

**IN THE SUPREME COURT OF NIGERIA**  
**HOLDEN AT ABUJA**  
**ON FRIDAY THE 11<sup>TH</sup> DAY OF JULY, 2024**  
**BEFORE THEIR LORDSHIPS**

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

**JUSTICE, SUPREME COURT**  
**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
12. ATTORNEY-GENERAL OF EDO STATE
13. ATTORNEY-GENERAL OF EKITI STATE
14. ATTORNEY-GENERAL OF ENUGU STATE
15. ATTORNEY-GENERAL OF GOMBE STATE
16. ATTORNEY-GENERAL OF IMO STATE

DEFENDANTS

1

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

18/7/24

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 HARUNA SIMON TSAMMANI, JSC)

My learned brother Emmanuel Akomaye Agim, JSC availed me of the benefit of reading in advance the draft of the judgment just delivered.

By an Originating Summons filed on the 20<sup>th</sup> day of May, 2024, the Plaintiff urged this Court to, in the exercise of its original jurisdiction, pursuant to Section 232(1) of the Constitution of the Federal Republic of

2


  
*Official*  
 Certified True Copy  
*Emmanuel Akomaye Agim Esq*  
 REGISTRAR  
 SUPREME COURT OF NIGERIA

Nigeria, 1999 (as altered) grant the following reliefs against the Defendants, jointly and severally:

1. **A DECLARATION** that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (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 Order/other actions (anyhow so called) lawfully dissolve democratically-elected Local Government Councils within the said States/state.

*Off. Seal*  
Certified True Copy  
*Alaminu B. Babayo Esq*  
REGISTRAR  
SUPREME COURT OF NIGERIA

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 (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 Committees (anyhow so called).
4. **A DECLARATION** that, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (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 unlawful, unconstitutional, null and void.

*Off. Seal.*  
Certified True Copy  
*Abdullahi B. Balogun Esq.*  
REGISTRAR  
SUPREME COURT OF NIGERIA

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 **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)

*Official*  
Certified True Copy  
*Olumun O. Babare Esq*  
REGISTRAR  
SUPREME COURT OF NIGERIA

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

8. **A DECLARATION** that, by the combined reading of sections 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) and 162(3), (5), (6), (7) and (8) of 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 reverses to status **quo ante bellum**.

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

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 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 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 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 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.

*Official.*  
Certified True Copy  
*Alhaji B. B. B. Esq.*  
REGISTERED  
SUPREME COURT OF NIGERIA

11. **A DECLARATION** that, by the combined reading of sections 1(1) and (2) and (3), 2, 7(1) and 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), by the combined reading of sections 1(1), (2) and (3), 2, 7(1) and 7(3), 14(1), (2)(a), (c) and (4) and 162(2), (3), (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (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 state Government is merely an agent of the Local Governments in the State to collect the amount standing to the credit of the Local Government in the Federation account and pay directly

to the 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 S162(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.

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

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

The grounds upon which the Originating Summons is predicated are set out in the Originating Summons. It is further supported by an Affidavit of 13 main paragraphs to which were attached documentary exhibits. Filed along Originating Summons was a Written Address. Each of the Defendants responded by filing Counter Affidavits supported by Written Addresses. The Defendants also filed Notices of Preliminary

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

Objections against the competence and validity of the Originating Summons. The suit was then heard on the 13/6/2024 and reserved for judgment.

I have carefully and soberly read and reflected on the lead judgment just delivered by my learned brother, Agim, JSC. My learned brother succinctly but exhaustively delved into and considered the germane issues presented before us for determination. I have no hesitation in agreeing with the reasoning and conclusion arrived at in the lead judgment. However, I wish to add a few words of mine anon.

I have also read the various Preliminary Objections raised by the respective defendants. I totally agree with my learned brother that none of the grounds upon which the Preliminary Objections are premised has merit. Thus, in agreement with my learned brother, I also dismiss all the preliminary objections as lacking in merit.

