IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON THURSDAY 11TH THE DAY OF JULY, 2024

BEFORE THEIR LORDSHIPS

MUHAMMED LAWAL GARBA	JUSTICE, SUPREME COURT
EMMANUEL AKOMAYE AGIM	JUSTICE, SUPREME COURT
CHIOMA EGONDU NWOSU-IHEME	JUSTICE, SUPREME COURT
HARUNA SIMON TSMMANI	JUSTICE, SUPREME COURT
MOORE ASEIMO ABRAHAM ADUMEIN	JUSTICE, SUPREME COURT
HABEEB ADEWALE OLUMUYIWA ABIRU	JUSTICE, SUPREME COURT
JAMILU YAMMAMA TUKUR	JUSTICE, SUPREME COURT

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

— DEFENDANTS

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12. ATTORNEY-GENERAL OF EDO STATE
13. ATTORNEY-GENERAL OF EKITI STATE
14. ATTORNEY-GENERAL OF ENUGU SATATE
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

DEFENDANTS

JUDGMENT

(Delivered by **MOHAMMED LAWAL GARBA**, JSC)

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The Plaintiff, by way of originating summons dated and filed on the 20th May, 2024, brought pursuant to Order 3, Rule 6 of the Supreme Court Rules and the Inherent Powers of the court preserved by Section 6 (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) initiated/commenced this suit against the Defendants before this court and sought for the determination of the following questions:-

"1) ***Whether by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the 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 Houses 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) 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, or anyone of them, acting through their/its respective State Governors and or State Houses of Assembly, can, using state power derivable from Laws enacted by the State Houses of Assembly (anyhow so called) or Executive Orders/other actions (anyhow so called) or Executive democratically-elected Local Government Councils within the said States/State?***

3) ***Whether, by the combined reading of section 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 State of Nigeria, or anyone of them, acting through their/its respective State Governors and or State Houses***

of Assembly, the 1st – 36th Defendants, or anyone of them can, using state powers derivable from Laws enacted by the State Houses of Assembly (anyhow so called), lawfully dissolve democratically-elected Local Government Councils within the said State and replace them with Caretaker Committees (anyhow so called)?

4) *Whether, by the combined reading of section 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the dissolution of democratically-elected Local Government Councils by the 36 States of Nigeria, or anyone of them, using state powers derivable from Las 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 section 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 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 of 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 unconstitutionally of a structure of administration of local government council other than a democratically elected local government council guaranteed by Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal Government/Federation is obligated under Section 162(5) and (6) of the 1999 Constitution to pay/allocate to a State funds standing to the credit of the local government, when no democratically elected local government guaranteed under the constitution vide Section 7 of the 1999 Constitution, is in place?*

7) *Whether having regard to the effect of Section 7 of the 1999 Constitution and Section 162(5) and (6) of the 1999 Constitution, a*

state which is in breach of Section 1(1), (2) and 7 of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution of the Federal Republic of Nigeria is entitled to receive and spend funds meant for the local government councils by virtue of Section 162(5) and (6) of the 1999 Constitution while still in breach of the Constitution by not putting in place a democratically elected local government system/councils?

8) *Whether, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 States of Nigeria, or anyone of them, acting through any of their elected or other/its officials within its domain is still entitled to the revenue allocation and operation of a Joint Account as stipulated in section 162(3), (5), (6), (7) and (8) of the said Constitution until such a State reverses to status quo ante bellum?*

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 Section 1(1), (2), and 7(1) of the Constitution as to create an interregnum in local government system and render inoperable Section 162(5) of the 1999 Constitution regarding allocation of fund standing to the credit of local government in Federation Account to the State?*

10) *Whether, by the combined reading of section 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 not liable to be arraigned during or at the end of his tenure (as the case may be) for criminal offences bordering on breach of the Constitution/contempt of court and or breach of applicable criminal and penal laws?*

11) *Whether, by the combined reading of section 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(2), (3), (4), (5), (6), (7) and (8)of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the State 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 ties of Government in Nigeria?*

12) *Whether 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 a Local Government Council in the Federation account should be distributed to it, and if so whether it can be paid directly to it?*

13) *Whether by virtue of S.162 (5) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of a Local Government Council 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 purposes?*

14) *Whether by virtue of S/162 (3), (5) and (6) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of a local government council in the Federation account and received by a State on its behalf, and paid directly to each Local Government without delay?*

15) *whether a Local Government Council is not entitled to a direct payment from the Federation account of the amount standing to its credit in the said Federation account, where the State Government has persistently refused of failed to pay to it the said amount received by the State Government on its behalf?"*

Expecting fovourable answers to these questions, the plaintiff claims the following reliefs against the Defendants; jointly and severally:-

"1) A DECLARATION that, by the combined reading of section 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, or anyone of them, acting through their/its respective State Governors and or State Houses of Assembly, are/is under obligation to ensure democratic governance at the third tier of government in Nigeria, namely, at the Local Government level.

2) A DECLARATION that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 States of Nigeria, acting through their/its respective State Governors and or State Houses of Assembly, cannot, using state power derivable from Laws enacted by the State Houses of Assembly (anyhow so called) or Executive Orders/other actions (anyhow so called) lawfully dissolve democratically-elected Local Government Councils within the said State/state.

3) A DECLARATION that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) 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 1st – 36th Defendants 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 any of the democratically-elected Local Government Councils within the said States/state and replace them/it with Caretaker Committee (anyhow so called).

4) A DECLARATION that, by the combined reading of section 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the dissolution of democratically-elected Local Government Councils by the 36 States of Nigeria, of 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 unlawful, unconstitutional, null and void.

