1) and (3) 14(1), (2) (a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with section 318(1), thereof, which defines "government" to include the Government of a Local Government Council, the 36 States of Nigeria, or anyone of them, acting through their/its respective State Governors and or State House of Assembly, are/is under obligation to ensure democratically governance at the third tier of government in Nigeria, namely, at the Local Government level.
2. A DECLARATION that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 States of Nigeria, acting through their/its respective States

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Governors and or State Houses of Assembly, cannot, using state power derivable from Laws enacted by the State Houses of Assembly (any how so called) or Executive Orders/other actions (any how so called) lawful dissolve democratically-elected Local Government Councils within the said States/State.

3. A DECLARATION that, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with section 318(1), thereof, which defines "government" to include the Government of a Local Government Council, the 36 States of Nigeria, acting through their respective State Governors and or State Houses of Assembly, none of the 1<sup>st</sup> – 36<sup>th</sup> Defendants can, using state powers derivable from Laws enacted by the State Houses of Assembly (any how so called) or executive Orders/other actions (any how so called), lawful dissolve any of the democratically-elected Local Government Councils within the said States/State and replace them/it with Caretaker Committees (any how so called) .

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4. A DECLARATION that , by the combined reading of sections 1(10), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), 92)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the dissolution of democratically-elected Local Government Councils by the 36 States of Nigeria, or anyone of them, using state powers derivable from laws enacted by the State Houses of Assembly (any how so called) or Executive Orders/other actions (any how so called), unlawful, unconstitutional, null and void.
5. A DECLARATION that, in the face of violation of the provision of the 1999 Constitution of the Federal Republic of Nigeria by reason of failure to put in place a democratically elected local government council guaranteed by Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal Government/Federation is not obligated under section 162(5) and (6) of the 1999 Constitution to pay/allocate to a State funds standing to the credit of the local government, when no democratically elected local government councils guaranteed under the constitution vide 7 of the 1999 Constitution are/is in place.

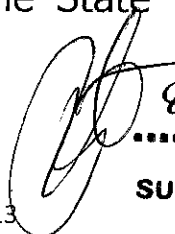
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6. A DECLARATION that, having regard to the effect of section 7 of the 1999 Constitution and Section 162(5) and (6) of the 1999 Constitution, a State which is in breach of section 1(1), (2) and 7 of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution is not entitled to receive and spend funds means for the local government councils by virtue of Section 162(5) and (6) of the 1999 Constitution while still in breach of the Constitution by not putting in place a democratically elected local governments system/councils
  
7. A DECLARATION that, by the combined reading of sections 191) and (2) and (3) 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with section 318(1), thereof, which defines "government" to include the Government of a Local Government Council, any of the elected or other officials of the 36 States of Nigeria, who, through the instrumentality of either a State law or an administrative directive/order, dissolves or causes the dissolution of any of the democratically-elected Local Government Councils of their/its States has gravely breached the provisions of the

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Constitution of the Federal Republic of Nigeria, 1999 (as amended); hence by that token has committed a gross misconduct.

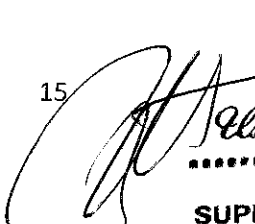
8. A DECLARATION that, by the combined reading of section 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 states of Nigeria, acting through any of their elected or other officials that dissolves democratically elected Local Government Councils within its domain is not entitled to the revenue allocation and operation of a Joint Account as stipulated in section 162(3), (5) (6) (7) and (8) of the said Constitution until such a state reverse to status quo ante bellum.
9. A DECLARATION that any money, including statutory allocations, grants, financial interventions or palliatives that accrues to any of the States for/to the benefit of its Local Governments or Local Government Councils shall, on being received by any such States or its organs or officials, be remitted immediately into the coffers of the Local Government Councils of the State without any deductions and delays or excuses.

  
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10. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with section 318(1), thereof, which defines 'government" to include other official of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of democratically-elected Local Government Councils of their States is liable to be arraigned during or at the end of his tenure (as the case may be) for criminal offences bordering on breach of the Constitution/contempt of court and or breach of applicable criminal and penal laws.
11. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3), 2, 7(1) and 7(3) 14(1), (2)(a), (c) and (4) and 162(2), (3), (4), 95), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended),,, by the combined readings of section 1(1), (2) and (3), 2, 7(1) and 7(3), 14(1), (2)(a), (c) and (4) and 162(2), (3) (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria (as amended), the States do not have unbridled and unrestricted discretion to operate the

"State Joint Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government Councils within those States, rather than for the greater benefit of those Councils, which are the third tier of Government in Nigeria.

12. A DECLARATION that, by virtue of S.162 (3) and (5) of the Constitution of the Federal Republic of Nigeria, 1999, the amount standing to the credit of Local Government Council in the Federation account should be distributed to them and be paid directly to them.
13. A DECLARATION that, by virtue of S.162 (5) of the Constitution of the Federal Republic of Nigeria, 1999, a Government is merely an agent of the Local Governments in the State to collect the amount standing to the credit of the Local Governments in the Federation Account and pay directly to the Local Governments and as such agent has no power or right to spend or use any part of it for any purpose.
14. A DECLARATION that, by virtue of S.162 (3), (5) and (6) of the Constitution of the Federal Republic of Nigeria, 1999, the amount standing to the credit of a local Government

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Council in the Federation account and received by a State on its behalf, and paid into a State Joint Local Government Account is liable to be paid directly to each Local Government without further delay.

15. A DECLARATION that that a Local Government Council is entitled to a direct payment from the Federation account of the amount standing to its credit in the said Federation account, where the State Government has persistently refused or failed to pay to it the said amount received by the State Government on its behalf.
16. AN ORDER of injunction restraining the Defendants, by themselves, their privies, agents, officials or howsoever called from receiving, spending or tampering with funds released from the Federation Account for the benefit of local government Councils when no democratically elected local government system is put in place in the State.
17. AN ORDER that the Federation through its relevant officials shall pay to Local Governments in a State directly from the Federation account the amount standing to their credit therein, where the said state has refused or failed to pay to

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each of them or anyone of them, the amounts it received or has been receiving on their/its behalf.