On the substantive matter before us, I wish to note that; this Court has in many cases, considered the Constitution to be the organic law of the country which prescribes the rights, duties, powers and responsibilities of its citizens and governmental power or authority. It is described as the **fons et origo** from which all other laws derive their validity in an ideal democratic setting. It creates rights and limitations to those rights. It has also been described as the foundation upon which the existence of all organs of governance is built and therefore inviolable. See **Hon. Michael**

Official  
Certified True Copy  
Elsman P. A. B. Esq.  
THE CLERK  
SUPREME COURT OF NIGERIA

Dapianlong & Ors v Chief (Dr) Joshua Chibi Dariye & Anor (2007) LPELR-928 (SC); The Governor of Kwara State & Anor v Ojibara & Ors (2006) LPELR-3178 (SC) and A.G. Federation & Ors v Abubakar & Ors (2007) LPELR-3 (SC). Thus, in Dapianlong & Ors v Dariye (supra) this Court per Onnoghen, JSC (as he then was) said:

“It is settled law that the constitution of any country is what is usually called that organic law or grundnorm of the people. It contains all the laws from which the institutions of state derive their creation, legitimacy and very being. The Constitution is also the unifying force in the nation apportioning rights and imposing obligations on the people who are subject to its operation. It is a very important composite document, the interpretation or construction of which is subject to recognised canons of interpretation designed or grafted to evidence and sustain the esteem in which Constitutions are held the world over”.

In A.G. Federation v AG of Abia State & Ors (2001) LPELR-24862 (SC), Belgore, JSC (as he then was) expressed his view on the nature of a Constitution in the following profound words:

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

**of nation's existence. Any slightest disruption of the Constitution, be it a dispute apparent or lurking must be addressed in the Court when the Court's intervention is sought".**

It therefore means that the Constitution of any nation is the Supreme Law of the land. It is from the Constitution that the validity of all executive, legislative and judicial acts or decisions are determined. It is the basic law of a nation that determine the powers and duties of government and also guarantees certain rights to the people. The Constitution therefore, sets out how all the elements of government are organised and how power is shared or distributed among the different political units that make up the country. It helps to protect rights of its citizens and maintain the balance of power between the various branches and organs of government.

Under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Supremacy of the Constitution is assured, guaranteed and sustained by Section 1 (1) and (3) thereof, which stipulate that:

1. (1) This Constitution is Supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
- (3) If any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

  
Off. Seal.  
Certified True Copy  
Olusola B. Olatunji Esq.  
.....  
SECRETARY  
SUPREME COURT OF NIGERIA

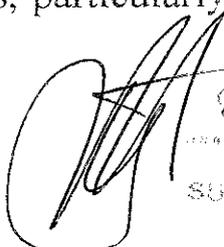
The Constitution itself, has in clear terms appointed the Judiciary as its guardian or watchman. This can be seen in Section 6(6)(a) and (b) of the said Constitution which enshrines that:

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

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

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

The Constitution is therefore the benchmark or touchstone upon which the constitutionality of any executive, legislative or judicial act is considered. As stated earlier in the course of this judgment, the Courts are saddled with the duty and function of determining the meaning, nature and scope of laws made or passed by the legislature. This is done in the exercise of the interpretative jurisdiction of the Courts. The judiciary is therefore, the arm of government responsible for interpreting the Constitution through the cases brought before it for adjudication. The interpretative jurisdiction of the Courts, particularly the Supreme Court,

  
Official  
Certified True Copy  
Olusola O. Badure Esq.  
REGISTRAR  
SUPREME COURT OF NIGERIA

is the Court's greatest weapon and is guaranteed by Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The Constitution does not contain prescriptions for its interpretation or construction, therefore, any approach this Court adopts in its interpretative jurisdiction of the Constitution must be broad in its effects on the rights of the citizens and duties of institutions of government so as to safeguard and sustain the conditions for a stable democracy. In construing the Constitution, it must be borne in mind that rules for interpretation of the Constitution as the grundnorm defer from interpretation of ordinary Laws or Statutes. See **Brig. General Mohammed Baba Marwa & Ors v Admiral Murtala Nyako & Ors (2012) LPELR-7837.**

In construing the provisions of the Constitution, the accepted view is that, the Court should not only look at the Constitution as a whole but also construe its various provisions in such a way as to justify the hopes and aspirations of those who have endeavoured to enact a Constitution for the purpose of promoting the good governance and welfare of all persons in the country on the principle of freedom, equality and justice, and for the purpose of consolidating the unity of our people. See per **Fatai-Williams, CJN in Senator Abraham Adesanya v the President of the Federal Republic of Nigeria (1981)5 SC 112; (1981) All N.L.R.1.** In order to achieve that purpose, the Court should, in the construction of the various provisions of Constitution, the words used by the makers should

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

be interpreted in the light of the underlying purpose for the provision under consideration. Therefore, the words used should be construed in the light of the purpose or spirit of the Constitution. In other words, the spirit of the provision under consideration should be the guiding principle, for it is said that the **“the spirit giveth life and it is infact the letter that killeth”**. See **B.O.Nwabueze: Federalism in Nigeria under the Presidential Constitution**; Sweet & Maxwell, London, 1983 at p.371.