5) *A DECLRATION 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 Section 7 of the 1999 Constitution are/is in place.*

6) *A DECLARATION that, having regard to the effect of Section 7 of the 1999 Constitution and Section 162(5) and (6) of the 1999 Constitution, a State which is in breach of Section 1(1), (2) and 7 of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution is not entitled to receive and spend funds meant for the local government councils by virtue of Section 162(5) and (6) of the 1999 Constitution while still in breach of the Constitution by not putting in place a democratically elected local government system/councils.*

7) *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, any of the elected or other officials of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of any of the democratically-elected Local Government Councils of their/its State has gravely breached the provisions of the 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), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) and 162(3), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 States of Nigeria, acting through any of their elected or other officials that dissolved democratically*

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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 reverses 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.*

10) *A DECLARATION that, by the combined reading of section 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, any elected or other official of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of democratically-elected Local Government Councils of their State is liable to be arraigned during or at the end 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 section 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(2), (3), (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), by the combined reading of section 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(2), (3), (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the States do not have unbridled and unrestricted discretion to operate the "State Join Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government Councils within those State, 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 S162(3) and (5) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit*

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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 state Government is merely an agent of the Local Government 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 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 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 each of them or anyone of them, the amounts it received or has been receiving on their/its behalf.*

18) *A ORDER OF IMMEDIATE COMPLAINCE 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."***

Twenty-Seven (27) grounds are relied on by the Plaintiff for the above claims as follows:-

"1) ***the Nigeria Federation is a creation of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended);***

2) ***The President is the head of the Federal Executive Arm of the government of the Federation and he has sworn to uphold and give effect to the provision of the 1999 Constitution;***

3) ***The Defendant represents the component States of the Federation, which are headed by the Executive Governors, each of whom has sworn to uphold the Constitution and to at all times give effect to the Constitution;***

4) ***The 1999 Constitution of the Federal Republic of Nigeria being the grundnorm has binding force all over the Federation of Nigeria;***

5) ***Within the context of the1999 Constitution of the Federal Republic of Nigeria both the Plaintiff and Defendants herein are under a constitutional duty to give effect to the provisions of the 1999 Constitution of the Federal Republic of Nigeria;***

6) ***The 1999 Constitution of the Federal Republic of Nigeria recognizes Federal, State and Local Governments as 3 tiers of government;***

7) ***The 3 recognized tiers of government to wit; Federal, State and Local Government draw funds for their operation and functioning from the Federation Account created by the 1999 Constitution of the Federal Republic of Nigeria;***

8) ***By the provision of the 1999 Constitution of the Federal Republic of Nigeria, there must be a democratically elected local***

government system, the existence of which is constitutionally guaranteed;

9) *The 1999 Constitution has not made provision for any other system of governance at the local government level other than a democratically elected local government system;*

10) *This Court in its several decisions including but not limited to Akan v. A.G. Rivers (1982) 3 NCLR 88; Ajuwon vs. Gov. of Oyo State (2021) LPELR -55339 (SC); Gov. of Ekiti State vs. Olubumo (2017) 13 NWLR (pt. 1551) 7; Eze & Ors vs. Gov. of Abia State & ors. (2014) 14 NWLR (pt. 1426) 192; APC vs. E.S.I.E.C. (2021) 16 NWLR (pt. 1801) p.1 @ 57 – 58 has consistently maintained that democratically elected local government is guaranteed by the 1999 Constitution and that no other structure outside the Constitution can be put in place to govern the local government;*

11) *The decision of this Honourable Court on the sanctity of democratically elected local government system is binding on all persons and authorities including the Defendant herein;*

12) *Notwithstanding the clear provisions of the 1999 Constitution and the decisions of this Court on the sanctity of democratically elected local government system, the Defendants have failed and refused to put in place a democratically elected local government system;*

13) *No state of emergency has been declared in any state to warrant the suspension of democratic institutions in the state;*

14) *The refusal or failure of the Defendants to put in place a democratically elected local government system is a deliberate subversion of the 1999 Constitution of the Federal Republic of Nigeria, which the President of the Federal Republic of Nigeria and each of the 36 state governors have sworn to uphold;*

15) *Efforts to make the Defendants comply with the dictates of the 1999 Constitution in terms of putting in place a democratically elected local government system has not yielded any positive result;*

16) *The 1999 Constitution provides for distribution of public revenue, the 3 ties of government to wit, Federal, State and Local Government.*

17) *In furtherance of the need to ensure distribution of public revenue, the Constitution mandates the Federation to maintain a specific account called "the Federation Account" into which all revenue collected by the government of the Federation are paid except certain exempted funds;*

18) *The account standing to the credit of local government councils in the Federation Account is to be allocated to the States for the benefit of the local government council and each State is to maintain a Special Account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils;*

19) *The amount due to the local government council from the Federation Account is to be paid to local government system recognized by the Constitution;*

20) *The local government system recognized by the 1999 Constitution is a democratically elected local government council;*

21) *The money from the Federation Account being allocated to the State for the benefit of the local government council are funds received in trust for the benefit of local government councils;*

22) *By the failure of the Defendants to put in place a democratically elected local government system. Defendants have continued to deny the plaintiff and Federation Account constitutional beneficiaries (to wit, democratically elected local government system/councils) of funds that may be due from the Federation Account;*

23) *To continue to disburse or release funds from the Federation Account to the Defendant for non-existing democratically elected local government system is to undermine the sanctity of the 1999 Constitution;*

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24) *By continuing to release funds to the Defendants or any of them when no democratically elected local government system is put in place is to give room for persons not constitutionally recognised to spend funds;*

25) *Pursuant to section 318(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), 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 democratically-elected Local Government Councils of their States has gravely breached the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); and committed gross misconduct;*

26) *In the face of the violation of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the unconstitutionally of a structure of administration of local government council other than a democratically elected local government council guaranteed by section 7 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal government is not obligated under section 162(5) and (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to pay to a state funds standing to the credit of the local government when no democratically elected local government guaranteed under the constitution is in place; and*

27) *The Defendants would not be prejudiced by upholding the constitution and the grant of the Plaintiff's reliefs in this suit."*

An initial Affidavit of thirteen (13) paragraphs, sworn to by a Litigation Officer in the Federal Ministry of Justice, Abuja, to which were attached copies of some documents marked as Exhibits, and a Written Address were filed along with and in support of the summons, on the same date.

A further Affidavit in support of the summons, to which Exhibit C1 was attached, was filed on the 23rd May, 2024 by the Plaintiff.

