

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 14**  
**CASE NUMBER : SUIT NO: CV/2006/2021**  
**DATE: : WEDNESDAY 1<sup>ST</sup> MARCH, 2022**

**BETWEEN:**

**HON. BASHIR OMOLAJA BOLARINWA ..... PLAINTIFF/RESPONDENT**

**AND**

**1. ALL PROGRESSIVES CONGRESS (APC)**

**2. GOV. MAI MALA BUNI**

**3. JOHN AKPANUDOEDEHE**

**4. ABUBAKAR BELLO**

**5. ISIAKA BELLO**

**6. STELLA OKOTETE**

**7. PROF. TAHIR MAMMAN, SAN**

**8. KEN NNAMANI**

**9. SENATOR ABUBAKAR YUSUF**

**10. HON. AKINREMI OLAIDE**

**11. DR. JAMES LALU**

**12. CHIEF DAVID LYON**

**13. SENATOR ABBA ALI**

**14. ISMAEEL BUBA AHMED**

(2<sup>nd</sup> – 14<sup>th</sup> Defendants sued in their capacities as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the APC)

**15. ABDULLAHI SAMARI**

(15<sup>th</sup> Defendant sued in his capacity as acting chairman of APC Caretaker Committee, Kwara State)

**DEFENDANTS**

# **JUDGMENT**

The Claimant vide Originating Summons dated the 16<sup>th</sup> day of August, 2021, approached this Honourable Court for the following reliefs:-

- a. A Declaration that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants being serving Executive Governors of Yobe, Niger and Osun States of Nigeria respectively, their appointment as chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020, is illegal and unconstitutional, having regards to the provisions of section 183 and 223 of the 1999 Constitution of Nigeria (as Amended).
- b. A Declaration that having violated the provisions of Sections 183 and 223 of the

Constitution of the Federal Republic of Nigeria 1999 (as Amended), the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are not entitled to the immunity granted under section 308 of the Constitution of the Federal Republic of Nigeria.

- c. A Declaration that the appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants being serving Executive Governors of Yobe, Niger and Osun States of Nigeria, Executive Director in Nigeria Export and Import (Nexim) Bank, and Senior Special Assistant to the President on National Social Investment Programs respectively, as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020, is illegal, having regards to

the Provisions of Article 17(IV) of the Constitution of the 1<sup>st</sup> Defendant.

- d. A Declaration that the Appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020, without the Ratification of the Board of Trustees of the 1<sup>st</sup> Defendant, is illegal and void having regards to the provisions of Article 18(II) of the Constitution of the All Progressive Congress.
- e. A Declaration that the Appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020, is illegal

and unconstitutional, having regards to the provision of the Constitution of Federal Republic of Nigeria (as amended).

- f. A Declaration that the decision of the National Executive Committee (NEC) of the 1<sup>st</sup> Defendant, made on 8<sup>th</sup> December, 2020, to extend the tenure of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant for a period of Six (6) Months, is illegal and unconstitutional having regards to Section 183 of the 1999 Constitution of Nigeria (as amended), Section 223 of the Constitution of Federal Republic of Nigeria (as amended), Article 17(IV) of the Constitution of the All Progressives Congress and Article 18(II) of the Constitution of the All Progressives Congress.

- g. A Declaration that the Notice issued by the 2<sup>nd</sup> – 4<sup>th</sup> Defendants on 25<sup>th</sup> July, 2021, as Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant for the conduct of the Ward, Local Government and State Congresses of the 1<sup>st</sup> Defendant is illegal, null and void, having regards to Section 183 of the 1999 Constitution of Nigeria (as amended), Section 223 of the Constitution of Federal Republic of Nigeria (as amended), Article 17(IV) of the Constitution of the All Progressives Congress and Article 18(II) of the Constitution of the All Progressives Congress.
- h. A Declaration that the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant cannot

validly remove the Claimant from Office as the Chairman of the 1<sup>st</sup> Defendant, Kwara State Chapter, having regards to Section 183 of the 1999 Constitution of Nigeria (as amended), Section 223 of the Constitution of Federal Republic of Nigeria (as amended), Article 17(IV) of the Constitution of the All Progressives Congress and Article 18(II) of the Constitution of the All Progressives Congress.

- i. A Declaration that the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant cannot validly appoint the 15<sup>th</sup> Defendant as the Caretaker Chairman of the 1<sup>st</sup> Defendant, Kwara State Chapter, having regards to Section 183 of the 1999 Constitution of Nigeria (as amended), Section 223 of the Constitution of Federal

Republic of Nigeria (as amended), Article 17(IV) of the Constitution of the All Progressives Congress and Article 18(II) of the Constitution of the All Progressives Congress.

- j. A Declaration that by the decision of the National Executive Committee of the 1<sup>st</sup> Defendant to extend the tenure of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant for six (6) months from 8<sup>th</sup> December, 2020, till 7<sup>th</sup> June, 2021, the Ward Congresses of the 1<sup>st</sup> Defendant conducted on 31<sup>st</sup> July, 2021 and supervised by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as set out in the Notice of Congress, is illegal, null and void.



k. A Declaration that by the decision of the National Executive Committee of the 1<sup>st</sup> Defendant to extend the tenure of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant for six (6) months from 8<sup>th</sup> December, 2020 till 7<sup>th</sup> June, 202, the Planned Local Government and State Congresses of the 1<sup>st</sup> Defendant to be conducted and supervised by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as set out in the Notice of Congress, is illegal, null and void.

1. A Declaration that all the decisions and actions taken by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant, from the 25<sup>th</sup> of June, 2020, till they are removed from office, are illegal, null and void, having regards to Section

183 of the 1999 Constitution of Nigeria (as amended), Section 223 of the Constitution of Federal Republic of Nigeria (as amended) and Article 17(IV) of the Constitution of the All Progressives Congress.

- m. An Order of this Honourable Court removing the 2<sup>nd</sup> – 14<sup>th</sup> Defendants from Office as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant.
- n. An Order of this Honourable Court nullifying and setting aside all actions and the purported removal of the Claimant from Office as the State Chairman of the 1<sup>st</sup> Defendant in Kwara State by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants on 4<sup>th</sup> January, 2021.

- o. An Order of this Honourable Court nullifying and setting aside the purported Ward Congresses conducted by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in Kwara State on 31<sup>st</sup> July, 2021.
- p. An Order of perpetual injunction restraining the 1<sup>st</sup> – 14<sup>th</sup> Defendants from conducting any other Congresses into any office in the 1<sup>st</sup> Defendant pursuant to the Notice of Congress issued by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants on 25<sup>th</sup> July, 2021 or from performing any other functions in their capacities as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant.
- q. Such further or other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the originating summons is a 32 paragraphs affidavit deposed to by the Claimant (i.e Hon. Bashir OmolafaBolarinwa), Male of No. 10, Shonga Street, GRA, Ilorin, Kwara State.