It therefore follows that, in the construction of the Constitution, the Court should give it a broad and liberal interpretation that will promote its purpose and spirit; and one that will promote good governance and people’s welfare as opposed to a narrow construction that will defeat the primary purpose of the provisions in the Constitution. In the interpretation of the Constitution, the Court should always have it at the back of its mind, the spirit behind the Constitution as captured in the preamble thereto; which is that:

WE THE PEOPLE of the Federal Republic of Nigeria: HAVING firmly and solemnly resolved: TO LIVE in unity and harmony as one indivisible and indissoluble sovereign Nation under God dedicated to the promotion of inter-African solidarity world peace, international co-operation and understanding.

AND TO PROVIDE for a Constitution for the purpose of promoting the good government and welfare of all persons in our

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

country on the principles of Freedom, Equality and Justice and for the purpose of consolidating the unity of our purpose:

DO HEREBY MAKE, AND GIVE TO OURSELVES the following Constitution: -

Flowing from the above preamble, the Constitution has in its Section 1 and 3, make the Constitution itself to be supreme. In other words, the provisions of the Constitution have binding effect or force on all authorities and persons throughout the Federal Republic of Nigeria. Therefore, all authorities' and persons in the exercise of any function have an obligation or mandatory duty to observe the provisions of the Constitution. Consequently, any administrative decision or act taken, that is inconsistent with or contravenes or violates the provisions of the Constitution, shall to the extent of such inconsistency, contravention or violation thereof, be null and void. The provisions of the Constitution, in such circumstances, take precedence over such administrative or other decisions including all other laws enacted by the National or State Assembly except where the Legislature has in the exercise of power granted it by the Constitution itself, amended the Constitution.

Now, the claim before us is bifurcated. First of all, the Plaintiff complains of the numerous and consistent breaches of the provisions of Section 7(1) of the 1999 Constitution of the Federal Republic of Nigeria which stipulate that:

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

7. (1) The system of local government by democratically elected local government, councils are under this constitution guaranteed; and accordingly, the Government of every state shall subject to Section 8 of this constitution ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.

The construction of the above cited provision of the Constitution has come up for determination in quite a number of cases, before this Court. In all those cases, this Court has been consistent in holding that the governor of a state has no power to dissolve a democratically elected Local Government Council and appoint his hand-picked political stewards by constituting them as Caretaker or Transition Committees to manage the affairs of Local Government Councils. That to do that will be in flagrant or blatant violation of Section 7(1) of the Constitution which imposes an obligation on the governor of a state to ensure the existence of democratically elected Local Government Councils. Thus, in **Bashorun Majeed Bosun Ajuwon & Ors v Governor of Oyo State & Ors (2021) LPELR-55339 (SC)** this Court, per Eko, JSC held that:

**“The law on this point or issue is now well established, and its no longer a scholarly secret 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**

*Official*  
Certified True Copy  
*Alhaji B. Babatope Esq*  
FEDERAL  
SUPREME COURT OF NIGERIA

**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 Governments 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 literally to promote their purpose”.**

I am of the view that the provision of Section 7(1) of the Constitution is enshrined in order to sustain the continued existence of our Federal structure as stipulated in Section 2, 3(1) and (6) of the Constitution. Section 2 and 3(1) recognize the Federal Republic of Nigeria and the thirty-six states with a Federal Capital Territory, Abuja. Section 3(6) recognises seven hundred and seventy-four Local Government Areas in Nigeria made up of 668 Local Government Areas in the states and six (6) Area Councils within the Federal Capital Territory, Abuja. Those Local Government Areas are listed in the 2<sup>nd</sup> column of part 1 of the 1<sup>st</sup> schedule of the Constitution. Sections 2(1), 3(1) and (6) of the Constitution therefore create three tiers of government recognised as Federal, State and Local Government. See also **Section 318 of the 1999 Constitution**. The Constitution therefore envisages that, those three tiers of government shall co-exist in a democratic setting. That is why section 1(2) of the Constitution stipulate that:

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

1. (2) The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.