Expectedly, after service of the summons on them, all the Defendants responded by filing Notices of Preliminary Objection to the competence of the suit, the locus standi of the Plaintiff to institute the action and lack of the requisite jurisdiction on the part of the court to adjudicate over it, on various grounds, which in brief, are:-

> *"1) that the Plaintiff has not suffered any personal injury to invoke the original jurisdiction of the Supreme Court;*
>
> *2) that the plaintiff has not disclosed sufficient interest to clothe him with the requisite locus standi to commence the instant suit;*
>
> *3) that the subject matter of the suit is speculative, academic and hypothetical;*
>
> *4) that the plaintiff's suit amounts to re-litigation, and caught by issue estoppel/res judicata;*
>
> *5) that the plaintiffs' 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 (as amended), to justify the invocation of the original jurisdiction of the Supreme Court;*
>
> *6) that the states houses of assembly and local government councils ought to be joined as parties to this suit, to be competent;*
>
> *7) that originating summons was a wrong mode of commencement of the action and also incompetent for not been signed by registrar of the court; and*

8) that the plaintiff's suit is on attempt to amend or fill gaps in the Constitution of the Federal Republic of Nigeria."

The Defendants also filed their respective counter Affidavits to deny and controvert the averments contained in Affidavit of the Plaintiff in support of the summons. Copies of documents and written Addresses were filed in support of the Notice of Preliminary Objections and the position of the Defendants.

In reaction to the Notices of Preliminary Objections, counter Affidavits and written Addresses of the Defendants, the Plaintiff filed the following processes:-

1. Plaintiff's 2nd Further Affidavit on the 10th June, 2024 to which were attached, copies of documents marked as Exhibits HAGFB1 and HAGFB2 and a composite Reply on points of law to the written Addresses of the Defendants and in support of the Further Affidavit.
2. Composite written Address in opposition to the Notice of Preliminary Objections of the Defendants.

3. Plaintiff's list of Authorities in support of the Originating Summons filed on the 11the June, 2024.
4. Plaintiff's List of Authorities in Aid of written Address opposing the Defendants' Notice of Preliminary Objections, filed on 11th June, 2024; and
5. Plaintiff's List of Authorities in support of the Reply on points of Law, filed on the 11th June, 2024.

Some of the Defendants have filed Replies on Points of Law to the Defendant's Address on the objections, all substantially, canvassing similar arguments.

In addition to the Notice of Preliminary Objection filed on 6th June, 2024 by the 28th Defendant; Attorney-General of Ondo State, a motion on Notice was brought for an order striking out all the paragraphs of the Affidavit in support of the summons or striking out paragraphs 8(xii), (xiii), (xiv), (xv), 9(vii), (ix), (x) and 10(a), (b), (n), (o), (p), (q), (r) of the Affidavit on alleged non-compliance with Section115 of Evidence Act 2011.

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Without much ado, the motion is misconceived as the Plaintiff's Affidavit in support of the summons has substantially complied with the provisions of Section 115 of the Evidence Act since the Deponent had disclosed the source of the facts or information which he believes to be true, setting out the circumstance forming the grounds of his belief. Section 115 of the Evidence Act provides thus:-

> *"(1) Every affidavit used in the court shall contain only a statement of fact and circumstances to which the witness deposes, either of his own personal knowledge or from, information which he believes to be true.*
>
> *(2) An affidavit shall not contain extraneous matter, by way of object8ion, prayer or legal argument or conclusion.*
>
> *(3) When a person deposes to his belief in any natter if fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.*
>
> *(4) When such belief is derived from information received from another person the name of his informant shall be stated and reasonable particulars shall be given respecting the information and the time, place and circumstance of the information."*

The averments of facts in the Affidavit in support of the summons are amply supported by the documents annexed thereto and do not constitute arguments to offend the above provisions. See Gov., Lagos State v. Ojukwu

(1986) 1 NWLR (pt. 18) 621 (SC), Josien Holdings Ltd. v. Lormlad Ltd. (1995) 1 NWLR (pt. 371) 254 (SC), Orji v. Zaria Ind. Ltd. (1992) 1 NWLR (pt. 216) 124 (SC), Bamaiyi v. State (2001) FWLR (pt. 46) 957 (SC).

For being misconceived/devoid of merit, the motion is dismissed.

Notice of Preliminary Objections:

As required by diligent judicial procedure and practice, the notices of preliminary objection raised by the Defendants are to be considered and determined first before a look at the merit of the suit since they all go to challenge or question the judicial power and authority of the court to adjudicate over the suit on the various grounds set out therein. In other words, all the objections go to challenge and question the jurisdiction of the court to entertain and adjudicate over the suit of the Plaintiff against the Defendants. The position of the law, as repeatedly stated by this court, is that due to the crucial and fundamental nature of the issue of the jurisdiction of a court in the conduct of its proceedings in any matter brought before it either as a trial or appellate court, whenever it is raised by

any of the parties or arises in the course of the proceeding, it has to be determined first before further steps are taken in the matter.

See Okoye v, N.C. & F. Co. Ltd. (1991) 6 NWLR (Pt. 199) 501 (SC), Aremo II v. Adekenye (2004) 7 SC (pt. II) 28, Oduko v. Govt., Ebonyi State (2009) 4 MJSC (pt. I) 1, Bingyadi v. INEC (No 2) (2010) 18 NWLR (pt. 1224) 154 (SC), Dangana v. Usman (2012) 2MJSC (pt. III) 146.

The reason for this position is simply that the issue of jurisdiction of a court to entertain and adjudicate over a matter, is both extrinsic and intrinsic in judicial proceedings such that where a courts lacks the requisite jurisdiction to adjudicate over a matter, every and all proceedings conducted, steps taken and decisions reached in the matter would be a nullity, void and of no legal effect, ab initio. Madukolu v. Nkemdilim (1962) 1 All NLR, 567, (1962) 2 SCNLR, 341 (the Locus Classicus on jurisdiction), Utilh v. Onoyivwe (1991) 1 NWLR (pt. 166) 166 (SC), Elebanjo v. Dawodu (2006) All FWLR (pt. 328) 604 (SC), Nwankowo v. Yar'adua (2010) 12 NWLR (pt. 1209) 518 (SC), CBN v. Rahamaniyya Global Resources Ltd. (2020)1 – 2 SC (pt. II) 89 and Edision

Automotive Ind. Ltd. v. NERFUND (2022) 4 NWLR (pt. 1821) 419 (SC) would suffice on the position of the law.