That he was appointed as Chairman of the All Progressives Congress in Kwara State on 12<sup>th</sup> September, 2018. His oath of office is attached herewith as Exhibit “C”.

That on the 25<sup>th</sup> of June, 2020, the National Executive Committee (NEC) of the 1<sup>st</sup> Defendant convened an emergency meeting and as the Chairman of the Kwara State Chapter of the party, he is a member of NEC and entitled to attend the said emergency meeting.

That at the meeting, the then National Chairman of the Party (Comrade Adams Oshiomhole) was

removed from office along with members of the then National Working Committee.

That at the said emergency meeting, the NEC of the 1<sup>st</sup> Defendant also set up a new Committee known as the Caretaker/Extraordinary Convention Planning Committee (CECPC) to fill in the leadership vacuum of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> – 14<sup>th</sup> Defendants were appointed members of the CECPC. The monitoring report of the said NEC meeting issued by the Independent National Electoral Commission (INEC) is hereby attached and marked as Exhibit “D”.

It is further the deposition of the Claimant that at the time of this appointment and up till this moment, the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants were and remain the current Executive Governor of Yobe, Niger and Osun States respectively.

That the 6<sup>th</sup> Defendant is an Executive Director of Nigerian Export and Import (NEXIM) Bank, while the 14<sup>th</sup> Defendant is the Senior Special Assistant to the President of National Social Investment Programs.

It is further the deposition of the Claimant that the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants are still occupying their positions as Executive Governor of Yobe, Niger and Osun States respectively, while 6<sup>th</sup> and 7<sup>th</sup> Defendants are still holding their positions as the Executive Director of Nigeria Export and Import (NEXIM) Bank and Senior Special Assistant to the President on National Social Investment programs respectively, and at the same time simultaneously/ concurrently still holding their respective positions as Chairman and Members of (CECPC) of 1<sup>st</sup> Defendant respectively.

That additionally, NEC removed all the State Chairmen of the 1<sup>st</sup> Defendant including himself from office and reinstated all of them (without exception) in Caretaker capacities.

That on 4<sup>th</sup> January, 2021, the 2<sup>nd</sup> – 14<sup>th</sup> Defendants, in a purported exercise of powers conferred on them, removed him from office and replaced him with the 15<sup>th</sup> Defendant. No reason was given for this action till date.

That he knows as a matter of fact that the 2<sup>nd</sup> – 14<sup>th</sup> Defendants did not have recourse to the NEC of the 1<sup>st</sup> Defendant before illegally removing him from the office as the Chairman of Caretaker Committee of Kwara State.

It is further the deposition of the Claimant that the Defendants refused, failed and neglected to respond

to my letter above or do anything about same, without any reason whatsoever.

That despite the fact that he is still a bonafide member of the 1<sup>st</sup> Defendant, he was also prevented from taking part in the aforementioned Ward Congress until its conclusion.

It is further the deposition of the Claimant that, he verily believes that the actions of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in the forgoing circumstances is a grave violation of provisions of the 1<sup>st</sup> Defendant's Constitution and is detrimental to the wellbeing of the 1<sup>st</sup> Defendant to which he belong.

That if the court does not intervene in the circumstances of this suit, the 2<sup>nd</sup> – 14<sup>th</sup> Defendants will continue to take actions in violation of constitutional provisions, in a manner that will cause



irreparable harm to the 1<sup>st</sup> Defendant, of which he is a member.

In support of the affidavit is a written address wherein 14 issues were raised for determination to with;

1. Whether the appointment of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants being serving Governors of Yobe, Niger and Osun States of Nigeria Respectively, as Chairman and Members of the Caretaker/Extraordinary convention planning committee (CECPC) of the 1<sup>st</sup> Defendant, pursuant to their purported appointment to those capacities on 25<sup>th</sup> June, 2020, is illegal and unconstitutional, having regards to the provisions of sections 183 and 223 of the

Constitution of the Federal Republic of Nigeria  
1999 (as Amended).

2. If question No. 1 above is answered in the positive, whether the 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants functioning as chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, pursuant to their purported appointment to those capacities on 25<sup>th</sup> June, 2020, being a gross violation of sections 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended), will not operate to disentitle the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants from the immunity provisions of section 308 of the Constitution.

3. Whether the 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants who are in gross violation of sections 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) by serving Governors of Yobe, Niger and Osun States of Nigeria respectively, and at the same time as chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant pursuant to appointment to those party offices purportedly made on 25<sup>th</sup> June, 2020, are entitled to the immunity granted under section 308 of the same Constitution.
  
4. Whether the appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants being respectively serving Governors of Yobe, Niger and Osun States of Nigeria, Executive Director in Nigeria Export and Import (NEXIM) Bank, and senior special

assistant to the President on National Social Investment Programs respectively, as Chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020, is not legal, having regards to the provisions of Article 17 (iv) of the Constitution of the all Progressives Congress and section 233 of the Constitution of the Federal Nigeria 1999 (as Amended).

5. Whether the appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020 is not legal, having regards to the provision of section 233 of the Constitution of Federal Republic of Nigerian (as Amended).

6. Whether the appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020, without the Ratification of the Board of trustees of the 1<sup>st</sup> Defendant is not legal, having regards to the provisions of Article 18 (11) of the Constitution of the All Progressives Congress. If the above four questions are answered in the Positive (3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup>).
  
7. Whether the decision of the National Executive Committee (NEC) of the 1<sup>st</sup> Defendant, made on 8<sup>th</sup> December, 2020, to extend the tenure of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant for a period of Six (6) months, is not valid, having

regards to section 183 of the 1999 Constitution of Nigeria (as Amended), Article 17 (IV) of the Constitution of the All Progressives Congress and Article 18 (II) of the Constitution of the All Progressives Congress, and section 223 of the Constitution of Federal Republic of Nigeria (as Amended).

8. Whether the notice issued by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants, on 25<sup>th</sup> July, 2021, acting as members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant for the conduct of the ward, Local Government and State Congresses of the 1<sup>st</sup> Defendant is not illegal, null and void, having regards to section 183 of the 1999 Constitution of Nigeria (as Amended), section 223 of the Constitution of Federal Republic of Nigeria (as

Amended) Article 17 (IV) of the Constitution of the All Progressives Congress and Article 18 (II) of the Constitution of the All Progressives Congress.