In my view, in the interpretation of the above cited provision, a Local Government Area is a part of Nigeria, therefore, the provision cited above equally applies to a Local Government. Consequently, by Section 7(1) of the Constitution, democratic operation of governance of Local Government Councils is envisaged, through democratically elected offices. Therefore, the administration or governance of Local Governments through Caretaker bodies or whatever contraption is a grave violation of the Constitution. See **Governor of Ekiti State & Ors v Olubunmi & Ors (2016) LPELR-48040(SC)**; **Eze & Or v Gov. of Abia State & Or (2014) LPELR-23276 (SC)**; **Attorney-General of Plateau State v Goyol (2007) 16 NWLR (Pt. 1059) 94**; **All Progressives Congress & Ors v Enugu State Independent Electoral Commission & Ors (2021) LPELR-55337 (SC)**. Thus, in **All Progressives Congress v Enugu State Independent Electoral Commission (supra)**, my learned brother Kekere-Ekun, JSC stated poignantly that:

**“A Governor who occupies his office as a result of a democratic exercise has a bounden duty to preserve, in all its ramifications, the existence of democratically elected Local Government Councils”.**

*Official*  
Certified True Copy  
*Umaru R. Babayo Esq*  
FEDERAL REPUBLIC OF NIGERIA  
SUPREME COURT

The second arm of the Plaintiffs claim has to do with the failure or refusal of the states to pay to the Local Government Councils, allocations from the Federation Account after receiving same from the Federation Account as required by Section 162(5) and (6) of the 1999 Constitution. Indeed Section 162(3) of the constitution stipulates that:

**“Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each state on such terms and in such manner as may be prescribed by the National assembly”.**

The interpretations of the above provision does not require any technical aid to appreciate. A literally interpretation from the plain words used will suffice. It simply means what it says, which is that, any amount of money standing to the Account of the Federation is to be distributed among the Federal Government, the Federal or State Governments and the Local Government Councils, in such manner as may be prescribed by an Act of the National Assembly. Thus, for the purpose of distribution of money from the Federation Account, the three tiers of Government are considered as separate or independent beneficiaries. However, when it comes to distribution to the Local Government Councils, it is stipulated in Section 162(5) and (6) of the constitution as follows:

162. (5) The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to

*Official*  
Certified True Copy  
*Honourable R. Abiodun Esq.*  
JUDGE  
SUPREME COURT OF NIGERIA

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 state 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.

I am of the view that, for a practical application, the two provisions cited above should be read together. The provisions require that the monies due to the Local Government Councils from the Federation Account shall be allocated to the State for the benefit of the Local Government Councils. For the purpose of actualizing that process, each state in the Federation is mandated to set up or maintain a special account called “**State Joint Local Government Account**”. It is intended by those provisions that, the money allocated to each Local Government in the State in accordance with Section 162(3) of the Constitution shall, instead of allocating same directly to the Local Governments, be allocated to the Local Government through the “**State Joint Local Government Account**” for onward transfer to the individual Local Government Councils. This is because, the money allocated to the Local Government through the said “State Joint Local Government Account” is meant for the benefit of the Local Governments. Those stipulations do not give license

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

to the State Governors to withhold monies allocated to the Local Governments and utilize same in a way and manner they deem fit.

I say so because, the Constitution has also mandated the Local Government Councils to be involved in the economic planning and development of their areas when it stipulates in Section 7(3) as follows:

7. (3) It shall be the duty of a Local Government within the state to participate in economic planning and development of the area referred to in subsection (2) of this Section and to this end an economic planning board shall be established by a Law enacted by the House of Assembly of the State.

This provision ~~is~~ also enjoins the State Governments ~~to~~ set up "ECONOMIC PLANNING BOARD" under a Law enacted by the State House of Assembly in order to enable the Local Government Councils participate in comprehensive economic development of the State in collaboration with the State Government.