I have calmly considered the grounds of the objections, as well as the respective submissions by the parties thereon, relying on the various judicial authorities from this court cited in support of their respective positions.

All I need to say on the objections is that I entirely agree with the views expressed and conclusion in the Lead Judgment written by my Learned Brother, E. A. Agim, JSC, that the objections are lacking in merit and ought to be dismissed for the reasons set out therein. The Plaintiff possesses the locus standi to undertake and initiate the suit or action against all the Defendants as it involves and calls for policy pronouncement on the interpretation of very vital provisions of the Constitution of the Federal Republic of Nigeria that deal with and provide for specific interests and rights of the tiers of government by which our practice democracy is based (and/or should be based). It is a public interest litigation, which the Plaintiff, as the Chief Law Officer of the Federation of Nigeria, possesses sufficient interest to undertake, initiate and pursue in order to preserve the wellbeing,

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the prosperity of all the components of the Federal Republic of Nigeria and the Fundamental Objectives and Directive Principles of state Policy as contained in the Constitution of the Federal Republic of Nigeria. This is in line with the Oath of office sworn to by the Plaintiff which, by dint of the provisions of Section 150 (1) of the Constitution, made him the Chief Law Officer and a Minister in the Government of the Federation.

In respect of the Defendants, each of them acquires a similar interest and locus standi to initiate and undertake public interest litigation in respect of their states as Chief Law Officers by virtue of the provisions in Section 195(1) of the Constitution.

As demonstrated in the Lead Judgment, there is a real dispute as to their respective rights between the Federation of Nigeria, represented by its Chief Law Officers; the Plaintiff, and the Defendants on the true and correct interpretation and application of the Constitutional provisions identified in the suit which calls for determination by the court in its original jurisdiction as envisaged and provided for in Section 232(1) of the Constitution.

In the case of Plateau State v. Federation (2006) ALL FWLR (pt. 305) 590 at 655 – 656, this court had stated, in relation to the original jurisdiction of this court under Section 232(1) by the Constitution, that:-

> ***"...to invoke the original jurisdiction of the Supreme Court, there must be a "dispute"; the word "dispute" has been defined as the "act of arguing against, controversy, debate, contention as to right, claims and the like or on a matter of opinion. See Attorney-General, Bendel State v. Attorney-General, Federation & 22 Others (1981) 10 SC 1 at 49, (2001) FWLR (pt. 65) 448; Attorney-General, Federation v. Attorney-General, Abia State & Others (2001) FWLR (pt. 64) 202, (2001) 89 LRCN, 2413 at 2423; Attorney-General, Federation & Others v. Attorney-General, Imo State and Others (1983) 4 NCLR, 178."***

In the present suit, the fact that all the Defendants have filed Counter Affidavits to strenously deny, dispute, challenge and attempt to controvert the averments of facts in support of the summons, apparently and undoubtedly, shows that a dispute exists between the parties on the issues raised in the suit, as defined by this court above, for the purpose of the provisions in Section 232(1) of the Constitution for the court to be properly seized of the requisite original jurisdiction to entertain and adjudicate over the suit.

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The provisions of Section 20 of the Supreme Court Act provide for the right of the Plaintiff and any of the Defendants in this suit to bring an action in this court in its original jurisdiction for the settlement of any dispute between the Federation of Nigeria and any of the states represented by the Defendants. The provisions are in the following terms:-

> ***"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 Attorney-General of the State."***

I am also of the firm view that although there exists a dispute between the Plaintiff and the Defendants on the facts contained in their respective Affidavits, as defined by the court, the relevant and material facts in the Affidavits of the Plaintiff which are to be used for the determination of the questions raised in the summons are actually not disputed, in dispute or controversy such that would warrant the call for pleadings and oral evidence for the complete, effectual and conclusive determination of the questions, by the court. In these premises, the originating summons procedure

employed in commencing the action by the Plaintiff is not only proper, but appropriate as it essentially seeks for the correct interpretation and application of the provisions of the Constitution. See University of Lagos v. Aigoro (1991) 3 NWLR (pt. 179) 376, Attorney-General, Adamawa State v. Attorney-General, Federation (2005) 12 SC (pt. II) 132, (2006) All FWLR (pt. 299) 1450 (SC), Amasikev. Reg. Gen., C.A.C. (2010) 13 NWLR (pt. 1211) 337 (SC), Eze v. A.P.G.A (2020) 3 NWLR (pt. 1712) 413 (SC), PDP v. Degi-Eremienyo (2021) 9 NWLR (pt. 1781) 274 (SC).

I should also say that the suit does not constitute re-litigation of the questions raised to be caught up by the issue estoppel/Res-judicata since most of the questions were not raised, considered and finally decided, determined or answered by the court in the previous cases relied on by the Defendants on the ground of the objections. Only questions 1), 2), 3) and 4) were raised, considered and fully and finally pronounced upon of the court in the previous cases as between the parties in this suit and which

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pronouncements are in rem to constitute issue estoppel/Res-judicata against the Plaintiff.

To merely call on the court to re-state the decisions or pronouncements on those questions or for "AN ORDER OF IMMEDIATE COMPLIANCE by the States" with those decisions in this suit clearly constitutes a tacit admission by the Plaintiff that the questions amounts to and constitutes re-litigation and caught by issue estoppel/Res-judicata.

The rest of the questions raised in the suit are new or fresh questions between the parties which takes it beyond the purview of the principle of issue estoppel/Res-judicata as enunciated by this court in numerous cases including Abiola & Sons Bottling Co. Ltd. v. Seven-up Bottling Co. Ltd. (2012) 5 – 7, MJSC (pt. II) 194, Sani v. President, FRN (2020) 15NWLR (pt. 1746) 151 (SC), Attorney-General, Abia State v. Attorney- General Federation (2022) 16 NWLR (pt. 1856) 205 (SC).

Another ground of the objections is that the suit is academic, speculative and hypothetical.