9. Whether the 2<sup>nd</sup> – 14<sup>th</sup> Defendants, acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant can validly remove the Claimant from office as the Chairman of the 1<sup>st</sup> Defendant, Kwara State Chapter, having regards to section 183 of the 1999 Constitution of Nigeria (as Amended), section 223 of the Constitution of Federal Republic of Nigeria (as Amended) and Article 17 (IV) of the Constitution of the All Progressives Congress.

10. Whether the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant can Validly appoint the 15<sup>th</sup> Defendant as the Caretaker chairman of the 1<sup>st</sup> Defendant, Kwara State chapter, having regards to section 183 of the 1999 Constitution of Nigeria (as Amended), section 223 of the Constitution of Federal Republic of Nigeria (as Amended) and Article 17(IV) of the Constitution of the All Progressives Congress.

11. Whether by the Decision of the National Executive Committee of the 1<sup>st</sup> Defendant to extend the tenure of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant for Six (6) months from 8<sup>th</sup> December, 2020, till 7<sup>th</sup> June,



2021, the Ward Congresses of the 1<sup>st</sup> Defendant conducted on 31<sup>st</sup> July, 2021 and supervised by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as set out in the notice of Congress, is not illegal, null and void, having regards to section 183 of the 1999 Constitution of Nigeria (as Amended), section 223 of the Constitution of Federal Republic of Nigeria (as Amended) and Article 17 (IV) of the Constitution of the All Progressives Congress.

12. Whether the Decision of the National Executive Committee of the 1<sup>st</sup> Defendant to extend the tenure of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant for Six (6) months from 8<sup>th</sup> December, 2020, till 7<sup>th</sup> June, 2021, the Planned Local Government and State Congresses of the 1<sup>st</sup> Defendant to be conducted

and supervised by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as set out in the notice of Congress, is not illegal, null and void, having regards to section 183 of the 1999 Constitution of Nigeria (as Amended), section 223 of the Constitution of Federal Republic of Nigeria (as Amended) and Article 17 (IV) of the Constitution of the All Progressives Congress.

13. Whether all the decisions and actions taken by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant, from the 25<sup>th</sup> of June, 2020, till they are removed from office are not illegal, null and void, having regards to section 183 and 223 of the 1999 Constitution of Nigeria (As Amended), section 223 of the Constitution of Federal Republic of Nigeria (as

Amended) and Article 17 (IV) of the Constitution of the All Progressive Congress (APC).

Claimant further sought for the following consequential reliefs to-wit;

- a. A Declaration that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants being serving executive Governors of Yobe, Niger and Osun States of Nigeria respectively, their appointment as chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020, is illegal and unconstitutional, having regard to the provisions of sections 183 and 233 of the 1999 Constitution of Nigeria (as amended).

- b. A Declaration that having violated the provisions of sections 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are not entitled to the immunity granted under section 308 of the Constitution of the Federal Republic of Nigeria.
- c. A Declaration that the appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> 6<sup>th</sup> and 14<sup>th</sup> Defendants being serving executive governors of Yobe, Niger and Osun States of Nigeria, Executive Director in Nigeria Export and Import (Nexim) Bank, and Seniors Special Assistant to the President on National Social Investment Programs respectively, as chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made

on 25<sup>th</sup> June, 2020, is illegal, having regards to the provisions of article 17 (iv) of the Constitution of the 1<sup>st</sup> Defendant.

- d. A Declaration that the appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as chairman and members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020, without the Ratification of the Board of Trustees of the 1<sup>st</sup> Defendant, is illegal and void having regards to the provisions of Article 18 (II) of the Constitution of the All Progressives Congress.
- e. A Declaration that the Appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendant as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made

on 25<sup>th</sup> June, 2020, is illegal and unconstitutional, having regards to the provision of section 223 of the Constitution of Federal Republic of Nigeria (as amended).

- f. A Declaration that the Decision of the National Executive Committee (NEC) of the 1<sup>st</sup> Defendant, made on 8<sup>th</sup> December, 2020, to extend the tenure of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant for a period of six (6) months, is illegal and unconstitutional having regards to section 183 of the 1999 Constitution of Nigeria (as amended), section 223 of the Constitution of Federal Republic of Nigeria (as amended), Article 17 (iv) of the Constitution of the All Progressives Congress and Article 18(II) of the Constitution of the All Progressives Congress.

- g. A Declaration that the notice issued by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants on 25<sup>th</sup> July, 2021 as members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant for the conduct of the ward, Local Government and State Congresses of the 1<sup>st</sup> Defendant is illegal, null and void, having regards to section 183 of the 1999 Constitution of Federal Republic of Nigeria (as amended), section 223 of the Constitution of Federal Republic of Nigeria (as amended), Article 17 (iv) of the Constitution of the All Progressives Congress and Article 18 (II) of the Constitution of the All Progressive Congress.
- h. A Declaration that the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant cannot

validly remove the Claimant from office as the Chairman of the 1<sup>st</sup> Defendant, Kwara State Chapter, having regards to section 183 of the 1999 Constitution of Nigeria (as amended), Section 223 of the Constitution of Federal Republic of Nigeria (as amended), Article 17 (iv) of the Constitution of the All Progressive Congress and Article 18 (II) of the Constitution of the All Progressives Congress.

- i. A Declaration that the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant cannot validly appoint the 15<sup>th</sup> Defendant as the Caretaker Chairman of the 1<sup>st</sup> Defendant, Kwara State Chapter, having regards to section 183 of the 1999 Constitution of Nigeria (as amended), section 223 of the Constitution of Federal



Republic of Nigeria (as amended), Article 17 (iv) of the Constitution of the All Progressives Congress and Article 18 (II) of the Constitution of the All Progressives Congress.

- j. A Declaration that by the Decision of the National Executive Committee of the 1<sup>st</sup> Defendant to extend the tenure of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant for Six (6) months from 8<sup>th</sup> December, 2020, till 7<sup>th</sup> June, 2021, the Ward Congresses of the 1<sup>st</sup> Defendant conducted on 31<sup>st</sup> July, 2021 and supervised by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as set out in the Notice of Congress, is illegal, null and void.

1. A Declaration that by the Decision of the National Executive Committee of the 1<sup>st</sup> Defendant to extend the tenure of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant for Six (6) months from 8<sup>th</sup> December, 2020, till 7<sup>th</sup> June, 2021, the Planned Local Government and State Congresses of the 1<sup>st</sup> Defendant to be Conducted and Supervised by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as set out in the Notice of Congress, is illegal, Null and Void.
  