18. AN ORDER OF IMMEDIATE COMPLIANCE by the States, through their elected or appointed officials and public officers, with the terms of the judgment and orders made in this Suit; and successive compliance by successive State Government officials and public officers, save when the applicable provisions of the Constitution of Nigeria, 1999 as amended here interpreted are otherwise subsequently amended.
19. Any other or other orders as this Honourable Court may deem fit to make in all the circumstances of this case”.

The originating summons is supported by an affidavit, a written address and a further affidavit.

The defendants filed preliminary objections, counter affidavits and written addresses in opposition to the originating summons. The plaintiff filed a 2<sup>nd</sup> further affidavit in response to all the counter affidavits filed by the defendants and a composite written address in response to the preliminary objections of the defendants.

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Let me determine the preliminary objections before I delve into the merits of the suit if need be.

I have carefully read and considered the arguments of all the parties herein on the preliminary objections which are essentially that the plaintiff has no right to bring the action as he has not suffered any personal injury and has not disclosed sufficient interest in the subject matter of the suit, that the subject matter of the suit is speculative, academic and hypothetical, that the plaintiff's suit amounts to re-litigation and is caught by issue estoppel/Res judicata, that the plaintiff's suit, as constituted, failed to disclose the existence of any dispute between the Federation and States in line with Section 232 of the 1999 Constitution, to justify the invocation of the original jurisdiction of the Supreme Court, that the States Houses of Assembly and Local Government Councils ought to be joined as parties to this suit, that the originating summons is incompetent for not being signed by Registrar of court and that the plaintiff's suit is an attempt to amend or fill gaps in the Constitution of the Federal Republic of Nigeria.

Let me start with the issues of whether the plaintiff's case discloses a dispute between the Federation and the

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States that is within the original jurisdiction of this court and whether the plaintiff has a right to bring this action

The plaintiff's suit clearly discloses a dispute between the Federation and the states involving questions of the flagrant violations of Ss. 1(2), 162 and 7(1) of the Constitution of the Federal Republic of Nigeria 1999 (the 1999 Constitution) by the States that are endangering the continued existence of the local government as the third tier government in Nigeria and thereby dismembering the federal governance structure in Nigeria contrary to the intention and tenor of the 1999 Constitution. This dispute is within the original jurisdiction given to this court by S.232(1) of the 1999 Constitution. The exact text reads thusly –**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.**” This provision clearly confers on this court an unlimited subject matter original jurisdiction. This court held in **AG Kaduna State & Ors V AG Federation (2023) 12 NWLR(Pt 1899) 537(SC)** that **“The scope of the**

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original jurisdiction of this court is over "any dispute between the Federation and a State or between States, if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends." It did not exclude some type of such disputes. The Constitution having used such general words as "any dispute" and "any question" to vest this court an unlimited subject matter exclusive original jurisdiction, no court including this court has the power to exclude from the original jurisdiction of this court disputes between States and the Government of the Federation over the exercise by the President of a power given to it by the Central Bank Act or other legislation. As this court held in *Obayuwana vs. Governor of Bendell State & Anor (1982) 12SC (Reprint) 67* per Nnamani JSC, Where the Constitution states a word or phrase generally or without any limiting words, it is obvious that it intends that the word or phrase should have a general meaning and application, unless other provisions in the Constitution state or suggest the contrary. If there are no other provisions of the Constitution requiring or suggesting the contrary, the Court must apply the word or

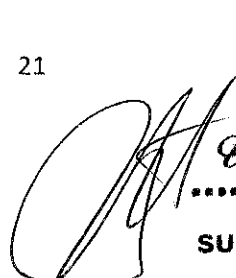
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**phrase generally, and will have no power to restrict its application to specific situations.”**

The Federation has the right to protect the Constitution and the duty to ensure that no part of the Federation is governed contrary to the Constitution or by anybody that is not constitutionally empowered to do so. It has the right to protect any tier of the federal governance structure from going extinct or being destroyed and has the right and interest in the moneys in the Federation Account and the moneys distributed from that Account to the respective tiers of government and the allied right that the tier of government to whom money is distributed from the Federation Account gets it . These are the legal rights the plaintiff is asserting in this suit. The cause for this suit is the flagrant violations of Ss. 1(2), 162 and 7(1) of the Constitution of the Federal Republic of Nigeria 1999(the 1999 Constitution) by the States that are endangering the continued existence of the local government as the third tier government in Nigeria and thereby dismembering the federal governance structure in Nigeria contrary to the intention and tenor of the 1999 Constitution.

This suit by the federation to protect the Constitution, to protect the federal structure of governance and enforce public rights and duties is validly maintained in the name of the plaintiff

  
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as Attorney General of the Federation. **See AG Kaduna State & Ors V AG Federation(2023) 12 NWLR(Pt 1899) 537(SC) and Attorney General Kano V A G Federation(2007) LPELR-618(SC).** S.150 of the 1999 Constitution provides that the Attorney General of the Federation is the Chief Law Officer of the Federation. Generally, the Federation can sue or be sued in the name of the Attorney General of the Federation. S.20 of the Supreme Court Act specifically provides that **Any proceedings before the Supreme Court arising out of a dispute referred to in Section 232(1) of the Constitution and brought by or against the Federation or the State shall-**

**a) In the case of the Federation be brought in the name of the Attorney General of the Federation;**

**b) In the case of the State be brought in the name of the Attorney General of the State.**

Let me restate that, generally, the Attorney General has the right to institute civil proceedings in a court of competent jurisdiction in the public interest to protect public rights, enforce the constitution or other law, prevent public wrong and preserve public order. See **AG Federation V AG Imo State(1982)12 SC 274 @306,** **AG Federation V ANPP (2003) 18**

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**NWLR(Pt.851) 182 @ 210, Centre for Oil Pollution Watch  
V NNPC(2019) 5 NWLR(Pt.1666)518 @575 and AG  
Anambra V AG Federation(2007)12 NWLR(Pt.1047) 1 @ 9**

In the light of the foregoing, I hold that this suit is validly maintained in the plaintiff's name, that he has the right to bring this action, that the subject matter of the suit is not speculative, academic and hypothetical, that the plaintiff's suit, as constituted, disclose the existence of a dispute between the federation and states in line with Section 232 of the 1999 Constitution, to justify the invocation of the original jurisdiction of this court.

Let me now consider the objection that the originating summons is incompetent because it is not signed by the Registrar of this court.