Speaking generally, a suit is said to be academic where it is merely theoretical, makes an empty sound, and of no practical utilitatian value to the Plaintiff, even if judgment is given in his favour. A suit is also academic if it is not related to any practical situation of human nature and humanity, and so purely speculative and hypothetical. An academic suit is one which has no relevance and involves issues which have become spent and no longer of any benefit or value such that it is not worth expending judicial time, and resource on since it is simply theoretical.

As a constant judicial policy, courts in Nigeria do not expend valuable judicial time, energy and resource on academic issues or exercise. See Attorney-General, Plateau State v. Attorney-General, Federation.

I would like to add that apart from the law stated in the Lead Judgment on the effect of non-joinder of State Houses of Assembly and Local Governments in the States to this suit, does not go to affect the competence of the suit. The joinder of such parties would clearly and materially affect the nature of the suit so as to take it beyond the purview of the original

jurisdiction of this Court as provided for in Section 232 (1) of the Constitution.

As stated in the Lead Judgment, since the suit is properly constituted as to the parties, and the issues raised therein can be fairly, effectively, totally, and condusively tried and decided by the court, non-joinder of State Houses of Assembly and/or Local Governments in the country, is non-sequitur to the competence of the suit or the jurisdiction of this court to adjudicate over it. A.G., Abia State v. A. G., Federation (supra). See Anyaniroko v. Okoye (2010) 5 NWLR (pt. 1188) 497 (SC), Sapo v. Sunmonu (2010) 11 NWLR (pt. 1205) 374 (SC), Akpamgbo v. Chidi (No1). (2015) 10 NWLR (pt. 1466) 171 (SC), F.G.P. Ld. V. Duru (2017) 14 NWLR (pt. 1586) 483,Onenu v. Comm. , Agric. & National Resources, Asaba (2019) 11 NWLR (pt. 1682) 1 (SC), Nwoubani v. A. G., Abia State (2020) 11 NWLR (pt. 1735) 267, C.B.N. v. Interstella Comm. Ltd. (2018) 7 NWLR (pt. 1618) 294 (SC).

On the whole, for the above and the more elaborate reasons set out in the Lead Judgment, I too find the preliminary objections raised by all the

Defendants on the competence of the suit and jurisdiction of the court to adjudicate over it on the various grounds relied on by them, to be lacking in merit. I join in over-ruling and dismissing the objections.

The merit of the suit

The Lead Judgment has comprehensively reviewed the respective Affidavits and Addresses of the parties in support of their positions in the determination of the questions that require answers or pronouncement from the court in the suit. It may be recalled that I have before now stated that since the court has made pronouncements and answered the Questions 1), 2), 3) and 4) on the summons in the cases cited and relied on by both parties in their arguments of the preliminary objections, issue estoppel/Res-judicata applies to obviate the need for repetition, re-statement or affirmation by the court because being extant decisions of the final court in Nigeria, all the parties are, by virtue of the provisions of Section 287 of the Constitution, bound to enforce, as a matter of constitutional obligation, duty and responsibility, without any qualification.

I totally agree with the views expressed in the Lead Judgment on the Questions considered and the answers provided therefor in the determination of whether Plaintiff has satisfactorily made a case for the grant of the declaratory reliefs sought, as required by Law.

I would, for support and emphasis only, say a few words by way of contribution.

The reliefs sought by the Plaintiff, being declaratory, the law requires that the Plaintiff by way of credible, cogent and sufficient evidence, must prove his entitlement to the reliefs which cannot and should not, be granted even on admission by the Defendants. In law, the absence of a defence or weakness of such a defence, would not entitled the the Plaintiff to the grant of the declaratory reliefs sought since he is to succeed only on the strength of his case. See Chukwuwah v. S.P.D.C.N. Ltd. (1993) 4 NWLR (pt. 289) 512 (SC), Inakoju v. Adeleke (2007) 4 NWLr (pt. 1025) 423 (SC), Ayida v. Town Planning Authority (2013) 10 NWLR (pt. 1362) 226 (SC), GE Int. Operations Nig. Ltd. v. Q-Oil & Gas Services Ltd. (2016) 10 NWLR (pt. 1520) 304 (SC),

Okon v. Asumogha (2019) LPELR – 47593 (SC), APC v. E. S.I.E.C. (2021) 16 NWLR (pt. 1801) 1 at 19, A. G. Rivers State v. A.G. Federation (2022) 15 NWLR (pt. 1852) 99 at 218 (SC).

The fulcrum of the Plaintiff's case as presented in paragraphs 8, 9 and 10 of the initial Affidavit in support of the summons and paragraph 10 of the 2nd further Affidavit in Response to the Counter Affidavits of the Defendants, is that some of Defendants have, in total disregard to the extant decisions of this court, continued to dissolve democratically elected Local Government Councils and replacing them with appointed caretaker committees or "any how so called," that even where democratically Local Government councils are in place, the Defendants do not remit the Local Governments' Funds allocated to them and paid in to the State Joint Local Government Account (SJLGA) as provided in Section 162 (6) of the Constitution, as and when due, but rather whimsically use and manage (mismanage) the said funds to the disadvantage and prejudice of the Local Government Councils, for the

benefit of whom, the funds are paid into the State Joint Local Government Account, as provided for in Section 162 (5) of the Constitution.

Read in isolation, the provisions of Section 162 (5) and (6) of the Constitution seem to, by the use of the word "shall" in both, make it mandatory that funds standing to the credit of Local Governments in the Federation Account be "allocated directly" to states for the benefit of their Local Government Councils and that each of the states are to maintain a special account into which "such allocations to the local government council of the state" are to be paid. However, the indisputable intendment and purpose of both subsections is for the said funds to get to, be transmitted and forwarded to the Local Government Councils directly by the states through whom the funds are sent, as agents of the Local Government Councils only for the purpose of the "allocation" and payment in to the special account to be maintained for the purpose, of the funds standing to the credit of such Local Governments.

