

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON THURSDAY THE 11TH DAY OF JULY, 2024

BEFORE THEIR LORDSHIPS

<u>MOHAMMED LAWAL GARBA</u>	<u>JUSTICE, SUPREME COURT</u>
<u>EMMANUEL AKOMAYE AGIM</u>	<u>JUSTICE, SUPREME COURT</u>
<u>CHIOMA EGONDU NWOSU-IHEME</u>	<u>JUSTICE, SUPREME COURT</u>
<u>HARUNA SIMON TSAMMANI</u>	<u>JUSTICE, SUPREME COURT</u>
<u>MOORE ASEIMO A. ADUMEIN</u>	<u>JUSTICE, SUPREME COURT</u>
<u>HABBEB ADEWALE O. ABIRU</u>	<u>JUSTICE, SUPREME COURT</u>
<u>JAMILU YAMMAMA TUKUR</u>	<u>JUSTICE, SUPREME COURT</u>

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 AKWA IBOM STATE
5. ATTORNEY GENERAL OF BAUCHI STATE
6. ATTORNEY GENERAL OF BAYELSA STATE
7. ATTORNEY GENERAL OF BENUE STATE
8. ATTORNEY GENERAL OF BORNO STATE
9. ATTORNEY GENERAL OF CROSS RIVER STATE
10. ATTORNEY GENERAL OF DELTA STATE
11. ATTORNEY GENERAL OF EBONYI STATE
12. ATTORNEY GENERAL OF EDO STATE
13. ATTORNEY GENERAL OF EKITI STATE
14. ATTORNEY GENERAL OF ENUGU STATE

DEFENDANTS

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15. ATTORNEY GENERAL OF GOMBE STATE
16. ATTORNEY GENERAL OF IMO STATE
17. ATTORNEY GENERAL OF JIGAWA STATE
18. ATTORNEY GENERAL OF KADUNA STATE
19. ATTORNEY GENERAL OF KANO STATE
20. ATTORNEY GENERAL OF KATSINA STATE
21. ATTORNEY GENERAL OF KEBBI STATE
22. ATTORNEY GENERAL OF KOGI STATE
23. ATTORNEY GENERAL OF KWARA STATE
24. ATTORNEY GENERAL OF LAGOS STATE
25. ATTORNEY GENERAL OF NASARAWA STATE
26. ATTORNEY GENERAL OF NIGER STATE
27. ATTORNEY GENERAL OF OGUN STATE
28. ATTORNEY GENERAL OF ONDO STATE
29. ATTORNEY GENERAL OF OSUN STATE
30. ATTORNEY GENERAL OF OYO STATE
31. ATTORNEY GENERAL OF PLATEAU STATE
32. ATTORNEY GENERAL OF RIVERS STATE
33. ATTORNEY GENERAL OF SOKOTO STATE
34. ATTORNEY GENERAL OF TARABA STATE
35. ATTORNEY GENERAL OF YOBE STATE
36. ATTORNEY GENERAL OF ZAMFARA STATE

DEFENDANTS

JUDGMENT

(DELIVERED BY JAMILU YAMMAMA TUKUR, JSC)

The Plaintiff by an Originating Summons dated and filed on 20th May, 2024, presented the following questions for determination before this Court:

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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) lawfully dissolve democratically-elected Local Government Councils within the said States/State?
3. Whether, by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2) (a) and (b) and 3 (c), 7 (1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution

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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, 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) or Executive Orders/other actions (anyhow so called), lawfully dissolve democratically-elected Local Government Councils within the said States and replace them with Caretaker Committees (anyhow so called)?

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


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

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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 or causes the dissolution of democratically-elected Local Government Councils of their States has not gravely breached the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); hence has committed gross misconduct?