This objection is frivolous and vexatious because the legal status and effect of the relevant officer of court not signing an originating process has been long settled by this court in a long line of cases. It is now trite law that the signing and sealing of the originating summons being an administrative process of the registry of the court over which the plaintiff or claimant has no control, the failure of the Registrar of the court to sign or seal it would not vitiate the suit. Examples are **Famafa Oil Ltd V A-G**

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**of the Federation &Anor (2003) 9-10 SC 31 @ 44, Braithwaite V. Skye Bank PLc (2012) 5 NWLR (Pt.1346)1 at 22, Gbenga V APC(2020) 14 NWLR (Pt.1744) 248 @ 276, Anyanwoko V Okoye(2010) 5 NWLR (Pt.1188) 497 @ 512, Touton S.A. V. Campagruia D. NawiguZioni SPA (2011)4 NWLR (Pt.1236) 1 at 25 and Kidida V. Ogunmola (2006) 13 NWLR (Pr.997) 377 at 394**

Since the Rules place the responsibility to seal the summons on the Registrar, then the duty of the plaintiff is to prepare the originating summons or Writ of Summons, present it to the registry of the Court and file same by paying the prescribed filing fees. Once he has done so, the originating summons or writ of summons is validly filed, waiting for the administrative processes by the officers of the Court to have it issued by signing or sealing same. Their failure to sign or seal the Writ or originating summons cannot be visited on the plaintiffs by declaring it invalid or incompetent. It remains valid, albeit irregular. Since it is the officers of Court that have the legal duty to sign, seal and issue the originating, their failure to discharge this duty should not be visited on the plaintiff who has done all the law requires him to do by filing the process in the Court registry. The originating process should not be vitiated by such failure.

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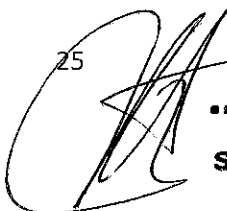


The objection that the suit is incompetent because States' Houses of Assembly and Local Government Councils are not joined as parties to the suit is not valid. This is because the suit as constituted can be fairly, effectually and conclusively tried and determined in respect of the rights and interest of the parties before it without the joinder of the States Houses of Assembly and Local Government Councils. The law is settled that the non-joinder of a person who can be a party to an action, as a party to the action, would not defeat it, if the action as constituted as to parties, their rights and interests and the issues raised or arising for determination in the suit, can be fairly, effectually and conclusively tried and determined without joining such a person as a party to the action. See **SPDCN Ltd V Oruambo(2023) 1NWLR (Pt.1866) 433 @460, AG Rivers V AG AkwaIbom(2011) 8NWLR (Pt.1248) 31(SC),Okoye V NCF Co Ltd &Ors(1991) All NLR 328, Bello V INEC(2010) and Green V Green (1987) LPELR-1335(SC).**

In the light of the foregoing, the preliminary objections of the defendants are hereby dismissed.

Let me now determine the merits of this suit.

It is obvious from the originating summons, the affidavits and the written address in support of it, the counter affidavits of

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the defendants and written addresses in opposition of the plaintiffs suit, that the Federation and the States dispute over the failure or refusal of the States to pay to the Local Government Councils allocations to Local Governments from the Federation Account after receiving the money from the Federation Account for the benefit of the Local Government Councils contrary to S.162(5) and (6) of the 1999 Constitution and the governance or administration of Local Government Areas by States through Local Government Caretaker Committees or Administrators or Interim councils, who are officials or appointees of the States contrary to S.1.(2) and S. 7(1) of the 1999 Constitution.

The case of the plaintiff is that since the states have for decades persistently refused to pay to Local Government Councils the money standing to the credit of their Local Governments in the Federation Account in violation of S.162(4), (5) and (6) of the 1999 Constitution, the Federation can validly pay the said money directly to their owners to protect the intention or objective of the Constitution from being defeated, that the governance of Local Government Areas by States using appointees or officers of States such as Local Government Caretaker Committees, Interim Councils and administrators amounts to governing or taking control of the government of a Local Government Area, a part of

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Nigeria, contrary to S.7(1) of the 199 Constitution and therefore in violation of S.1(2) of the 1999 Constitution and that the above mentioned acts of the States in violation of S.162 (4), (5) and (6), S.1(2) and S.7(1) of the 1999 Constitution have endangered the continued existence of the Local Government as a third tier of the Federal Governance structure, as most of them are now virtually extinct.

The case of the defendants taken together is essentially that the Federation cannot validly pay the money standing to the credit of the Local Governments in the Federation Account directly to Local Government Councils as to do so would be in violation of S.162(5) and (6) of the 1999 Constitution that require that it be paid directly to the States for the benefit of their Local Government Council and that each State pay same into a State Joint Local Government Account maintained by the State, that the States are entitled to retain the said allocation and use it for the benefit of Local Government Councils, that the failure of some of the States to organize the conduct of democratic elections of local government councils is not deliberate as there are subsisting orders of courts in pending suits restraining them from holding democratic elections of Local Government Councils in their States.

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I have carefully read and considered the arguments of all the parties on these issues.

Let me now proceed to determine the merits of those arguments.

Let me start with the question of whether the Federation can validly pay directly to Local Government Councils the amount standing to the credit of Local Governments in the Federation Account, since the States have for over two decades persisted in their refusal to pay the money to the Local Government Councils under the claim of the right to retain and use same for the benefit of the Local Government Councils by virtue of S.162(5) and (6) of the 1999 Constitution.

S.162(3) of the 1999 Constitution provides that – **“Any amount standing to the credit of the Federation Account shall be distributed among the Federal, State government and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.”**

It is obvious from this provision that the Constitution did not intend a joint ownership of the amount standing to the credit of the Federation Account to each of the three tiers of Government

and therefore provided that the said amount be distributed amongst them. This distribution makes each of them a separate owner of the part distributed to it. Could the same Constitution that had distributed the amount standing to the credit of the Federation Account to the Local Government Council, intended that the amount should not be paid to the Local Government Council and should be retained and used by the States for the benefit of the Local Government Councils? Is that what the Constitution intended by providing in Subsections (5) and (6) of S. 162 thusly –

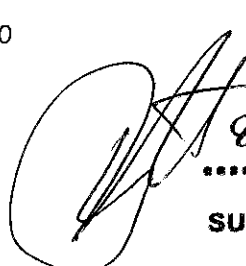
5. **"The amount standing to the to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their local government council on such terms and in such manner as may be prescribed by the National Assembly.**
6. **Each States shall maintain special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the state from the Federation Account and from the Government of the State."**

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The Constitution could not have intended by those provisions that States should retain money distributed by the Constitution to the third tier of government and use same for their benefit. This is because if the States retain and use the money and do not pay to the Local Government council concerned, it would defeat the Constitutional provision in 162(3) that money in the Federation Account be distributed to each of the three tiers of Government. The States retention and use of the money belonging to the Local Government Council truncates the distribution of the money to the Local Government Councils.