- m. A Declaration that all the decisions and actions taken by the 2<sup>nd</sup> -14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant, from the 25<sup>th</sup> of June, 2020, till they are removed from office, are illegal, null and void, having regards to section

183 of the 1999 Constitution of Nigeria (as amended), section 223 of the Constitution of Federal republic of Nigeria (as amended) and Article 17 (iv) of the Constitution of the All Progressives Congress.

- n. An Order of this Honourable Court removing the 2<sup>nd</sup> – 14<sup>th</sup> Defendants from office as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant.
- o. An Order of this Honourable Court nullifying and setting aside all actions and the purported removal of the Claimant from office as the State Chairman of the 1<sup>st</sup> Defendant in Kwara State by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants on 4<sup>th</sup> January, 2021.

- p. An Order of this Honourable Court nullifying and setting aside the purported Ward Congress conducted by the 2<sup>nd</sup> - 14<sup>th</sup> Defendants in Kwara State on 31<sup>st</sup> July, 2021.
- q. An Order removing the 15<sup>th</sup> Defendant as the Caretaker Chairman of the 1<sup>st</sup> Defendant in Kwara State.
- r. An Order of Perpetual Injunction Restraining the 1<sup>st</sup> – 14<sup>th</sup> Defendants from conducting any other Congresses into any office in the 1<sup>st</sup> Defendant Pursuant to the Notice of Congress issued by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants on 25<sup>th</sup> July, 2021 or from performing any other functions in their capacities as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant.

Claimant's Counsel in the end formulated the following issues for determination to-wit:-

1. Whether by the interpretation of the provision of Section 183 of the 1999 Constitution of Federal Republic of Nigeria (as amended) the appointment of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as Chairman and Members respectively of the Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant is legal and constitutional?
2. Whether by the interpretation of the Provisions of Article 17(IV) of the Constitution of the 1<sup>st</sup> Defendant the appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants as Chairman and Members respectively of the Caretaker/Extraordinary Convention Planning

Committee (CECPC) of the 1<sup>st</sup> Defendant is legal and Constitutional?

3. Whether by the interpretation of the Provisions of Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on 25<sup>th</sup> June, 2020 is legal and Constitutional.

4. Whether by the interpretation of Section 183 of the 1999 Constitution of Nigeria (as amended), Section 223 of the Constitution of Federal Republic of Nigeria (as amended) and Article 17(IV) of the Constitution of the All

*Progressive Congress, the issuance of the notice for the conduct of Congresses and Every Other Actions and Decision taken by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant, from the 25<sup>th</sup> of June, 2020 are legal and constitutional.*

5. *Whether the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants functioning as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, pursuant of their purported appointment to those capacities on 25<sup>th</sup> June, 2020, being a gross violation of Sections 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), will not operate to disentitle the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants from*

*the immunity provisions of Section 308 of the Constitution.*

6. *Whether by interpretation of Article 13(3)(V), Section 183 of the 1999 Constitution of Nigeria (as amended), Section 223 of the Constitution of Federal Republic of Nigeria (as amended) and Article 17(IV) of the Constitution of the All Progressive Congress, the purported removal of the Claimant as Chairman of the 1<sup>st</sup> Defendant in Kwara State by 2<sup>nd</sup> – 14<sup>th</sup> Defendants and purported appointment of the 15<sup>th</sup> Defendant without recourse to the National Executive Committee (NEC) and without alleging or hearing the Claimant is Constitutional and legal in the circumstance of this matter.*



Learned counsel for the Claimant argued issues No. 1, 2, 3 and 4 conjunctively together, whilst issues 5 and 6 were argued separately.

Arguing on issues 1, 2, 3 and 4 conjunctively, learned counsel cited Order 3 rule 4(i) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 which makes the place where a Defendant resides equally a forum convenience where an action against such a Defendant could be instituted.

Learned counsel argued also that the action of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants amounts to an infringement of the Constitution of the All Progressive Congress (APC) i.e the 1<sup>st</sup> Defendant particularly Article 17(IV) and Section 183 of the 1999 Constitution respectively. Counsel therefore contends that

this Court is most competent to hear this matter. He cited the case of *OSUDE VS. AZODO (2018) ALL FWLR (Pt. 923) 1 at 8 – 9.*

On the issue of the interpretation of sections 183 Article 17(IV) of the Constitution of Federal Republic of Nigeria 1999 (as amended) and the All Progressives Congress (APC) Constitution, it is illegal and unconstitutional for 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> Defendant to have been appointed as members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, wherein the 2<sup>nd</sup> Defendant acted as Chairman with others as Members, whilst serving as Governor of Yobe, Niger and Osun States while 6<sup>th</sup> Defendant was an Executive Director of Nigerian Export and Import Bank (NEXIM), and the 14<sup>th</sup> Defendant is the

Special Assistant to the President on National Social Investment Program.

Learned counsel for Claimant then contended that the conduct of the Governors and 6<sup>th</sup>, 14<sup>th</sup> Defendants who are occupying Executive position in Government as Chairman and Members of Caretaker/Extraordinary Convention Planning Committee of the All Progressive Congress (1<sup>st</sup> Defendant) is illegal and unconstitutional.

Learned counsel equally argued that where the provision of a Constitution is clear, it shall be given its literal meaning.. He cited the case of *A.G BENDEL STATE VS. A.G OF THE FEDERATION & ORS (1982) (1981)9 SC. Page 1 at Pages 78 – 79.*

Counsel then posits that from the Provision of Section 183 and of the Constitution of Federal Republic of Nigeria 1999, and Article 17(IV) of the APC Constitution, the conducts of the said Defendants occupying Executive positions as well as Chairman and Members of the Caretaker/ Extraordinary Convention Planning Committee is illegal and unconstitutional.

It is further the contention of learned counsel for the Claimant that were there to be provision allowing 2<sup>nd</sup> Defendant to hold any other appointment as Chairman of the APC (1<sup>st</sup> Defendant) in an acting capacity, such will not change the argument. Counsel urged the Court to resolve issues 1 and 2 in their favour.

**On issues 3 and 4,** the same argument proffered with respect to issues 1 and 2 and the argument were adopted.

Counsel then cited the case of *UZODINMA VS. IZUNASO (No.2) (2011)17 NWLR (Pt. 1275) 30 at 60* and argued that Courts have held in numerous cases that political parties must obey their Constitutions and not act arbitrarily.

It is therefore the submission of Counsel for the Claimant that anything done or any appointment done in contravention of the provision of the Constitution of the political party is null and void and that the Court will not close her eyes to its.