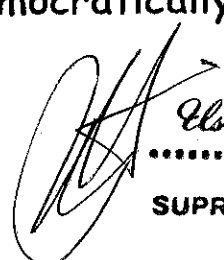
6. Whether in the face of a violation of the Constitution and the unconstitutionality of a structure of administration of local government council other than a democratically elected local government council guaranteed by Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal Government/Federation is obligated 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


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

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

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government system mandatorily provided for in Section 7 of the 1999 Constitution is not a breach and subversion of Sections 1(1), (2) and 7(1) of the Constitution as to create an interregnum in local government system and render inoperable Section 162(5) of the 1999 Constitution regarding allocation of fund standing to the credit of local government in Federation Account to the State?

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

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the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the States or anyone of them have/has unbridled and unrestricted discretion to operate the "State Joint Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government Councils within those States, rather than for the greater benefit of those Councils, which are the third tier of Government in Nigeria?

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, a state Government is not merely an agent of the Local Governments in the State to collect the amount standing to the credit of the Local Government in the Federation account and pay directly to the Local Government and as such agent has no power or right to spend or use any part of it for any purpose?
14. Whether by virtue of S.162(3), (5) and (6) of the Constitution of the Federal Republic of Nigeria

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1999, the amount standing to the credit of a local Government Council in the Federation account and received by a State on its behalf, and paid into a State Joint Local Government Account is liable to be paid directly to each Local Government without delay?

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

The Plaintiff thereafter claimed the following:

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

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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 States/state.

3.A Declaration that, by the combined reading of sections 1(1), (2) and (3), 4(7) , 5(2) (a) and (b) and 3(c), 7(1) and (3) and 14(1) , (2) (a) , (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with section 318(1) thereof, which defines "government" to include the Government of a Local Government Council, the 36

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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 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.


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- 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) and (2) and (3), 4(7), 5(2) (a) and (b) and 3(c), 7(1) and (3) and 14(1), (2) (a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with section 318(1), thereof, which defines "government" to include the Government of a Local Government Council, any of the elected or other officials of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of any of the democratically-elected Local Government Councils of their/its States has gravely breached the provisions of the 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 sections 1(1) and (2) and (3), 4(7) , 5(2) (a) and (b) and 3(c), 7(1) and (3) and 14(1), (2) (a), (c) and (4) and 162(3), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 States of Nigeria, acting through any of their elected or other


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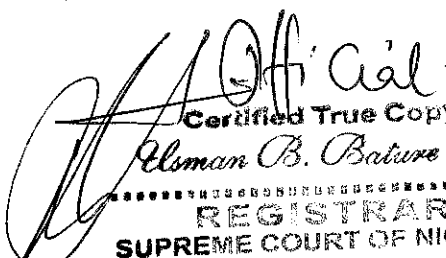
officials that dissolves democratically elected Local Government Councils within its domain is not entitled to the revenue allocation and operation of a Joint Account as stipulated in section . 162(3), (5), (6), (7) and (8) of the said Constitution until such a State reverses to status quo ante bellum.

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 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


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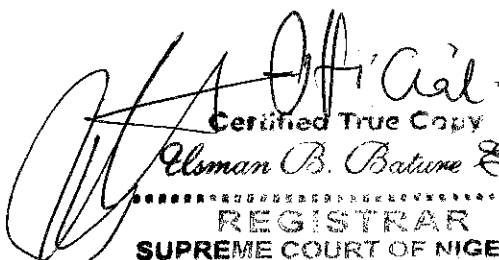
either a State Law or an administrative directive/order, dissolves or causes the dissolution of democratically-elected Local Government Councils of their States is liable to be arraigned during or at the end of his tenure (as the case may be) for criminal offences bordering on breach of the Constitution/contempt of court and or breach of applicable criminal and penal laws.