The Constitution by providing that money "shall be allocated directly to the States for the benefit of their Local Government Councils" could not have intended that States should retain, manage, expend or disburse the money for the benefit of Local Government Councils who are the owners of the money. The Constitution could not have intended to confer any discretion on how to use the money for the benefit of the Local Government Councils. The words merely prescribe the procedure for distributing the money to the Local Government Councils.

The adoption of this procedure of distribution to the Local Government Councils through the States is a departure from the procedure used before the 1999 Constitution. Then, all Local

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Government Councils came to the office of the Accountant General of the Federation to receive their monthly allocations from the Federation Account. The fact is common knowledge, is not reasonably open to question and does not require proof that the reason for adoption of this present method was to avoid the problem of the huge logistics and costs involved in having the officials of 774 Local Government Councils travel monthly to the Federal Capital Territory to collect the money standing to their credit in the Federation Account. It was considered a better practice for each State to collect the money for each Local Government Council in that State, pay it into a State Joint Local Government Account from which it is paid out to the Local Government Councils owning them. This in my view is what the Constitution intended. The States collect the money as agents of the Federation to convey and deliver same to the Local Government Councils being the owners of the allocations from the Federation Account. From the adoption of this method in 1999 the local government councils stopped receiving their allocations from the Federation Account. The states now rather hold on to the allocations and refuse to deliver same to their owners under the dubious claim of right to retain and disburse same for the benefit of Local Government Councils.

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It is clear from Section 162 (6) that the State pays the money into States Joint Local Government Account as allocations to the Local Government Councils. All monies due to each Local Government in a State are required by Section 162 (6) to also be paid into the State Joint Local Government Account. In other words, the money standing to its Credit in the Federation Account that is received on its behalf by the State and the money due to it from the State internally generated revenue are to be paid into the State Joint Local Government Account. Section 162 (8) of the Constitution require that the amount standing to the Credit of the local government councils of a State shall be distributed amongst them. Section 162 (7) provides that each State shall pay to the local government in its area of Jurisdiction such proportion of its revenue on such terms and in such manner as may be prescribed by the National Assembly.


The States retention and use of Local Government Council money received on their behalf for their benefit does not fit into the tenor and scheme of the provisions of S.162 of the 1999 Constitution that require in Subsections (6), (7) and (8) that all money belonging to and due to Local Government Councils from the Federation Account be distributed to the Local Government Councils in the State. No law of the House of Assembly of a State

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can validly interfere or deal in any manner with money distributed to the Local Government Council from the Federation Account under S.162(3) of the 1999 Constitution. No such law can prescribe the terms and manner of such distribution or payment of such distributed money by a State to a Local Government Council. This is because the distribution is already made by S.162(3) of the 1999 Constitution to the Local Government Council.

In addition, S.7 (1) of the 1999 Constitution expressly provides that local government shall be by democratically elected Local Government Councils. Therefore it is the Local Government Council that should control and manage funds including allocations from the Federation Account belonging to a local government for the well being and development of its local government area. This position is consistent with the provisions of S.162(3),(5),(6) and (8) of the 1999 Constitution for the distribution and payment of local government allocation from Federation Account to local government councils. The State Government not being a democratically elected local government council cannot exercise the power of such Council by retaining, controlling and managing local government allocations from the Federation Account.

  
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In the light of the foregoing, I hold that the States' retention and use of money standing to the credit of local governments from Federation Account paid to it for the benefit of Local Government Councils is unconstitutional and illegal.

Let me now determine if the Federation can pay the amount distributed to a Local Government Council as standing to its credit in the Federation Account directly to the local government council since the States that have been receiving the money for the benefit of the Local Government Councils have continued to refuse to pay the moneys to their owners, the Local Government Councils.

S.162 (5) and (6) of the 1999 Constitution merely provide for a method or procedure of getting the amount distributed to the Local Government Councils under s.162(3). Subsection(5) provides that it should be given to the States to take to them and subsection (6) provides that for this purpose the States shall maintain a special account called State Joint Local Government Account into which the State shall pay the allocation to Local Government Councils from the Federation Accounts and revenue from the Government of the State.

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S.162(5) and (6) merely appointed the States agent of the Federation to collect local government allocations from the Federation account and pay to them and did not give the State any right or interest in the said allocations to the Local Government Councils from the Federation Account. The duty of the State is to simply convey to the Local Government Council their allocations from the Federation Account. As it is the States after collecting the Local Government Councils allocation from the Federation Account, have refused to pay the allocation to their owners, the Local Government Councils under a claim of right to keep and use the money purportedly for the benefit of the Local Government Councils. The Constitution did not give the States any right or interest in the allocations to a Local Government Council from Federation Account.

This claim of right to keep and use the Local Government allocations from the Federation Account for the benefit of Local Government Councils and the refusal to deliver same to the Local Government Councils has gone on for over two decades now. This has deprived the Local Government Councils the right to be paid their allocations from the Federation Account and defeated the intention of the Constitution that their allocations from the Federation Account be paid to them. As it is the method

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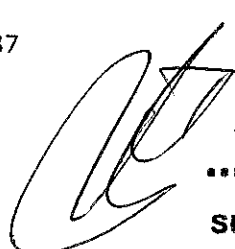
or procedure put in place by the Constitution to enable the States collect and pay to the Local Government Councils their allocations from the Federation Account is completely defeated and made unworkable and useless by the refusal of the States to pay to the Local Government Councils their allocations from the Federation Account collected for them by the States. The States are exploiting the role given them by the Constitution to create an unconstitutional Status quo, that has endangered the continual existence of Local Government as a third tier of government in the federal governance structure. There is no doubt that something has to be done concerning this unconstitutional and illegal status quo. But what should be done?