Since the Local Government Councils are mandated to participate in the economic planning and development of the areas over which they exercise authority, how can they exercise that constitutional mandate if the monies allocated to them are withheld by the State? It needs no stargazer to see where that will lead to. No wonder, as things stand now in this Country, the Local Government Areas lie prostrate and completely bereft of any development that directly touch on the lives of our brothers

*Official*  
Confidential True Copy  
*Abdullahi R. Abdullahi*  
SUPREME COURT OF NIGERIA

and sisters in the rural areas. I wish to observe that Section 162 (5) and (6) if the Constitution is a radical departure from what obtained pre-1999 Constitution when monies were allocated directly to the Local government Councils from the Federation Account. I believe that Sections 162(5) and (6) were enshrined in the Constitution in order to reduce the inconvenience and logistic difficulty of each Local Government having to run to Abuja every month for collection of its own allocation.

I am convinced that the framers of the 1999 Constitution might have had the belief that the operators of the Constitution will have faith with the letters and spirit of the Constitution and not observe same in breach as the Defendants have consistently been doing in relation to Sections 7(1) and 162(5) and (6) of the 1999 Constitution. If the Defendants are in doubt about the extent or scope of the duty placed on them in the operation of those provisions, this Court has the task or duty to expound the Constitution and lay out a clear direction for the Defendants to follow. In doing so, this Court will have an eye on the future and lay down an enduring framework for the legitimate exercise of governmental power and authority. A framework that is capable of aiding in the growth and development of the Local Government Areas so as to meet the social, economic and political yearnings of the ordinary folks in our rural areas.

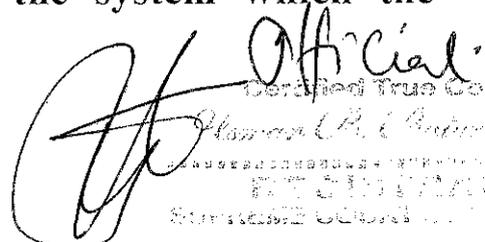
I find support for the above postulation in **Dingyadi & Anor v INEC & Ors (2011) LPELR-950 (SC)** where this Court per Adekeye,

*Official*  
Certified True Copy  
*Abdullahi R. Babangida Esq.*  
FEDERAL  
SUPREME COURT OF NIGERIA

JSC stated that this Court as custodian of the Constitution has the duty, as the final Court to interpret the Constitution and other enactments, in a way as to lay down proper conduct of affairs, so that democratic governance will be predicated and sustained on the rule of law. See also **Brig. Gen. Mohammed Buba Marwa & Ors v Admiral Murtala Nyako & Ors (2012) LPELR-7837 (SC); 1636) 197 at 227; NBN Ltd v Weide & Co. Nigeria Ltd & Ors (1996) LPELR-24848 (SC) and Adetayo & Ors v Ademola Ors (2010) LPELR-156 (SC)**. Thus, in **Amalgamated Trustees Ltd v Associated Discount House Ltd (2007) LPELR-454 (SC)** this Court per Onnoghen, JSC (as he then was) held that:

“... it is settled principle of law that where a Court is faced with alternative in the course of interpreting the constitution or statute, the alternative construction that is consistent with smooth running of the system shall prevail as held in **Tukur v Government of Gongola State (1989) 4 NWLR (Pt.117) 517 at 579;**

“I must remember that this Court has said it several times that the provisions of the Constitution ought to be read and interpreted as a whole in that related Sections must be construed together... Finally, I must approach the matter from the viewpoint that since the decision of this court in **Nafiu Rabi v The State (1981) 2 NCLR 293**, this Court has opted for the principle of construction *ut res magis valeat quam pereat*. This means that even if alternative constructions are equally open, I shall opt for the alternative which is to be consistent with the smooth working of the system which the

  
Official  
Certified True Copy  
Abdullahi A. Abubakar Esq.  
SHERIFF  
SHERIFF COURT

**constitution read as a whole has set out to regulate and so the alternative which will disrupt the smooth development of the system is to be rejected”.**

My lords, I am of the view that, in the exercise of our interpretative jurisdiction, a construction that will ensure and preserve the continued existence of Local Government System as the third tier of government must be adopted. Therefore, a construction that will endanger the existence and ultimate extinction of Local Government system must be rejected. In other words, Constitution should not be construed in such a way as to defeat the purpose or ends the Constitution was designed to serve. See **Rabiu v Kano State (1980) 12 NSCC 291**. Those who flagrantly and unabashedly violate the constitution should not be allowed to ride on their acts of infamy to ingratiate themselves with their actions.