11. A Declaration that, by the combined reading of sections 1(1), (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), 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


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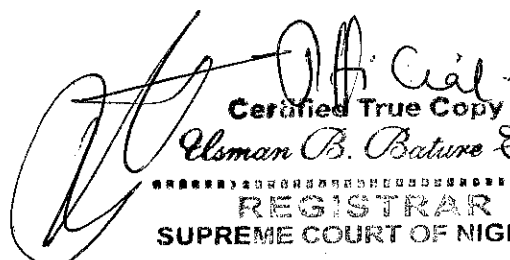
those Councils, which are the third tier of Government in Nigeria.

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 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


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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. An Order of immediate compliance by the States, through their elected or appointed officials and public officers, with the terms of the judgment and orders made in this Suit; and successive compliance by successive State Government officials and public officers, save when the



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applicable provisions of the Constitution of Nigeria, 1999 as amended here interpreted are otherwise subsequently amended.

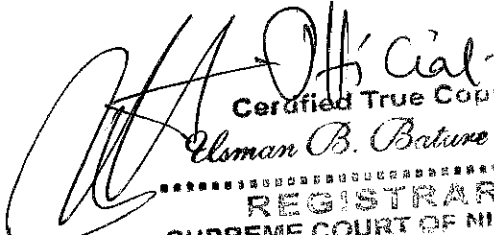
19. Any other or other orders as this Honourable Court may deem fit to make in all the circumstances of this case.

The grounds upon which the claim rested are set out hereunder thus:

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 the 1999 Constitution of the Federal Republic of Nigeria both the Plaintiff and Defendants herein are under a constitutional duty

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- 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. Olubunmo* (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


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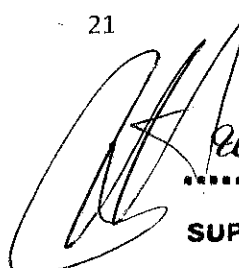
guaranteed by the 1999 Constitution and that no other structure outside the Constitution can be put in place to govern the local government;

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

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government system has not yielded any positive result;

16. The 1999 Constitution provides for distribution of public revenue to the 3 tiers of government to wit, Federal, State and Local Governments;
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

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government council are funds received in trust for the benefit of local government councils;

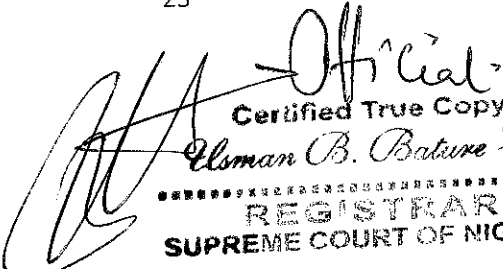
22. By the failure of the Defendants to put in place a democratically elected local government system. Defendants have continued to deny the Plaintiff and Federation Account constitutional beneficiaries (to wit, democratically elected local government system/councils) of funds that may be due from the Federation Account;
23. To continue to disburse or release funds from the Federation Account to the Defendant for the non-existing democratically elected local government system is to undermine the sanctity of the 1999 Constitution;
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

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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 unconstitutionality 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.

In reactions to this suit, the Defendants filed several Preliminary Objections counter affidavit and written addresses in opposition to the originating summons. The plaintiff filed a 2nd further affidavit in response to all the


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counter affidavits filed by the defendants and a composite written address in response to the preliminary objections which shall be taken first. The various objections could be rightly summarized under 8 subheadings as captured in the Reply dated 10th day of June, 2024 filed by the Attorney General of the Federation as follows;

- "(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/Re judicata;
- (5) That the plaintiff' 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;

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- (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 court; and
- (8) That the plaintiff's suit is an attempt to amend or fill gaps in the Constitution of the Federal Republic of Nigeria."

A major plank of the objection of the defendants against the plaintiff's suit is on the ground that the plaintiff lacks the locus standi to institute the action and that this Court has no jurisdiction to adjudicate on the matter. It is the argument of the defendants that the plaintiff haven not shown any sufficient interest to protect, this Court lacks jurisdiction to adjudicate on the matter.