Learned counsel contends that the appointments of 2<sup>nd</sup> – 14<sup>th</sup> Defendants is in contravention of Section 223 of the Constitution.

Learned counsel similarly contends that the provisions of Article 13.3(vi) of the All Progressive Congress (APC) Constitution is contrary to the Provisions of Section 223 of the Constitution of Federal Republic of Nigeria 1999 (as amended), in that the said Constitutional Provision provides for the democratically elected and not Caretaker Committee of a Political Party.

It is further the argument of learned counsel that Section 223 of the Constitution of Federal Republic of Nigeria 1999 (as amended) connotes mandatoriness.

The authority of ***GOVERNOR OF EKITI STATE & ORS VS. PRINCE SANMI OLUBUNMI & ORS (2016) 3 NWLR (Pt. 1551).***

Relying on the case of *ABACHA VS. FAKINMI (2000)6 NWLR Page 289 Pp. E – F and Section 1(3)* of the 1999 Constitution of Federal Republic of Nigeria (as amended), learned counsel submitted that once there is conflict between the provision of any law and that of the Constitution, the Constitutional Provision shall take precedence.

It is the contention of learned counsel that Article 13.3(vi) of the All Progressives Congress (APC) Constitution is inconsistent with Section 223 of the Constitution of Federal Republic of Nigeria 1999 (as amended). Court is urged to set aside the said Articles of the All Progressives Congress (APC) Constitution.

Learned counsel further contends that any act not done in conformity with the Provision of Article

14.1(1) of All Progressives Congress (APC) Constitution, Section 183 of 1999 Constitution (as amended) and Article 17(iv) of the All Progressives Congress (APC) Constitution which provides that the National Chairman shall be the Chief Executive, Accounting Officer and shall preside over the meetings of the National Executive Committee of the party, is a nullity.

It similarly the argument of learned counsel for the Claimant that the ad-hoc Committee or Caretaker Committee ought to have been ratified by the Board of Trustees (BOT) of the All Progressives Congress (APC) and that having not done so, makes all actions taken by the said Caretaker Committee a nullity and a void act.



On the whole, learned counsel urged the Court to hold that all acts done by the purported Caretaker/Extraordinary Convention Planning Committee led by His Excellency (Hon) Mai Mala Buni amounts to a nullity including the recently conducted Ward Congresses on the 31<sup>st</sup> July, 2021 and the proposed Nationwide Congresses. Learned counsel urged the Court to therefore hold that the decisions taken, notices issued, and actions taken by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the All Progressive Congress (APC) (1<sup>st</sup> Defendant) are unconstitutionally, null and void. Same being illegal. Counsel urged the Court to resolve issues 1, 2, 3 and 4 in their favour.

On the 5<sup>th</sup> issue formulated, learned counsel adopted all arguments on issues 1, 2, 3 and 4 and submitted that 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants cannot plead and rely on immunity to strip this Court of jurisdiction.

Learned counsel relied on the case of *JEGEDE VS. AKEREDOLU in SC/CV/509/2021 and SC/CV/448/2021* to say that had Mai Mala Buni (All Progressives Congress (APC) Caretaker Committee Chairman) been joined in the said suit; Supreme Court could have nullified the election of Akeredolu.

Counsel urged the Court to resolve issue 5 in their favour.

On issue 6, it is the argument of learned counsel that the purported removal of the Claimant as Chairman of Kwara State Chapter and purported appointment of the 15<sup>th</sup> Defendant is null and void as the

Caretaker/Extraordinary Convention Planning Committee of the All Progressives Congress (APC) i.e 1<sup>st</sup> Defendant does not have such power to have removed the Claimant.

Counsel on the whole, stated that the conduct of the Defendants as a whole is in violation of Section 183 of the 1999 Constitution (as amended) and Article 17(iv) of the All Progressives Congress (APC) Constitution, and thereby urged the Court to uphold Claimant's arguments and grant the whole reliefs.

Upon service of the originating summon on the Defendants, they filed preliminary objections to the originating summons and equally counter affidavits in opposition to the originating summons in line with procedure. Both processes were accompanied by written addresses.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants, filed a Notice of Preliminary Objection dated 31<sup>st</sup> of August, 2021 and filed same day and counter affidavit in opposition of the main Originating Summons. The application is accompanied by an 18 paragraphs affidavit deposed to by One Dare Oketade, head of legal services to the 1<sup>st</sup> Defendant.

It is the deposition of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in this case are serving Governors of Yobe, Niger and Osun States respectively and persons envisaged by the Provisions of Section 308(1)(a – c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

That by virtue of the foregoing, no summons or any other Court process whatsoever can legitimately

issue against the said 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are the serving Governors of Yobe, Niger and Osun States respectively, having regard to the immunity conferred on them by Section 308(1) (a – c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

That the inclusion of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as Defendants in this case violates the provisions of Section 308(1) (a – c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and has ultimately rendered the entire Originating Summons incompetent and liable to be dismissed.

That the crux of the questions nominated for determination by the Claimant revolves around the persons of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in their respective personal capacities.

That the Claimant's entire grouse as contained in the said Originating Summons, borders essentially on the internal management/control and or domestic affairs of the 1<sup>st</sup> Defendant as a political party which this Honourable Court does not have the jurisdiction to adjudicate on.

That the NEC of the 1<sup>st</sup> Defendant on the 8<sup>th</sup> day of December, 2020, delegated its powers and functions to CECPC set up by the party to act in its stead in the interim pursuant to Article 13.3 (v) and 13.3(vi) of the 1<sup>st</sup> Defendant.

That the Claimant's Originating Summons before the Honourable Court discloses no reasonable cause of action as the appointment of the Caretaker Extraordinary Convention Planning Committee (CECPC) by the NEC of the party to steer the affairs

of the party in the interim, does not in any way translate to Constituting the said Members of the Committee as an organ of the party.

It is further their (1<sup>st</sup> and 3<sup>rd</sup> Defendants) deposition that the appointment as well as the actions of the Caretaker Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant are pursuant to the Powers donated to it by the NEC of the party in accordance with the provisions of the party's Constitution.

That it would be in the overriding interest of justice if this application is granted.