I hope that this judgement will put an end to the commandeering of funds meant for the Local Governments by state governors. This is particularly so, considering the way and manner local government elections are conducted by the various States “Independent” Electoral Commissions (SIECs). In most cases, those elections are mere sham process where the “more you look, the less you see” as it is colloquially said in this country. In those elections, candidates are handpicked by the Governor among his most trusted acolytes and unabashedly returned by the SIEC which is also composed of the Governor’s handpicked proteges and minions. Those acolytes are then installed as “democratically elected” chairman and councilors, ready and willing to do the Governor’s bidding.

*Official*  
Certified True Copy  
*Justice R. B. Chikwe*  
\*\*\*\*\*  
SUPREME COURT OF NIGERIA

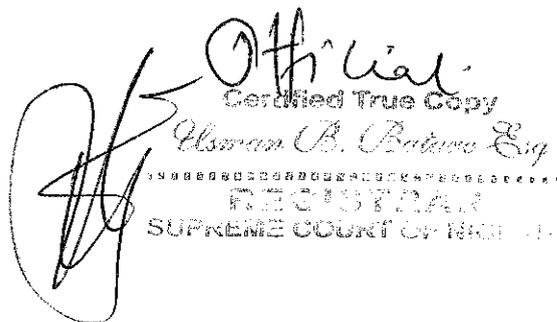
To them, the people do not matter so long as their master, the Governor, is happy or satisfied. The National Assembly may therefore rise to the occasion and have a look at the Law on conduct of Local Government Election. On that note, I will side with my learned brother Agim, JSC to grant the reliefs sought by the plaintiff in the terms and manner stated in the lead judgment.

It is for the above reasons and the detailed reasons ably captured in the lead judgment, that I agree that the plaintiff's claim has merit. I therefore adopt and abide by all the reliefs granted in the lead judgment.

I abide by the order on cost.



**HARUNA SIMON TSAMMANI  
JUSTICE, SUPREME COURT**



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

**Appearance:**

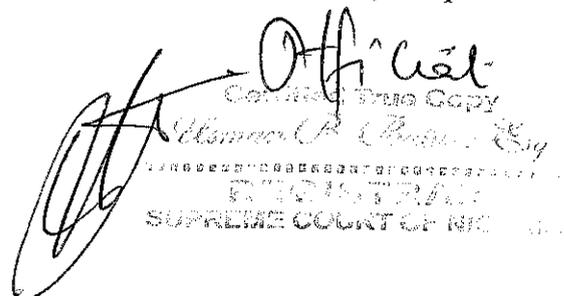
**Prince Lateef O. Fagbemi, (SAN)** (Attorney General of the Federation & Minister of Justice), Prof. Yusuf Ali, (SAN), S.T. Hon, (SAN). T.A. Gazali, (SAN Acting Director, Civil Appeals Department, Federal Ministry of Justice) with O.A. Oloruntogbe, Esq. (Assistant Chief State Counsel, FMOJ) for the **Plaintiff**

**Ikechwu Uwanna Esq.** (Attorney General and Commissioner for Justice, Abia State), Mrs. Nkeiru N. Akinola (Director Legal Services, MOJ Abia State), Mrs. Ihuoma Omokwe (Director Abia State MOJ) Mrs. Nkolika Ubani (Senior Chief State Counsel, Abia State) and Chinedu Amnamba (Assistant Chief State Counsel, Abia State) for **the 1<sup>st</sup> Defendant**

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

**Essien Essien Udom SAN,** and 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; OFR; OON)** and P.I.N. Ikewueto, **SAN.;** Julius Mba Esq.; Nwamaka Ofoegbu, Esq. and Emeka Chinwuba, Esq. for **the 4<sup>th</sup> Defendant**

  
Official  
Certified True Copy  
Ullmann O. Oluwalana Esq.  
REGISTRAR  
SUPREME COURT OF NIGERIA

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

**Emmanuel Yinfaowei, Esq.** (Solicitor-General of Bayelsa State) with Lugard Tare-Out, Esq; Erebi Biboye, Esq. (Principal State Counsel, Bayelsa MOJ), and Michelle Zuokumor, (Principal State Counsel, Bayelsa SMOJ) for the **6<sup>th</sup> Defendant.**

**F.B. Mnyim** (Attorney General Benue State), E. Enyikwola (Director Citizen Right, Benue State) 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.**

**J.J. Usman, SAN** with Bulus Adamu, Esq.; (DCL, Borno State MOJ), C.O. Ogbu, Esq. Asma'u Ahmed Esq. and I.Q. Abbey, Esq. for **the 8<sup>th</sup> Defendant.**

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

**Omomuzo Erebe, Esq.** (Solicitor-General, Delta Ministry of Justice) with S.O. Monye, Esq. (Director Civil Litigation), I.G. Eze-Owenze, Esq.