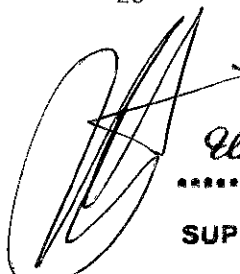
The hallowed principle of locus standi is predicated on the pedestal that no Court is obligated to adjudicate a claim in which the plaintiff has a remote, hypothetical or no sufficient interest at all. Thus only a person who has sufficient interest in a subject matter is competent to bring an action on it.

Locus standi is a threshold issue in litigation that affects-

Access to justice, jurisdictions judicial powers and remediation of civil wrongs.

In the case of **BARBUS & CO. (NIG) LTD & ANOR v. OKAFOR-UDEJI** (2018) LPELR-44501(SC) (Pp 18 - 20 Paras F - A) this Court per John Inyang Okoro, JSC, reiterated the above principles thus:

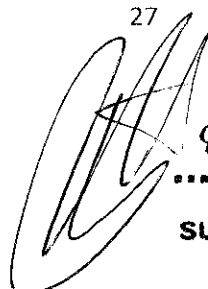
"The expression "Locus standi", denotes legal capacity to institute proceedings in a Court of law. It is used interchangeably with terms like "standing" or "title to sue". A person has locus standi to sue in an action if he is able to show to the satisfaction of the court that his civil rights and obligations have been or are in danger of being infringed. There are two tests for determining if a person has locus standi. They are:- 1. The action must be justiciable. 2. There must be a dispute between the parties. There ought to be a liberal approach in applying the test. See *Ojukwu v Ojukwu & Anor* (2008) 12 SC (Pt. 111) page 1, (2008) 18 NWLR (Pt. 1119) 439, *Attorney General Kaduna State v Hassan* (1985) 2 NWLR (PT. 8) 483, *Adesanya v President of the Federal Republic of Nigeria &*

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Anor (1981) 550 page 112, (1981) LPELR - 147 (SC), Thomas & Ors v Olufosoye (1936) 1 NWLR (pt 18) 669, Emezi v Osuagwu & Ors (2005) 12 NWLR (pt 939) 340. From the definition of locus standi, it is clear that for a person to have the legal capacity to sue over a matter, he must show sufficient interest in the subject matter of litigation and that will give him the access to institute proceedings in a Court of law. As was the case in relation to ascertaining reasonable cause of action, the pleadings of the party seeking to sue must disclose a cause of action vested in the plaintiff and the rights and obligations or interest of the plaintiff which have been violated before he can be vested with locus standi to sue."

See: OLI V. INEC & ORS (2023) LPELR -60587(SC): NWORIKA V. ONONEZE-MADU & ORS (2019) LPELR-46521(SC): and B.B. APUGO & SONS LTD V. OHMB (2016) LPELR-40598(SC).

The grouse of the plaintiff in this suit is predicated on the infringement of a very crucial part of the constitution that has to do with the Governance Structure of the Federation and the

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plaintiff as the chief law officer of the Federation vide the provisions of section 150 (1) of the 1999 constitution (As Altered) has the locus to institute the instant action.


The other heads of objection against the suit have been shown in the lead judgment to be bereft of any merit. I agree with the views expressed and the conclusion arrived at on those heads of objections. I also find the entire preliminary objections as lacking in merit and same are hereby dismissed.

MERIT OF THE SUIT

On the merit of the case, I have read the lead judgment and I agree with the reasoning and conclusion arrived at that the suit has merit.

The core issue before the Court revolves around the correct interpretation of the provisions of Section 162(3), (5) and (6) of the 1999 Constitution vis a vis the disbursement of moneys from the Federation account to the Local Government Councils. Whether the Federation can validly pay directly to the Local Government Councils without the necessity of passing through the states as enshrined by the provisions of section 162 (5) and (6) of the constitution.