In line with procedure, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants filed a written address wherein 3 issues were formulated for determination to wit;

1. Whether having regard to the facts and circumstances of this case, particularly with respect to the inclusion of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are serving Governors of their respective States as Defendants in this case, the Honourable Court has the requisite jurisdiction to entertain and determine the Plaintiff's case as presently constituted.
2. Whether the questions, claims and/or reliefs presented by the Claimant for the Court's determination which essentially border on the internal management/control and/or domestic affairs of the 1<sup>st</sup> Defendant as a political party are justiciable.
3. Whether having regard to the facts and circumstances of this case, the Claimant has



*disclosed reasonable cause of action for the Honourable Court to determine.*

*On issue one, whether having regard to the facts and circumstances of this case, particularly with respect to the inclusion of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are serving Governors of their respective States as Defendants in this case, the Honourable Court has the requisite jurisdiction to entertain and determine the Plaintiff's case as presently constituted.*

It is the submission of learned counsel that this court lacks the requisite jurisdiction to entertain and determine the Claimant's case as presently constituted particularly with respect to the inclusion of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are serving Governors of their respective States as Defendants in

this case. It has crystallized that the issues and questions nominated by the Claimant in his Originating Summons dated and filed on the 16<sup>th</sup> day of August, 2021, for the Honourable Court's determination are such that require individual reactions and or responses from all the Defendants including but limited to the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are serving Governors of their respective States.

It is also the submission of learned counsel that the Claimant by the said Originating Summons has therefore set out to not only elicit reactions and or responses from all the Defendants including the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, and compel them to appear before this Honourable Court and make their presentation in this matter contrary to the provisions

of Section 308(1) (a – c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Learned counsel further submits, that the immunity accorded persons to which the provisions of Section 308(1) (a – c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) applies to, is absolute and indeed bars the institution, maintenance and or issuance of any form of legal proceedings be it civil or criminal against such persons.

***TINUBU VS. I.M.B SECURITIES PLC. (2001) LPELR – 3248, Pages 24 – 25, Pages F – D (SC)*** was cited to buttress the above submission.

Learned counsel argues that, the Claimant's instant case does not in any way fall under the provisions of Subsection 2 of Section 308(1) of the 1999

Constitution of the Federal Republic of Nigeria (as amended), which make provisions for the 2 exceptions wherein a Governor can be sued while serving in office. This much is clearly admitted and quite apparent on the face of the Originating Summons indicating that this case was maintained and or issued against the said 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in their respective personal capacities at a period, as it is presently, when they occupy the offices, and are serving as Governors of their respective States as envisaged by the provisions of Section 308(1) (a – c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

**On issue two, *whether the questions, claims and/or reliefs presented by the Claimant for the Court's determination which essentially border on the internal management/control and/or domestic***

*affairs of the 1<sup>st</sup> Defendant as a political party are justiciable, and*

*On issue three, whether having regard to the facts and circumstances of this case, the Claimant has disclosed reasonable cause of action for the Honourable Court to determine.*

It is the submission of learned counsel that no matter the sleight of hand that may have been deployed in formulating the issues and or questions nominated for determination by the Claimant in his Originating Summons, the centerpiece of the Claimant's case which stems from his challenge and or questions on the appointment of some of the Defendants herein by the 1<sup>st</sup> Defendant to serve as Chairman and Members of the Caretaker Extraordinary Convention Planning Committee (CECPC) of the party, to the actions

taken by the said Committee which includes the ratification of the suspension and subsequent removal of the Claimant by the Party as an erstwhile Caretaker Committee Chairman of the Party in Kwara State for his anti-party activities, are matters and issues purely bordering on the internal Management/Control and/or domestic affairs of the 1<sup>st</sup> Defendant as a political party. The said issue by virtue of plethora of authorities, are not in any way actionable or justiciable.

Learned counsel contends, that no matter how the Claimant's claims before this Honourable Court is viewed despite the name or the coloration which the Claimant seeks to bring it under, the said claims boarder essentially on the Management, Control and disciplinary decision and or policies of the 1<sup>st</sup> Defendant as a political party, which this

Honourable Court does not have the jurisdiction to entertain.

***PDP VS. OGUNDIPE (2018) LPELR – 43887, Pages 36 – 45, Paragraphs B – C CA.*** was cited.

Learned counsel also contends, that the Claimant has not shown any express provision of a statute that empowers the Court to deal with the internal affairs of a Political Party as highlighted in the Supreme Court's decision in ***JEGEDE & ANOR VS. I.N.E.C & 3 ORS (2021) (Supra)*** and assuming, but without conceding, that it has, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Applicants have shown, as highlighted above clearly, that the 1<sup>st</sup> Defendant actions were strictly in line with the provisions of its Constitution while the Claimant has not shown any breach of those extant provisions by the Defendants.

Learned counsel submits as regards whether or not the Claimant has disclosed a reasonable cause of action in this suit, the Claimant by virtue of his Originating Summons has disclosed no reasonable cause of action worthy of being considered and/or determined by this Honourable Court. This is so because firstly, the appointment of some of the Defendants herein by the NEC of the 1<sup>st</sup> Defendant to serve as Chairman and Members of the Caretaker Extraordinary Convention Planning Committee (CECPC) of the party and to steer the affairs of the party in the interim, was made pursuant to the relevant provisions of the party's Constitution, particularly Article 13.3(vi) of the Constitution.

Learned counsel also submits that the said appointment contrary to the erroneous perception of the Claimant, was not in any way made to serve as



or translate the said members of the Committee into being constituted as an organ of the party. It is noteworthy that it was this misconception, with due respect to the Claimant which runs through the entire gamut of the Claimant's Originating Summons that prompted him to file this action which in reality, has disclosed no reasonable cause of action to be determined by this Honourable Court. The law is settled that a matter cannot be heard on its merits unless there is a cause of action and a Plaintiff has the right to bring the action.

***UTIH VS. ONOYIVWE (1991) 1 NWR (Pt. 166) SC.*** was cited.

On the consequence of the absence of cause of action against a party, the Courts in a litany of decided cases have held that the absence of a

reasonable cause of action against a party robs the Court of jurisdiction to adjudicate and determine a particular suit.

***BAKARI VS. COLLEGE OF EDUCATION HONG & ANOR (2017) LPELR – 43634 (CA).***

Learned concludes by humbly urging this Court to resolve the issues argued above in favour of the Applicant and uphold the Applicant's contention that the Claimant has by his instant originating summons disclosed no reasonable cause of action for the Court to determine. This court is also urged to strike-out and/or dismiss this suit.

The Claimant on his part, filed a counter affidavit in opposition to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants'/Applicants' affidavit in support of their Motion on Notice dated the 31<sup>st</sup> of August, 2021.