The Plaintiff's case is that in the circumstance, the Federation should pay directly to Local Government Councils their allocation from the Federation Account so as to save the local government from going extinct as a tier of governance. The contrary argument from the defendants is that such direct payment would violate the very Subsections (5) and (6) of Section 162 of the 1999 Constitution the defendants have continued to breach. The obvious implication of the position of the defendants is that the unconstitutional status quo should continue as they are unwilling to handover local government

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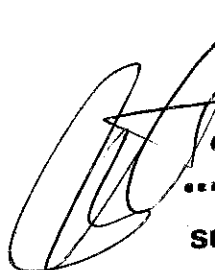
allocations from the Federation Account to the local government councils that own them.

The courts across jurisdictions have, through the cases laid down the conceptual tools that should be used in Constitutional and fundamental rights adjudications and in the process evolved the principled criteria upon which the interpretation of the Constitution must proceed. Just as the criteria for the interpretation of statutes differ between statutes according to the subject matter of each statute, the criteria for the interpretation of statutes and other documents must be different from those for the interpretation of the Constitution because of its sui generis nature as the fundamental and supreme law of the land, an organic document and a predominantly political document. Therefore it must be interpreted in line with principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and documents. One of the principles suitable to its sui generis nature is that it must be given a benevolent, broad, liberal and purposive interpretation and a narrow, strict, technical and legalistic interpretation must be avoided to promote its underlying policy and purpose. In interpreting the part of the Constitution providing for governance in a constitutionally established democratic culture, the court

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must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of an open democratic society. See **ABSIEC V Nwali and FRN V Nganjiwa (2022) 17 NWLR (Pt.1860) 407 at 458**. This court in **Marwa V Nyako (2012) 6 NWLR (pt.1296) 199 at 337 SC**, restated that **when interpreting the provisions of our Constitution not only should the court look at this Constitution as a whole, the provisions should be construed in such a way to justify (the) hope and aspirations of those who made strenuous efforts to provide us with a constitution to ensure good governance, but also to protect the rights of Nigerians who are the beneficiaries of the provisions of the Constitution, particularly to ensure... durable democratic institutions. The right of Nigerians to vote and change their government at the expiration of every four years and retain those who have met their expectation"**

In **Nwosu V APP (2020) 16 NWLR (Pt.1749) 28 at 80 SC**, this court again restated that **"the principle that the Constitution, indeed every statute, should be given broad and liberal construction to promote its purpose and avoid the narrow and conservative interpretation that would defeat its purpose. Rather, the interpretation the courts should adopt is the one that promotes good governance and the people's welfare."**

  
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Therefore, the Constitution must be applied in such a manner as not to defeat its intention or purpose. Where the application of the Constitution in a particular manner would defeat or work against the intention or purpose of the Constitution, the court is bound not to apply it in such a manner and rather adopt an application that would result in the achievement of that intention or purpose. See also **Kalu V State (1998) 13 NWLR (pt. 583) 531 at 586**, and **FRN V Nganjiwa (2022) 17 NWLR (Pt.1860) 407 at 458**.

As this court restated per Nweze, JSC in **Saraki v. FRN (2016) 3 NWLR (Pt. 1500) 531, 631, - 631**, "... one of the guiding posts in the interpretation of the provisions of the Nigeria Constitution is that the principles upon which it (the Constitution) was established, rather than direct operation or literal meaning of the words used, measure the purpose and scope of its provisions, **Global Excellence Communication Ltd v. Duke (2007) 16 NWLR (Pt. 1059) 22; A-G., Bendel v. A.-G. Federal (1982) 3 NCLR 1**.

Above all, the rationale of all binding authorities is that a narrow interpretation that would do violence to its provisions and fail to achieve the goal set by the Constitution must be avoided. Thus, where alternative constructions are the equally open, the construction that is consistent with the smooth working of the system, which the Constitution, read as a whole, has set out to

regulate, is to preferred, *Dapianlong v. Dariye* (2007) 8 NWLR (Pt. 1036) 239.

The principle that underlies this constitution technique is that the Legislature would legislate only for the purpose of bringing about an effective result, *Tinubu v. I.M.B Securities Plc* (2001) 16 NWLR (Pt. 740) 670; *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517,579; *Aqua Ltd. V. Ondo State Sports Council* (1988) 4 NWLR (Pt. 91) 622; *Ifezue v. Mbadugha and Anor* (1984) 15 NSCC 314, (1984) 1 SCNLR427; *Nafiu Rabiu v. The State* (1980) 8 – 9 SC 130.

This approach is consistent with the 'living tree' doctrine of constitutional interpretation enunciated in *Edward v. Canada* (1932) AC 124 which postulates that the Constitution 'must be capable of growth to meet the future.'

I think that the approach of a direct payment to the Local Government Councils would achieve the intention and purpose of the constitution and accord with the smooth running of the system of paying Local Government Councils their allocations from the Federation Account.


In our present case, the person or body saddled with the constitutional responsibility to implement a method or procedure for the enjoyment of a right created by the Constitution is using



that role to destroy that right. In a situation such as this, the Constitution should not be applied in a manner as to support the destruction of the said right.

The demands of justice require a progressive application of interpretative criteria in the interpretation and application of the Constitution or other statutes. So that where the use of a literal and narrow criterion in the application of the provisions would result in an absurdity, injustice, impracticality or work against the objective of the Constitution, the court should employ a purposive or teleological approach or criterion that would meet the intention and objective of the Constitution. The purposive or teleological approach requires the court not to remain fixated on the literal and narrow meaning of the words used in the Constitution or statute in the situations mentioned above in disregard of the intention or purpose of the provisions, but go on to give the words a meaning that accords with the purpose and intention behind the words.