Under the present arrangement moneys meant for the third tier of Government must pass through the 'states joint Local Governments account' an arrangement the plaintiff said the

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defendants serially abused by either not paying all or in some cases remitting very little to the intended beneficiaries. The plaintiff therefore urge the Court to order for direct disbursement of the moneys from the Federation account to the Local Government Councils to realise the objective of the Constitution. The defendants however argued the contrary and submitted essentially that disbursement of moneys standing to the credit of the Local Government Councils directly to them will offend the provisions of Section 162 (5) and (6) of the 1999 Constitution.

Section 162 (5) and (6) reads;

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

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


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A literal interpretation of the aforementioned section canvassed by the defendants would seem to suggest mandatoriness by the usage of the word "shall" therein. In other words the federation cannot make direct payment of funds meant for the Local Government Councils without violating the provisions of Section 162 (5) and (6).

The law is however trite that in the interpretation of Constitutional provisions the court must bear certain principles in mind and these are;

1. A liberal approach to the interpretation of the Constitution or statute should be adopted.
2. the court must employ care and take the circumstances of the people into consideration.
3. The historical facts, which are necessary for comprehension of the subject matter may be called in aid; and the mischief which the legislation was made to deter is arrested.

It is also an accepted principle of the interpretation of the Constitution that the provision should be taken as a whole and that a narrow interpretation that will do violence to it's provisions and failed to achieve the goal set by the Constitution must be avoided see **SKYE BANK PLC VS VICTOR ANAEMEN IWU (2017) LPELR 42595 (SC)**;

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**AGBAJE V. FASHOLA ALL FWLR (PT 443) 1302 AT 1337
B-C; A.G. FEDERATION (1981) 10 SC.**

In the instant case a holistic construction of the relevant provisions of the Constitution subject of the dispute by the parties will clearly bring to the fore the intention and purport of the Constitution. In this respect it is not a matter for dispute that by the provisions of section 7(1) of the Constitution the existence of democratically elected Local Government Councils is guaranteed as a tier of government within the federation and which by the provisions of Section 162(3) of the Constitution has right of ownership to the funds standing to its credit in the federation account just like the federal and State Governments.

For ease of reference section 162(3) provides thus;

"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."

Section 162(5) and (6) merely prescribed the procedure for the disbursement of such funds to the local government. The payment to the State Governments of the share due to the local government councils from the federation account merely

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makes the state governments trustees of such funds. They are not entitled to keep any part of it for their own use. As pointed out in the lead judgment the provisions of sub Section (5) and (6) of Section 162 of the Constitution do not confer any right in respect of the funds standing to the credit of the local government councils in the federation account, to the State Governments.

The procedure for disbursement of the amount standing to the credit of the local government councils is not working in tune with the clear intendment of the Constitution which envisages financial independence of the local government councils in respect of funds accruing to them for the benefit of their communities.

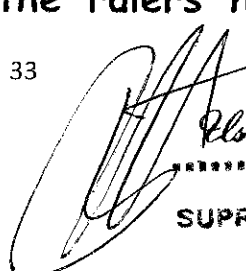
A narrow and restrictive interpretation of the provisions of sub sections (5) and (6) of Section 162 of the constitution will certainly do violence to the primary objective of the constitution in ensuring financial independence to the local government councils thus defeating the goal set out by the constitution in section 162 (3) which gives ownership of funds standing to the credit of the federation account to the three tiers of government named therein.