It is the deposition of the Claimant that paragraphs 9 and 10 of the Defendants'/Applicants' affidavit are false. That the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants have not been sued in their personal capacities but in their capacity as Chairman and Members caretaker Extraordinary Convention Planning Committee (CEPC) of the 1<sup>st</sup> Defendant for the violation of the clear provisions of Section 183 and 223 of the 1999 Constitution (as amended) and Article 17 and 18 of the 1<sup>st</sup> Defendant's Constitution.

That the depositions in Paragraph 12 of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' counter affidavit are false and put the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to the strictest proof of same. That the Claimant has never at anytime undertook or carried out any anti-party activities.

It is the averment of the Claimant, that paragraph 14 of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' affidavit are not true and that the National Executive Committee (NEC) never delegated its powers and functions to the CECPE at the inception of the CECPC. That the monitoring report (that is Exhibit "D") attached to the affidavit in support of the Originating summons reveals the true events that transpired during the meeting of 25<sup>th</sup> June, 2020, where NEC appointed the Chairman and Members of the CEPC but never delegated its powers to the said CECPC.

That the NEC resolution of 8<sup>th</sup> December, 2020 was signed by the 3<sup>rd</sup> Defendant in his capacity as the Secretary of the CECPC and not the National Executive Committee of the 1<sup>st</sup> Defendant. That the Originating Summons discloses a reasonable cause of action against the Defendants/Applicants as their

appointment as Chairman and Members of the CECPC is a violation of the extant provisions of Section 183 and 223 of the 1999 Constitution. That the deposition in paragraph 17 of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants'/Applicants' affidavit is not true.

In line with procedure, the Claimant filed a written address in opposition to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants'/Applicants' written address in support of Notice of Preliminary Objection wherein sole issue was formulated for determination to wit;

**Whether the Claimant's Suit is brought properly before this Honourable Court to clothe this Honourable Court with the requisite jurisdiction to hear and entertain same.**

It is the contention of learned counsel, that this is a matter which has absolutely no connection to the respective Executive Governorship offices of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as that would be unfounded in law. This matter is suited to the persons holding the executive positions of the 1<sup>st</sup> Defendant, through a committee known as the Caretaker/Committee Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant which is a gross violation of the Constitution of the 1<sup>st</sup> Defendant and the Constitution of the Federal Republic of Nigeria.

Learned counsel submits that, it is quite known and it is unassailable that the National Chairman and the National Secretary are the alter egos of a political party chartered with the day to day running of the party. It is therefore, incontrovertible that the continuous stay of the Governor(s) as Chief

Executive Officer of the All Progressive Congress, and Members of the CCECP runs contrary to provisions of the Constitution and as such may be an albatross on the party, as all they had done before, currently doing and are going to do, would be null and void, including the nomination of Candidate. ***MACFOY VS. UAC LIMITED (1961) 3 ALL E.R*** was cited to buttress the above. It is a known equitable maxim that he who comes to equity must come with clean hands. The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants cannot be allowed to plead immunity when they have taken up executive positions in contravention of the law that rids them of that immunity, at least to the extent of the actions taken in that capacity. Learned counsel also made reference to the decision held by Lord Denning, in

the case of *PARKER VS. PARKER (1954) ALL ER 22*.

Learned counsel also contends, that if a Governor assumes another Executive office as is the case in this suit, during his period of office, he is not performing the functions of his office, and so he is not covered under Section 308(3) of the 1999 Constitution (as amended). Indeed, such an action will be contrary to the oath that they swore to and the code of conduct contained in the Fifth Schedule to the 1999 Constitution (as amended).

Learned counsel submits, that in further response to paragraphs 2.2 – 3.1 of the Defendants’/Applicants’ written address in support of Notice of Preliminary objection, provisions of Section 183 of the 1999



Constitution of Nigeria (as amended) should be carefully perused.

*“The Governor shall not during the period when he holds office hold any other executive office or paid employment in any capacity whatsoever”.*

By the use of ‘shall’ above, in its ordinary meaning, it is a word of command which is normally given a compulsory meaning. The word is intended to denote an obligation. The word “shall” when used in statutory provision imports that a thing must be done. It is not merely permissive, it is mandatory.

***SPEAKER KADUNA STATE HOUSE OF ASSEMBLY & ORS VS. NKOM & ANOR (2019)***

***LPELR – 50961 (CA)*** was cited. It is settled law that where the provision of a statute is clear and

unambiguous, effect should be given to its literal and ordinary meaning.

***A.G BENDEL STATE VS. A.G OF THE FEDERATION & ORS (1982) (1981), 9 SC. Page 1 at Page 78 – 79*** was cited.

Learned counsel further submits that the suit of the Claimant is first of all constitutional. The crux of the matter is asking this Honourable Court to determine the right of the Claimant in light of Sections 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Alongside other instruments. Section 6(6) of the Constitution was cited. Part of the decisions of the Court in the case of ***EYITAYO OLAYINKA JEGEDE VS. INEC (unreported)*** relied upon by the Defendants/Applicants was confined to Election Tribunals,

where the Supreme Court held that they cannot entertain such. The fact in the case relates to an action between two different parties, the PDP and APC, while the instant case deals with the unconstitutional appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as Chairman and Members of the Caretaker Committee on extraordinary Convention Planning of the 1<sup>st</sup> Defendant. It is worthy to note that the part of the Judgment in the above cited case quoted by the Defendants/Applicants in paragraph 3.4 of their written address is an Obiter, as the Court has already held that such issues cannot be decided since the Chairman of the CCEPC, Mai Mala Buni, was not joined as a party in that case.

Learned counsel argues that the case of ***ONUOHA VS. ONUOHA (1983) SC*** relied upon by the Defendants/Applicants Objector under paragraphs

3.5 were decided before 2018, when the Supreme Court handed down its considered Judgment in ***OSUDE VS. AZODO (Supra)***. It is trite that when there are conflicting decisions of a Superior Court of record, the latest in time prevails.

***OSAKUE VS. FCE, ASABA (2010) 10 NWLR (Pt. 1201) 1 at 34 Para C (SC)*** was cited. Additionally, the decision in ***ONNUOHA VS. OKAFOR (Supra)*** which forms the bulwark of the Defendants'/ Applicants' argument, has since been trumped by more recent judicial authorities.

Learned counsel submits that specifically, the Defendants/Applicants have raised the argument that Article 13.3 (vi) of the Constitution of the All Progressive Congress empowers the National Executive Committee of the party to appoint

committees to perform functions as it deems fit. Same violates the provisions of the Article 17 of the APC Constitution which prohibits persons holding offices in Government from holding offices within the party as in the case of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. Clearly, by the arguments and judicial authorities proffered by the Claimant cum the Claimant's depositions in the affidavit in support of the Originating Summons on the cause of action or reasonable cause of action, a prima facie case has been established by the Claimant against all the Defendants in this case.