There is no doubt that a literal and narrow construction of the word "shall" in Subsection (5) of S.162 as imposing a mandatory duty on the Federation to pay Local Government Councils allocation from the Federation Account, only through the States, would mean that the Federation must pay it to the States only. As

  
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the facts of this case has shown, such a literal application would work against the intention and purpose of the Constitution and create an unconstitutional status quo, unworkable and oppressive situations. To apply that word "shall" as making it mandatory for the Federation to pay Local Government allocations from the Federation Account through the States would make a constitutional provision prescribing the procedure to facilitate the enjoyment of a right created by the same constitution to override and even extinguish the very right created by the Constitution, whose enjoyment it is meant to facilitate. For the above reasons, I think that a purposive and teleological application of that word would best meet the intention of the Constitution, accord with the smooth running of the system for payment of allocation from Federation Account to Local Government Councils. This is an application that would not exclude any other mode of paying allocation from the Federation Account to the Local Government Councils and giving discretion to the Federation to pay the allocations directly to the Local Government Councils or through States. The law is long settled that it is not always that the word 'shall' in a statute is ordinarily literally read as mandatory and that in situations where such literal reading would defeat the intention of the statute and reading it as permissive or

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discretionary would meet the intention of the statute it would be read as permissive. See **Amokeodo V IGP (1999) 6 NWLR(Pt.607)467 @ 481, Evong V Messrs Obono Obono & Ass.(2012) 6 NWLR(Pt. 1296) and Okorochoa V UBA(2011) 1NWLR (Pt.1228) 348**

In this case it is glaring that giving the word "Shall" a literal meaning would defeat the objective of the Constitution, result in unconstitutionality or illegalities or cause injustice or unworkable situations. It should be purposively read as permissive or discretionary. Therefore, I understand that word as permissive and imposing a discretionary and not mandatory duty..

In the light of the foregoing, I hold that the Federation can pay Local Government allocations from the Federation Account to Local Government Councils directly or pay to them through States. In this case, since paying them through states has not worked, the justice of the case demands that the Local Government Council allocations from the Federation Account should henceforth be paid directly to the Local Government Councils.

Let me now consider the issue of government of Local Government Areas.

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The federal structure of Nigeria geopolitically consists of the territory of Nigeria as a whole, states and Local government areas. The 1999 Constitution provides a government for each geopolitical area. The federal governance structure in the 1999 Constitution therefore consists of three tiers, namely, federal government, state government and local government. The Constitution requires the government of each tier to be democratically elected.

For local government areas, specific provision for their governance is made in S.7(1) of the 1999 Constitution which provides that Local government shall be by democratically elected Local Government Councils. The Constitution having prescribed that its government shall be by democratically elected Local Government Councils, it cannot be governed by any other body or means. Therefore it cannot be governed or administered by the Federal Government, State Government, Governor of a State, Local Government Caretaker Committee, Interim Local Government Council, Administrator, Head of Local Government or by whatever name called or by any other State agency or other body. The government of a local government area other than by a democratically elected council is not in accordance with the 1999 Constitution.

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S.1(2) of the 1999 Constitution provides that no person or group of persons shall take control of the government of any part of Nigeria contrary to the provisions of the Constitution. The exact text of this provision reads thusly –**The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.**

The law is settled by a long line of decisions of this court that by virtue of Ss. 1(2) and 7(1) of the 1999 Constitution, local government must be by democratically elected local government councils and no other body and that the government or administration of a local government area by a State Government, Governor of a State, Local Government Caretaker Committee, Interim Local Government Council, Administrator, Head of Local Government or by whatever name called or by any other State agency or other body is not in accordance with the 1999 Constitution, is therefore unconstitutional, illegal and of no effect. See for example **Ajuwon V Gov. of Oyo State(2021) LPELR-55339(SC), Gov. of Ekiti State V Olubunmo(2017) 13 NWLR(Pt.1551) 7, Eze V Gov. of Abia State &Ors**

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**(2014) 14 NWLR (Pt.1426) 192, Friday V Governor of Ondo State (2022) 16 NWLR (pt.1857) 585 at 648 SC.**

After prescribing that local government shall be by democratically elected local government councils, S. 7(1) of the 1999 Constitution imposed a constitutional duty on the Government of every State to ensure their existence under a law. The word existence in S.7(1) includes their election and tenure. S.7(1) also requires that the said law provides for the establishment, structure, composition, finance and functions of such councils. A law made by the Government of a State to ensure the existence of a local government council in accordance with S.7(1) of the 1999 Constitution must not contain any provision that undermines or destroys the democratic nature of the Local Government Councils or that renders them departments or mere appendages of a State Government. Such law must provide for their establishment, structure, composition, finance and function as government of the local Government area independent of the State Government. This court has in several decisions declared as unconstitutional and illegal any interference by the State Government or the Governor of a State with the independent functioning of the local government councils including the tenure of office of democratically elected local

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government councils. This court in *Ajuwon V Gov of Oyo State* (supra) held that "a democratically elected local Government Council does not exist at the pleasure, whims and caprice of either the governor or the House of Assembly. The misconception by the state authorities that the Constitution does not intend to grant and guarantee autonomy to the local government is only a brain wave nurtured by sheer aggrandizement and megalomaniac instinct to conquer and make the local government mere parastatals of the state. That is the very mischief Section 7(1) of the Constitution has set out to address, and it must be so read and construed purposefully. The Constitution and its provisions are to be read and construed broadly and liberally to promote their purpose." In *APC & ORS V Enugu State Independent Electoral Commission & Ors(2021) LPELR-55337(SC)* this court also held that It has been settled beyond any equivocation that that the continued existence of democratically elected Local Government Councils is sacrosanct, non-negotiable and cannot be tempered with by any authority whatsoever. It follows therefore, that any law made by the Enugu State House of Assembly,

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which attempts to impose non-democratically elected persons on the citizens of the state is the antithesis of the existence democratically elected Local Government Councils constitutionally guaranteed. See also Gov. of Ekiti State V Olubunmo(supra), Eze V Gov of Abia(supra).