*Official*  
Certified True Copy  
*Hassan U. El-Yakub Esq.*  
SOLICITOR GENERAL  
SUPREME COURT OF NIGERIA

(Director, Advisory Services), U.P. Okolotu, Esq. (Principal State Counsel) and O.B. Okonye, Esq. (Principal State Counsel) for **the 10<sup>th</sup> Defendant.**

**Dr. Ben Uruchi Odoh** (Attorney General and Commissioner for Justice Ebonyi State) with Istrael Ikechukwu Alobu, Esq. Ikenna Michael Nwidagu, Esq. (Ag. Chief State Counsel, MOJ Abakaliki), and Sylvia Nnenna Nworie (Senior State Counsel, MOJ) for **the 11<sup>th</sup> Defendant.**

**Oluwole Oasaze-Uzzi, Esq.** (Attorney-General & Commissioner of Justice, Edo State), Prof. Faith Osadolor (Solicitor General, Edo State) with Dr. Solomon Agbonhulu, Mrs. Esosa Osula (DPPRS), Chukwuemeka Achugbu, Esq. for **the 12<sup>th</sup> Defendant.**

**Dayo Akpata, SAN,** (Attorney General and Commissioner for Justice, Ekiti State), Gbemiga Adaramola, (DCL, Ekiti State), Olalekan Suleman, (ACLO, Ekiti State), O.M. Atibioke, Esq and A.D. Adeleye, Esq for **the 13<sup>th</sup> Defendant.**

**Dr. Kingsley T. Udeh** (Attorney-General, Enugu State) with I.I. Eze (Director Appeal), Lillian Ogar (Senior Legal Officer), S.U.Madu, (DD Appeal and C.V. Asogwa-Ugwueze (Legal Officer) for **the 14<sup>th</sup> Defendant.**

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

*Official*  
Certified True Copy  
*Umar Musa Pada Esq*  
REGISTRAR  
SUPREME COURT OF NIGERIA

Mohammed, Esq. Salvation Zainab Kyari, Esq. (Senior State Council), Sadiya Nair, (Senior State Council) and Aliyu Alhassan for **the 18<sup>th</sup> Defendant**

**Ahmed Raji, SAN. (FCI Arb.) U.K.)** with Ibrahim Tukur Elsudi, Esq. Bimbo Atilola, Esq. Abdulkarim Maude, Esq and Peter Nwatu, Esq. for **the 19<sup>th</sup> Defendant.**

**Lukman O. Fagbemi, SAN** with A.A. Ibrahim, (Director Civil Litigations, Katsina State), Kamal O. Fagbemi, Esq. Khalil O. Ajana, Esq. K.A. Imafidon, Esq. Ibrahim A. Saleh, Esq and I.O. Adedoyin, Esq for **the 20<sup>th</sup> Defendant.**

**J.B. Marshall** (Attorney General Kebbi State) with Olanrewaju Osinaike, Esq. for **the 21<sup>st</sup> Defendant.**

**J.B. Daudu, SAN, (FCI Arb, UK)** and A.M. Aliyu, SAN, Ibrahim Sani Muhammad, SAN, Aliyu O. Saiki, SAN, and Adedayo Adedeji, SAN for **the 22<sup>nd</sup> Defendant.**

**Senior Ibrahim Sulyman, Esq,** (Attorney General, Kwara State) with A.B. Bello, Esq., (Director Civil Litigation, Kwara State Ministry of Justice), Isiaq Abdurasheed Olorundare, Esq. (State Counsel 1, Kwara State MOJ), and Hussein Afolabi, Esq for **the 23<sup>rd</sup> Defendant.**

**Lawal Pedro, SAN. FCI Arb,** (Attorney General, Lagos State), E.R. Agu (DD) and A. P Ameh, Esq for the 24<sup>th</sup> Defendant.