To insist that the unworkable sharing procedure prescribed under sub section (5) and (6) of Section 162 of the constitution must continue to operate to the disadvantage of

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the local government councils is certainly not what the framers of the constitution intended by those provisions. It will also be against one of the fundamental principles of construction which frowns at the use of constitutional power to attain an unconstitutional result. Insisting on the mandatory tenor of the provisions of sub section (5) and (6) of section 162 in the disbursement of the funds to the local government councils in Nigeria and which provision the defendants have serially frustrated brings to the fore the level of the arrogance in the use of state power in this country and this attitude is an indication that the spirit of democracy remains foreign to our leaders. In his book titled constitutional democracy in Africa vol 1 chapter 13 on fostering partnership between the legislature and the executive for sustainable democracy: A constitutionalist perspective; the Learned Author Professor Ben Nwabueze SAN spoke on the arrogance and intolerant use of state power thus;

"The arrogance and intolerance of power in democratic Nigeria since may 29 1999 is nearly as great as under military rule, which is an indication that the spirit of democracy remains foreign to our new rulers in the legislative and executive arms of the government just as it was to their military predecessors in office. For, democracy requires in the rulers humility in the

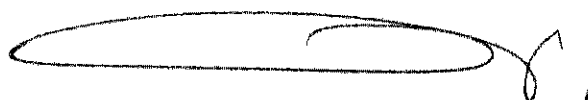

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exercise of power. Democracy is preached and proclaimed simply as some abstract concept enshrined on the pages of the constitution but it is not yet being lived in the utterances and behaviours of our rulers as it's spirit requests"

I will say no more.

It is against this back ground that I find myself in harmony with my learned brother Emmanuel Akomaye Agim JSC in the lead judgment that the word "shall" in section 162(5) and (6) of the constitution be construed to mean 'may' implying permissiveness in order to give effect to the provision of section 162 (3) which guarantees the right to the disbursement of funds standing in the federation account to the three tiers of the government, including the Local Government Councils without let or hindrance. It is for these and the elaborate reasoning in the lead judgment that I find merit in the case presented by the plaintiff and I grant the reliefs sought in terms of those granted in the lead judgment.

I abide by the order as to costs made in the lead judgment.



**JAMILU YAMMAMA TUKUR,
JUSTICE, SUPREME COURT.**

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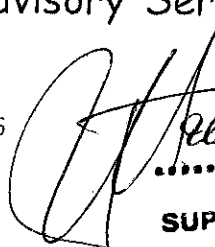
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F,B, Mnyim (Attorney General Benue State) E. Enyikwola (Director Citizens Rights, Z.O. Onum, (Assistant Chief State Counsel) J.T. Gwa, (Assistant Chief State Counsel) and E.N. Agoh (Senior Chief Stater Counsel) for the 7th Defendant.

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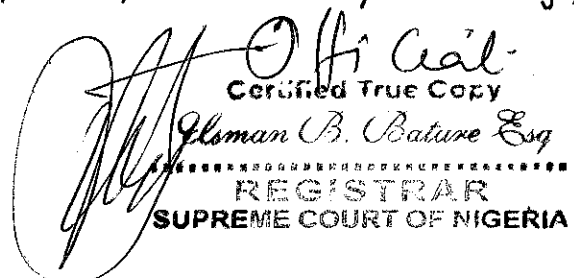
Sule Shu'aibu, SAN (Attorney-General, Kaduna State) with Jumai Adamu Dan'Azumi, Esq (Solicitor General), Mohammed Tajudeen Mohammed, Esq Salvation Zainab Kyari, Esq (Senior State Counsel), Sadiya Nasir, (Senior State Counsel) and Aliyu Alhassan for 18th Defendant

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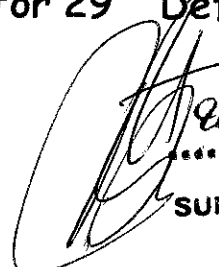
S.M. Labaran, Esq (Attorney General, Nasarawa State) Y.Y. Ede (Director Civil Litigation), with E.U. Aliyu, Esq (Deputy Director Legal Drafting) M.J. Abokee (Deputy Director Law Reform) and B.A. Jankat, Esq for 25th Defendant.

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Mohammed Nasiru Binji, Esq., (Attorney General, Sokoto State) L.S. Wali, Esq (Director Civil Litigation) and Amanzi F. Amanzi, Esq., for 33rd Defendant.

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