In **Ajuwon V Gov. of Oyo State (supra)** this court had also stated that **"It is unthinkable that a democratically elected Governor would embark on these unwholesome undemocratic tendencies. These tendencies no doubt endanger democracy and the rule of law. It is almost becoming a universal phenomena that the democratically elected Governors have constituted themselves a specie most dangerous to democracy in this country. They disdainfully disregard and disrupt democratically elected Local Government Councils and appoint their lackeys as caretaker committees to run affairs of the Local Governments. It should be reiterated as Abdullahi, PCA and Ndukwe-Anyanwu, JCA did say, respectively in Abubakar V A.G, Federation (2007) 3 NWLR (pt.1022) 601 (CA) at 619 and A.G Benue State v Umar (CA) 9supra) at 363, that an elected person is not an employee of anybody except the electorate that voted him in. It is only**

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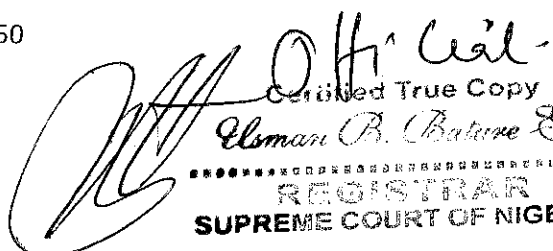
**the electorate that can fire him. Democratic elections should always be sacrosanct in this country, like in any other country, for democracy to thrive. Local Government Chairman and councilors being persons duly elected by the people cannot just be removed and their councils dissolved whimsically and arbitrarily by any other elected persons in clear abuse of their office and powers. It is not right in law and under the Constitution to do that."**

The fact is common knowledge and need no proof that State Governments want to hold onto and manage allocations to local government councils from Federation Account, therefore do not want local government by democratically elected Local Government Councils and do not want to leave local government allocations from Federation for the Local Government Councils to control and manage. Their unconstitutional take over, control and management of Local Government Allocation from the Federation Account is the impetus for their preference for Local Government Caretaker Committee by whatever name called over democratically elected Local Government Councils and their refusal to build the capacity of the State Independent Electoral Commission to be independent enough to hold truly democratic elections. They create the absence of democratically elected

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councils by not enabling the State Independent Electoral Commission to conduct democratic local government council elections and use that as an excuse to appoint care taker Committee or administrators or dissolve a democratically elected Council and appoint Local Government Caretaker Committees or administrators. Such appointment cannot be justified in any circumstance. It is unconstitutional. A State Government or the Governor of a State has no power to constitute, appoint or determine a local government that S.7(1) of the 1999 Constitution has prescribed can only be by Local government councils democratically elected by persons in a local government area. As this court restated in **Friday V Governor of Ondo State (supra)** " **the Local Government Council is the third tier of government in our federal structure government. No tier of government is a subset of the other. Their relationship is as defined by the Constitution and other laws. Each must respect this relationship and deal with the other only in accordance the Constitution and other laws.**"

In **Knight FrankRutley (Nig.) V A-G, Kano State (1998) 7 NWLR (Pt 556) 1 at 19**, this court per Uwais CJN held that "The powers exercisable by the Federal, State and Local Governments have been clearly identified under the 1979

  
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**Constitution. With the exception of the items under the Concurrent Legislative List each of the three tiers of Government exercises exclusive power over the subject under its control”**

**In A G of Abia State V AG of Federation(2006) LPELR-613(SC) this Court again stated that “ where the rule of law reigns, political expediency ought to be sacrificed on the altar of the rule of law so as to guarantee the continued existence of institutions fashioned to promote social values of liberty, orderly conduct and development, particularly in a republic founded on the principles of federalism where power is not only apportioned between the federal and state governments, but also the local Governments with checks and balances. Within the Federal and State Governments, power is further apportioned among three arms of government termed the Legislature, Executive and the Judiciary. See Sections 4,5 and 6 of the 1999 Constitution.”**

In the light of the foregoing, I hold that the plaintiff’s claim succeeds as it has merit. Accordingly the following reliefs are hereby granted.

1.A DECLARATION thatthe 36 States of Nigeria, or anyone of them, acting through their/its respective State Governors

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and or State House of Assembly, are/is under obligation to ensure democratic governance at the third tier of government in Nigeria, namely, at the Local Government level

2. A DECLARATION that the 36 States of Nigeria, acting through their/its respective States Governors and or State Houses of Assembly, cannot, using state power derivable from Laws enacted by the State Houses of Assembly (any how so called) or Executive Orders/other actions (any how so called) lawfully dissolve democratically-elected Local Government Councils within the said States/State.
3. A DECLARATION that the 36 States of Nigeria, acting through their respective State Governors and or State Houses of Assembly, using state powers derivable from Laws enacted by the State Houses of Assembly (anyhow so called) or executive Orders/other actions (anyhow so called), have no power to dissolve any of the democratically-elected Local Government Councils within the said States/State and replace them/it with Caretaker Committees (any how so called) .

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4. A DECLARATION that the dissolution of democratically-elected Local Government Councils by the 36 States of Nigeria, or anyone of them, using state powers derivable from laws enacted by the State Houses of Assembly (any how so called) or Executive Orders/other actions (any how so called), is unlawful, unconstitutional, null and void.
5. A declaration that a State Government or the Governor of a State has no power to constitute, appoint or determine a local government that S.7(1) of the 1999 Constitution has prescribed can only be by Local government councils democratically elected by persons in a local government area.
6. A DECLARATION that the amount distributed to and standing to the credit of Local Government Councils in the Federation Account can be paid by the Federation directly to democratically elected Local Government Councils.
7. A DECLARATION that the amount distributed to and standing to the credit of a Local Government Councils in the Federation Account must be paid by the Federation to only democratically elected Local Government Councils and no other body or institution.

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8. A DECLARATION that any of the elected or other officials of the 36 States of Nigeria, who, through the instrumentality of either a State law or an administrative directive/order, dissolves or causes the dissolution of any of the democratically-elected Local Government Councils of their/its States has gravely breached the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); hence by that token has committed a gross misconduct.
9. A DECLARATION that, by virtue of S.162 (3) and (5) of the Constitution of the Federal Republic of Nigeria, 1999, the amount standing to the credit of Local Government Councils in the Federation account shall be distributed to them and be paid directly to them.
10. A DECLARATION that a State either by itself or its Governor or other agencies has no power to keep, control, manage, or disburse in any manner allocations from the Federation Account to Local Government Councils.
9. A DECLARATION that the current practice of States keeping, controlling, managing and disbursing Local Government allocations from Federation Account is unconstitutional and illegal.

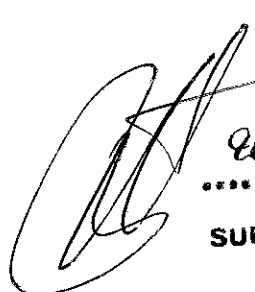
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11. A DECLARATION that a Local Government Council is entitled to a direct payment from the Federation account of the amount standing to its credit in the said Federation account.
12. AN ORDER of injunction restraining the Defendants, by themselves, their privies, agents, officials or howsoever called from further collecting, receiving, spending or tampering with local government council funds from the Federation Account for the benefit of local government Councils.
13. AN ORDER that the Federation or Federal Government of Nigeria through its relevant officials forthwith commence the direct payment to each Local Government Council of the amount standing to the credit of each of them in the Federation account.
14. AN ORDER OF IMMEDIATE COMPLIANCE by the States, through their elected or appointed officials and public officers, with the terms of this judgment and orders made in this Suit; and successive compliance by successive State Government officials and public officers.