It is beyond reasonable argument that the only plausible purport of the provisions in subsections (5) and (6) of Section 162 of the Constitution is to

provide for the procedure, the channel and the method of transmission, remission and forwarding the funds standing to the credit of the Local Governments (as the legitimate beneficial owners thereof) directly to them through their constitutionally designated and appointed agents; the states. The right to the ownership and entitlement to the funds standing to the credit of the Federation Account, was created by, conferred on and vested in the Local Governments, just like the Federal and State Governments, by dint of the provisions in Section 162 (3) which prescribes thus:-

> *"(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and 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."*

Now, in the interpretation of the provisions of the Constitution this court has, over the years, devised and evolved the following principles and guidelines:-

> *"(a) effect should be given to every word used to the Constitution;*
>
> *(b) a Constitution nullifying a specific clause in the Constitution shall not be tolerated;*
>
> *(c) a constitutional power shall not be used to attain an unconstitutional result;*

(d) *the language of the Constitution, where clear and unambiguous, must be given its plain and evident meaning;*

(e) *the Constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety and therefore a particular provision should not be severed from the rest of the Constitution;*

(f) *while the language of the Constitution does not change, the changing circumstances of the progressive society for which it was designed can yield new and further import of its meaning;*

(g) *a constitutional provision should not be construed in such a way as to defeat its evident purpose;*

(h) *under the Constitution granting specific powers, a particular power must be granted before it can be exercised;*

(i) *declaration by the National Assembly of its essential legislative functions is precluded by the Constitution;*

(j) *words, are the common signs that men make use of to declare their intentions one to another, and when the words of a man express his intentions plainly, there is no need to have recourse to other means of interpretation of such words;*

(k) *the principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used should measure the purpose and scope of its provisions;*

(l) *words of the Constitution are not to be read with stultifying narrowness;*

(m) *constitutional language is to be given a reasonable construction and absurd consequences are to be avoided;*

(n) *constitutional provisions dealing with the same subject matter are to be construed together;*

(o) *seemingly conflicting parts are to be harmonized, if possible, so that effect can be given to all parts of the Constitution;*

(p) the position of an article or clause in the Constitution influences its construction."

See Rabiu v. State (1981) 2 NCLR, 293 (SC), A. G., Bendel State v. A. G. Federation & 220 Ors. (1981) 10 SC, 1, (1981) 1 FNLR, 179, Anyah v. A.G. Borno State (1984) SCNLR, 25, Onyema v. Oputa (1987) 3 NWLR (pt. 60) 259 (SC), Ishola v. Ajiboye (1994) 7 – 8 SCNJ (pt. 1)1, (1994) 6 NWLR (pt. 352) 506 (SC), Egolum v. Obasanjo (1999) 7 NWLR (pt. 611) 355 (SC), Tukur v. Govt., Gongola State (1989) 4 NWLR (pt. 117) 517 (SC), A.G. Lagos State v. Eko Hotels Ltd. (2006) 18 NWLR (pt. 1011) 378 (SC), A.G., Federation v. Abubakar (2007) 10 NWLR (pt. 1041) 1 (SC), Marwa v. Nyako (2012) 6 NWLR (pt. 1296) 199 (SC).

These principles and guidelines were deviced due to the fundamental nature and function of the Constitution which are to establish a framework and principles of government which are broad and general in terms and intended to apply to varying conditions and times brought about by development in our dynamic and plural society. The Constitution is also an organic instrument which, inter alia, provides for, controls and regulate the

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powers and functions of government, the rights and obligations of citizens of Nigeria, as well as the parametres upon which it operates.

In the case of Marwa v. Nyako (supra), Mustapher, CJN, had stated, affirming the position of Chief Justice Dickson of the Supreme Court of Canada in the case of Hunter v. Southern Inc. (1984) 2 SCR, 145 at 146, that:-

> ***"The task of expounding a Constitution is crucially different from that of constituting a statute. A statute defines present rights and obligations .... A constitution by contrast is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power, ... it must therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must in interpreting its provisions, bear these considerations in mind."***

The Learned Chief Justice of Nigeria (then) emphasized that:-

> ***"Every legal document, including the Constitution, has a purpose without which it is meaningless. This purpose or ratio legit, is made up of the objectives, the goals, the interest, the values, the policy and the function that by law it is designed to actualize. It is the duty of the Judge to give the meaning of the words that best realizes its purpose and intent and intendment."***

The Learned Lawlord, as JSC, in the earlier case of A. G. Abia v. A. G. Federation (supra) had, at page 454, stated that:-

> ***"it is also important to bear in mind that the judiciary especially the Supreme Court in particular is an essential integral arm in the***

> ***governance of the nation. It is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purpose of safeguarding and protecting the Constitution and its goals. The judiciary when properly invoked has a fundamental role to play in the structure of governance by checking the activities of the other organs of the government and thereby promoting good governance, respect for individual rights and fundamental liberties and also ensuring the achievement of the goals and intendments. It is the duty of the court to keep the government faithful to the goals of democracy, good governance for the benefit of the citizens as demanded by the Constitution."***

Bearing in mind the aforenamed guidelines, the provisions of Section 162 (3), 5 and (6) are to be construed along with and in line with the provisions of Sections 1(1), (2) and 7 (1) of the Constitution in such a harmonious manner which very clearly aims at meeting and achieving the very essence, purport and intention of the framers of the Constitution to provide for financial independence of democratically elected Local Government Councils in Nigeria, just like the other two (2) tiers of government; that is the Federal and the State Governments; as provided for in Section 162(3). I entirely agree with the Lead Judgment that the provisions in Section 162(5) & (6) only provide for the procedure by which the funds allocated to the Local Government Councils from the Federation Account are to be given or paid to them. The provisions of subsections (5) & (6) of Section 162 of the

Constitution do not create any right in favour of the States in respect of the funds allocated to Local Government Councils from the Federation Account which they can validly and legitimately claim to be entitled to by resisting the relief sought by the Plaintiff that the funds, which undeniably belong to the Local Government Councils and meant by the constitution, to be paid directly to the Local Government Councils from the Federation Account instead of having to be rooted through the procedure in subsections (5) and (6) which has been demonstrated to be antithesis to the over-all, clear and manifest intention and objectives of the Constitution. To interprete or construe the provisions of subsections (5) and (6) of 162 as imposing a command or mandatory procedure to get the funds from the Federation Account, belonging to the Local Government Councils in Nigeria, is to disregard, frustrate and defeat the primary intention and objective of the Constitution in providing funds, as and when due, to the democratically elected Local Government Councils to ensure their financial autonomy, sustainability and even existence.