*Official*  
Certified True Copy  
*Abdulkarim Maude Esq*  
ABDULKARIM MAUDE ESQ  
SUPREME COURT OF NIGERIA

**S.M. Labaran, Esq.** (Attorney General, Nasarawa State), Y.Y. Ede (Director Civil Litigation) with E.U. Aliyu, Esq. (Deputy Director Legal Drafting), M.J. Abokee Esq. (Deputy Director Law Reform), B.A. Jankat, Esq. and F.A.Tung, Esq. for **the 25<sup>th</sup> Defendant.**

**J.J. Usman, SAN.** with Mrs Abdul-Aziz, Esq. D.O. Atita, Esq., I. U. Ujah and N.U. Usman, Esq for **the 26<sup>th</sup> Defendant.**

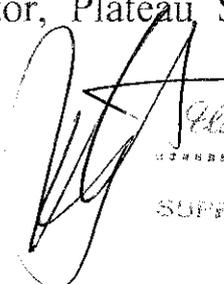
**Kehinde Ogunwumiju, OFR, SAN, FCIArb** with O.M Atoyebi, SAN. Tunde Afe-Babalola, SAN, FCIArb, Eko Ejembi Eko, SAN, Opemipo Owotumi ,Esq., OpemipoOsunleti, Esq., Teslim Tobatele Giwa, Esq. and D.D.anyanwu, Esq for **the 27<sup>th</sup> Defendant.**

**Dr. Olukayode Ajulo, OON, SAN,** Emmanuel Patrick, Esq., Eniola Oyelami, Margaret Aguocho, Lasisi Hamed, Michael Okejimi and O.F. Bosun-Kwadjo (P.L.O) for **the 28<sup>th</sup> Defendant.**

**Olu-Wole Jimi-Bada,** Esq., John E. Opaluwa, Esq Nurudeen Hakkem, Esq. and Jide Obisakin, Esq for **the 29<sup>th</sup> Defendant.**

Abiodun Aikomo (Attorney General and Commissioner for Justice, Oyo State) with N.A. Abiola (Director Legal Drafting and Ministerial Counseling) and Adeola Ige Adeleke (Assistant Chief State Counsel) for **the 30<sup>th</sup> Defendant.**

**P.A. Daffi** (Attorney General and Commissioner for Justice Plateau State) with J.I. Mantu, Esq., (Assistant Director, Plateau State Ministry of Justice) for **the 31<sup>st</sup> Defendant.**

  
Certified True Copy  
Alhaji B. Babayo Esq.  
THE REGISTRAR  
SUPREME COURT OF NIGERIA

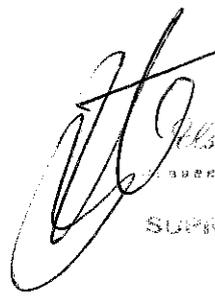
**I.D. Iboroma, SAN** (Attorney General and Commissioner for Justice, River State with Ibiwari Claton-Ogolo, Esq., Uzor Ikenga, Esq., R.O. Adakole, Esq., cfmc, U.P. Ogo, Esq., and T.C. Shalom, Esq., for the **32<sup>nd</sup> Defendant.**

**Mohammed Nairu Binji, Esq.** (Attorney General and Commissioner for Justice, Sokoto State) with L.S.Wali, Esq.(Director Civil Litigation) and Amanzi, Esq for the **33<sup>rd</sup> Defendant.**

**G. A. Idiagboya, Esq** with Mrs. P.N. David (Principal State Counsel, Taraba State Ministry of Justice) for **the 34<sup>th</sup> Defendant.**

**Saleh Samanja,** (Attorney General and Commissioner of Justice, Yobe State) with Baba Dala Fika, Esq., Isma'il Usman, Esq and Muhammad S. Dan'azumi for **the 35<sup>th</sup> Defendant.**

**Abdulaziz Sani, SAN** (Attorney General and Commissioner for Justice, Zamfara State) with Mustapha Aikawa, Esq., for **the 36<sup>th</sup> Defendant**

  
Official  
Certified True Copy  
Abdullahi P. Bature Esq.  
DISCIPLINARY  
SUPREME COURT OF NIGERIA  
18/7/24