No order as to costs.

  
**EMMANUEL AKOMAYE AGIM**  
**JUSTICE SUPREME COURT,**

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**APPEARANCES:**

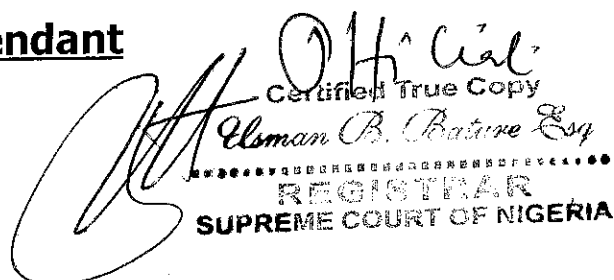
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Ikechukwu Uwanna (Attorney General and Commissioner for Justice, Abia State), Nkeiru N. Akinola (Director Legal Services. DLS), MOJ, Abia State), Ihuoma Omokwe (Director), Nkolika Ubani (Senior Special Assistant to the Governor), Chinedu Amanamba (Assistant Chief State Counsel) **for 1<sup>st</sup> defendant**

A.K. Jingi, (Attorney General and Commissioner for Justice, Adamawa State), J.A Waya, (Ag. Director Civil Litigation) with Z.U. Usman (Senior State Counsel 1) **for 2<sup>nd</sup> Defendant**

Essien Udom SAN, Emmanuel Enoidem, SAN with Samuel Akpabio ESq, Oluwole Akindutire, Esq and Bassey J. Ekanem Esq **for 3<sup>rd</sup> Defendant.**

Dr. Onyechi Ikpeazu SAN, with P. I. N. Ikweto SAN, Julius Mba Esq, Vincent Agbata Esq, Ebere Ngwu Esq, Timi Edward Esq and Jenifer Arueji Esq **for the 4<sup>th</sup> Defendant**

  
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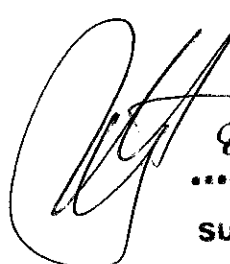
Hassan Usman El-Yakubu SAN, (Attorney General and Commissioner for Justice, Bauchi State), M.U. Usman (Deputy Director Public Prosecution DDPP) and S.M Toro (Chief State Counsel CSC) **for the 5<sup>th</sup> Defendant**

Emmanuel Yinfaowei (Solicitor- General of Bayelsa State) Ebiboye Erebi, I.(Principal State Counsel), and Michelle Zuokumor, (Principal State Counsel), and Lugard Tare-Otu **for the 6<sup>th</sup> Defendant**

F.B. Mnyim (Attorney General Benue State), E. Enyikwola (Director Citizens Rights, Z.O Onum, (Assistant Chief State Counsel), J.T Gwa , (Assistant Chief State Counsel) and E.N Agoh (Senior Chief State Counsel) **for the 7<sup>th</sup> Defendant.**

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Ededem C. Ani, Esq. (Attorney General, Cross River State), Anthony Effiom, Esq (Director, Civil Litigation), Gregory I. Okem Esq, (Director Public Prosecution), John OgbanEsq (Director Appeals), and Udenyi, Omaji Esq (Senior State Counsel 1) **for 9<sup>th</sup> defendant**

  
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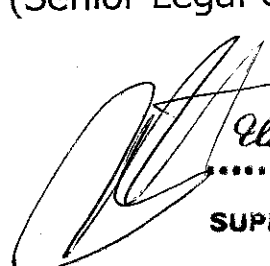
Omamuzo Erebe, Esq (Solicitor-General, Delta State Ministry of Justice), S.O Monye, ESq (Director Civil Litigation), I.G. Eze-Owenz, Esq (Director, Advisory Services), U.P. Okolotu, Esq (Principal State Counsel) and O.B. Okonye, Esq (Principal State Counsel) **FOR 10<sup>TH</sup> defendant**

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Madu, (DD Appeal and C.V. Asogwa-Ugwueze (Legal Officer) **for 14<sup>th</sup> Defendant.**

Umar Musa Pada (Senior State Council, MOJ Gombe State)  
Muzzammil Yahaya Esq **for 15<sup>th</sup> Defendant**

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Bello A. Famini,(Attorney-General, Jigawa State) with Aliyu  
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Sule Shu'aibu SAN (Attorney General, Kaduna State) with, Jumai  
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Lawal Pedro, SAN. (FC1Arb, (Attorney General, Lagos State), Ade Ipaye, OFR, FCARB), Hameed Oyenuga Esq. (DCL, MOJ, Lagos State), E.R. Agu (DD) and A.P Ameh ESq **for the 24<sup>th</sup> Defendant.**

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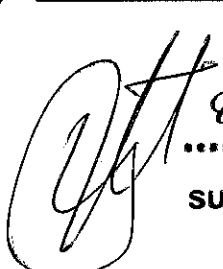
Kehinde Ogunwumiju, (OFR. SAN, FC1Arb.), O.M Atoyebi, SAN, Tunde Afe-Babalola, SAN, FC1Arb, Eko Ejembi Eko, SAN with Opemipo Owotume Esq **for 27<sup>th</sup> Defendant**

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P.A Daffi (Attorney General, Plateau State) with J.M Mantu (ADCR & LR MOJ), D.N. Yilji Esq, (Assistant Director Public Prosecution) Alfred Danbaba, (Private Lawyer – Pro Bono) and Chuwang D. Gyang (Private Lawyer – Pro Bono) **for the 31<sup>st</sup> Defendant.**

  
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G.A. Idiagbonya Esq with P.N. David (PSC, MOJ Taraba State) and J.M. Vokna **for the 34<sup>th</sup> Defendant**

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AbdulazizSani, San (attorney General, Zamfara State), Abdul Ahmad Esq (DPP), Mustapha Aikawa Esq, and Amina Muhammad Esq (CSC) **for 36<sup>th</sup> Defendant**

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