In the case of Saraki v. FRN (2016) 3 NWLW (pt. 1500) 531 at 831 – 832, Nweze, JSC, had stated that:-

> *".....one of the guiding posts in the interpretation of the provisions of the Nigerian Constitution is that the principles upon which it (the Constitution) was established, rather than the 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. Federation (1982) 3 NCLR 1.*
>
> *Above all, the ratio 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 equally open, the construction that is consistent with the smooth working of the system, which the Constitution, read as a whole, has set out to regulate, is to be preferred, Dapianlong v. Dariye (2007) 8 NWLR (pt. 1036) 239.*
>
> *The principle that underlies this construction teachnique is that the Legislature would legislate only for the purpose of bringing about an effective result, Tinubu v. I. M. 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 SCNLR 427; 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,' N.K. Chakrabarti, Principles of Legislation and Legislative Drafting, (Third Edition) (Kolkata: R Cambray and Co. Private Ltd, 2011) 560, citing Graham, "Unified Theory of Statutory Interpretation," in Statute Law Review Vol 23, No 2, July, 2002 at 91 – 134. (Emphasis susplied)."*

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Once again, I refer to the case of Marwa v. Nyako (Supra) where Onnoghen, JSC (then) in the Lead Judgment of this court referred to the immutable words of Sir Udo Udoma,JSC in Rabiu v. State (supra) where he said:-

> ***"My Lord, it is my view that the approach of this court to the construction of the Constitution should be, and so it has been, one of liberalism, probably a variation on the theme of the general maxim ut re magis valeat quam pereal. I do not conceived it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words sense of such provisions would serve to enforce and protect such ends."***

The peculiarities in the undeniable and untroverted facts in this suit make it imperative for this court to adopt the harmonious, purposeful and liberal approach in the construction of the provisions in Sections 1(1), (2), 7(1) and 162(3), (5) and (6) of the Constitution in order not to defeat the evident purpose manifested therein, but to meet the scope and primary purpose established in the principles upon which the Constitution stands.

The peculiarities in this suit, which stand out like Zuma and Aso Rocks, are:-

(1) that some state Governors/Governments in Nigeria, have continuously ignored, disregarded and willfully treated the decisions of the highest court

Court of Nigeria in, among others, the cases of Akpan v. Umah (2002) 2 NWLR (pt. 767) 701 (SC), A. G., Benue State v. Hon. Umar (2008) 1 NWLR (pt. 1068) 311 (SC), Eze & Ors. v. Gov., Abia State & Ors. (2014) 14 NWLR (pt. 14526) 192 (SC), (2014) 5-7 SC (pt. 1) 171, A.G., Plateau State Goyol (2017) 16 NWLR (pt. 1059) 57, Gov., Ekiti State v. Olubunmo (2017) 13 NWLR (pt. 1551) 7 (SC), Bello v. Gov., Gombe State (2016) 8 NWLR (pt. 1514) 219 (SC), Ajuwon v. Gov., Oyo State (2021) 16 NWLR (Pt. 1803) 485 (SC), Yantaba v. Gov., Katsina State (2022) 1 NWLR (pt. 1811) 259 (SC),with utmost contempt by either dissolving democratically elected Local Government Councils or deliberate refusal to ensure that democratically elected councils are put in place as and when due in compliance with the constitutional obligation and duty imposed on them by the provisions in Section 7(1) of the Constitution. As a reminder, the prescription in Section 287(1) of the Constitution is that:

> ***"The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons and courts with subordinate jurisdiction to that of the Supreme Court."***

It should also be noted that each of the Governors of the States in Nigeria and each of the Defendants in this suit, has sworn the oaths of Allegiance

and of Office set out in the seventh schedule to the Constitution, to discharge the duties of their respective offices in accordance with the provisions of the Constitution which they are to preserve, protect and defend whilst in those offices. The continuing and flagrant refusal to enforce the decisions of this Court in the aforenamed cases wherein the court emphatically and unequivocally stated that State Governors have no constitutional power and authority to dissolve democratically elected Local Government Councils and to appoint officials, by whatever name called, to run such councils, as it constituted a violent breach and infraction of the provisions of Section 7(1) of the Constitution. Similarly, State Houses of Assembly lack the Constitutional Legislative power and authority to enact laws purportedly empowering and authorizing State Governors/Govts to dissolve democratically elected Local Government Councils to replace them with appointees.

However, in spite of these extant and constitutionally binding decisions of this court, State Governors and the Defendants have, continued to defy

them and the Oaths of their respective offices, primarily, because there are no legal consequences metted for the defiance.

In Countries where Constitutional democracy is practiced, as provided for in our own Constitution, willful disobedience, deliberate non – compliance, and flagrant breach and violation of the Constitution is a very serious misconduct that attracts swift and appropriate consequences. It is even more serious where the violators are the Chief Security Officers and Chief Law Officers of the States who should be the enforcers and the first line of defence for the Rule of Law. There must be way of ensuring and assuring compliance with the provisions in Section 287 in line with Constitutional democracy and the Rule of Law otherwise we will continue to pay lip service to both.

2. That even in some States where elected Local Govt. Councils are in place, the funds paid in to the State Joint Local Government Account for the benefit of the councils and transmission to them, are not transmitted as and when due in line with Constitutional primary intention and stipulation.

Rather, such funds are managed, (actually mismanaged) to the disadvantage and prejudice of the owners) controlled and used by the States, whimsically and autocratically, contrary to the principles of the Constitution to ensure financially independent and democratically elected third tier of government in the Country.

Even with the weak and empty denial by the State Governments of the use and mismanagement of local government councils' funds paid into the State Joint Local Government Account from the Federation Account, one wonders why the Defendants (representing them) are vehemently, resisting payment of such funds directly to the owners to manage and control as intended by the Constitution.

To interprete any procedural provision of the Constitution in a manner that would not only stultify, emasculate and frustrate, but eventually render other provisions which create and confer substantive rights, barren and merely decorative, is, with respect, arcane and rancid. In FRN v. Osahon (2006) 5 NWLR (Pt. 973) 361, the erudite and proficient Pats – Acholonu, JSC, had said, inter alia,

> ***"the Constitution cannot be strictly interpreted like an Act of the National Assembly or a law of a State House of Assembly. It must construe without ambiguity it being the fountain of all laws. It must be literally interpreted so that every section will have meaning. All cannons of constriction will not abate, but will be employed with great caution. ---- an autochthonous Constitution like ours which seeks to give a framework of a law or stipulation that builds us should as much as possible reflect positive tendencies to liberalise the mind from the cocoon of antiquated and fossilized ideas of philosophy which might militate against judicial progressivism that would situate the constitution in a vibrate clime. The constitution of any country is the embodiment of what a people desire to be their guiding light in governance, their supreme, fountain of all their laws. As such, all its provisions must be given meaning and interpretation even with the imperfection of the legal draftsman. Common sense must be applied to give meaning to all its sections or articles. In other words, beneficial interpretation which would give meaning and life to the society should always be adopted in order to enthrone peace, justice and egalitarianism in the society."***

These are very weighty views that should be borne in mind by this Court, as a policy court, that shapes judicial jurisprudence in Nigeria.

The word "shall" though ordinarily connotes a command when used in the provisions of a statute or the Constitution, has also been ascribed a directory meaning in appropriate situations and circumstances in order to give meaningful effect to other related provisions and the manifest intention

of the legislature in enacting the entire provisions on the subject or the law or statute.

It is not in every situation that the word imports a mandatory usage, but in proper situations, such as in the provisions of Section 162(5) and (6), it can and should be interpreted to mean "may", importing mere direction in order to give effect to the right to the allocation of the funds standing in the Federation Account to the three (3) tiers of government in Nigeria. See Ude v. Nwara (1993) 2 NWLR (pt. 278) 638 (SC), Amadi v. NNPC (2000) 10 NWLR (pt. 674) 76 (SC), Ugwu v. Ararume (2007) 12 NWLR (pt. 1048) 367 (SC), Atungwu v. Odukwu (2013) 14 NWLR (pt. 1375) 605 (SC), Nyesom v. Peterside (2016) 1 NWLR (pt. 1492) 71 (SC).

In the above premises and for the elaborate reasons adumbrated in the Lead Judgment, I agree that the only way this court can effectively and beneficially construe and interprete the provisions in Section 1(1), (2), 7(1) and 162(3),(5) and (6) of the Constitution in order to accord meaning to

every one of them in line with their manifest intention and purport, is to grant the reliefs sought in this suit.

By the provisions in Section 17 (b) and (d) of the Supreme Court Act, 2004, this Court has the vires to grant appropriate and deserving remedies or reliefs in the exercise of its original jurisdiction. The provisions are in the following terms:-

> ***" With respect to the exercise of the original jurisdiction conferred upon the Supreme Court by subsection (1) of section 232 of the Constitution or which may be conferred upon it in pursuance of section 232 (2) of the Constitution, the following provisions shall apply-***
>
> ***(b) in every cause or matter pending before it the Supreme Court shall grant, either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided;***
>
> ***(d) in addition to any other powers conferred upon the Supreme Court by any enactment, the Supreme Court shall have and may exercise all powers and authorities which are vested in or capable of being exercised by it under the Constitution;"***

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In the result, I too find merit in the case presented by the Plaintiff in terms of the Questions put forward which I answer in his favour against the Defendants jointly and severally. I join in granting the following reliefs:-

"1) ***A DECLARATION that, by the combined reading of section 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, or anyone of them, acting through their/its respective State Governors and or State Houses of Assembly, are/is under obligation to ensure democratic governance at the third tier of government in Nigeria, namely, at the Local Government level.***

2) ***A DECLARATION that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 States of Nigeria, acting through their/its respective State Governors and or State Houses of Assembly, cannot, using state power derivable from Laws enacted by the State Houses of Assembly (anyhow so called) or Executive Orders/other actions (anyhow so called) lawfully dissolve democratically-elected Local Government Councils within the said State/state.***

3) ***A DECLARATION that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) 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 1st – 36th Defendants 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***

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dissolve any of the democratically-elected Local Government Councils within the said States/state and replace them/it with Caretaker Committee (anyhow so called).

4) *A DECLARATION that, by the combined reading of section 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the dissolution of democratically-elected Local Government Councils by the 36 States of Nigeria, of 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 unlawful, unconstitutional, null and void.*

5) *A DECLRATION 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 Section 7 of the 1999 Constitution are/is in place.*

6) *A DECLARATION that, having regard to the effect of Section 7 of the 1999 Constitution and Section 162(5) and (6) of the 1999 Constitution, a State which is in breach of Section 1(1), (2) and 7 of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution is not entitled to receive and spend funds meant for the local government councils by virtue of Section 162(5) and (6) of the 1999 Constitution while still in breach of the Constitution by not putting in place a democratically elected local government system/councils.*

7) *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, any of the elected or other officials of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of any of the democratically-elected Local Government Councils of their/its State has gravely breached the provisions of the 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), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) and 162(3), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 States of Nigeria, acting through any of their elected or other officials that dissolved 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 reverses 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.*

11) *A DECLARATION that, by the combined reading of section 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(2), (3), (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), by the combined reading of section 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(2), (3), (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the States do not have unbridled and unrestricted discretion to operate the "State Join Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government*

Hon. Justice Mohammed Lawal Garba, JSC

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Councils within those State, 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 S162(3) and (5) of the Constitution of the Federal Republic of Nigeria 1999, the amount standing to the credit of Local Government Councils in the Federation account should henceforth 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 state Government is merely an agent of the Local Government 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 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.*

Reliefs 15, 16 and 17 have been effectively been overtaken by the grant of the above reliefs while Relief 10 is not grantable in this suit. These reliefs are hereby refused and dismissed.

MOHAMMED LAWAL GARBA
JUSTICE, SUPREME COURT.

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