Learned counsel concludes by praying the Court to take a casual look at the Claimant's Originating Summons, and particularly the affidavit in support of same, would properly classify and characterize the Claimant's case to comfortably sit well outside

the bubble the Defendants/Applicants are trying to confine it. The grounds in support of the Defendants'/Applicants' objection, and the arguments in support of same suffer from a lack of oxygen; therefore they naturally give in their breath. This Court is urged to do the honours and lay them to final rest to where they actually belong.

On their part, the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants filed a Notice of Preliminary Objection dated 2<sup>nd</sup> of September, 2021 and counter affidavit to the main action. The Motion was accompanied by a written address wherein a sole issue was formulated for determination to wit;

***“Whether the Issuance and Service of the Originating Summons and other Processes of this Honourable Court on the 2<sup>nd</sup>, 4<sup>th</sup> and***

***5<sup>th</sup>Defendants/Applicants is not unconstitutional having regard to Section 308(1)(a), (b) and (c); (2) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).”***

Learned counsel submits that this suit was not initiated by due process of law; the Originating summons by which this Suit was commenced having been issued and served on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants in fragrant disregard of Section 308(1) (a), (b) and (c); (2) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The wordings of the Constitution regarding the extent of immunity enjoyed by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants from this suit are very clear and straight forward, requiring no further explanations as regards the intent of the Framers of

the Constitution or statute are clear and unambiguous;

***NIGERIA PORTS AUTHORITY PLC. VS. LOTUS PLASTICS LTD. (2005) 19 NWLR (Pt. 959) 158*** was cited.

Learned counsel also submits that the unconstitutional issuance of the originating summons in this suit on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/ Applicants does not and cannot be remedied by this Court merely striking out the name of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants from this suit. The entire process of the application, issuance and service of the Originating Summons is tainted with unconstitutionality.



***TINUBU VS. I.M.B SECURITIES PLC. (2001) & MJSC 1 – 6 at 6 – 10; OLU ROTIMI VS. MC GREG OR (1974) 9 NSCC 542*** were cited.

Learned counsel concludes by urging the Court to set aside the application, issuance and service of the Originating Summons in this Suit on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants, and consequently, strike out this suit for want of jurisdiction.

In line with procedure, the Claimant filed a written address in reply to the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' Preliminary Objection. Wherein sole issue initially raised by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendant Objector was adopted (with slight modification) for determination to wit;

- ***Whether the issuance of the Originating Summons on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants is***

*not valid by virtue of Section 308(1), (A), (B), (C); (2) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

Learned counsel, in response to the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants Objector's written address where they argued about the immunity of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendant, as enshrined in Section 308 of the 1999 Constitution, posits ab initio, that relying on same in this matter considering the extant facts and peculiarities, is an aberration to public policy and interest, equity, good conscience and justice.

Learned counsel contends, that the mere incidence that incumbent Governors of three respective States are simultaneously members of an unlawfully established leadership of the 1<sup>st</sup> Defendant brings a

sour taste to the mouth. It is unheard of that an Executive Governor would concurrently hold similarly tasking executive position, but this is where we find ourselves, and the Court is once again called upon to intervene and save the day. There exist situations where the President, Vice President, Governor or Deputy Governor is not covered by the immunity clause as provided for in Section 308 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The immunity does not extend to an incumbent as a nominal party in a suit against official acts.

***ANZAKU VS. GOVERNOR OF NASARAWA STATE (2005) 5 NWLR (Pt. 919) 448*** was cited.

Similarly, the constitutional immunity so conferred does not extend to election matters, neither does the immunity create a correlative duty on the Occupant

of that office not to institute action(s) against any person or party while in that office.

*AMAECHEI VS. I.N.E.C (2008) 5 NWLR (Pt. 1080) 227* was cited.

It is the submission of learned counsel, that the Courts are implored to see through the technical usage and conversion of the law and hold that the acts of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, in contravention of Section 183 of the Constitution and Article 17 of the Constitution of the 1<sup>st</sup> Defendant is untenable in law and practice. This Court is urged to uphold the 1999 Constitution and direct the Governors to uphold their oath and go back to their people.

Learned counsel concludes by praying the Court to peruse the Originating Summons, and particularly

the affidavit in support of same, properly classify and characterize the Claimant's case to comfortably sit well outside the bubble the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are trying to confine it.

This Court is urged to strike out the Preliminary Objection of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in the interest of justice.

On their part, the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants filed a Notice of Preliminary Objection dated 28<sup>th</sup> of October, 2021 and counter affidavit to the main action. Accompanying the Preliminary Objection is a written address wherein two issues were formulated for determination to wit;

- 1. Whether deducing from the facts and circumstances of this case as arising from the affidavit of the Claimant and the*

counteraffidavits of the Defendants, this Honourable Court has jurisdiction to entertain this case being one founded on the internal management and/or domestic affairs of the 1<sup>st</sup> Defendant being a Political Party.

2. Whether having regards to the facts and circumstances of this case, the Claimant has disclosed reasonable cause of action for the Honourable Court to determine.

On issue one, whether deducing from the facts and circumstances of this case as arising from the affidavit of the Claimant and the counter affidavits of the Defendants, this Honourable Court has jurisdiction to entertain this case being one founded on the internal management and/or

**domestic affairs of the 1<sup>st</sup> Defendant being a Political Party.**

Learned Counsel submits that no matter how the Claimant's claim before this Honourable Court is couched and the reliefs constructed, despite the name or the coloration which the Claimant seeks to bring it under, since the said claims border essentially on the internal management and or domestic affairs of the 1<sup>st</sup> Defendant as a Political Party, this Honourable Court does not have the jurisdiction to entertain same.

***JEGEBE & ANOR VS.I.N.E.C & 3 ORS (2021) (Unreported) AND ONUOHA VS. OKAFOR (1983)2 SCNLR, 244*** were cited.

Learned counsel submits further, that the Claimant hinged his contention as contained in paragraphs

4.6 - 4.16 of his written address in support of the Originating Summons, being the purported illegality of the appointment of 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants as Members of the CECPC on the findings of the minority decisions of the Supreme Court in the unreported decision of ***JEGEDE & ANOR VS. I.N.E.C & ORS in SC/CV/448/2021.***

**On issue two, *whether having regards to the facts and circumstances of this case, the Claimant has disclosed reasonable cause of action for the Honourable Court to determine.***

Learned counsel submits, that it is the law, that it is the averments in the statement of claim and the reliefs sought that determines the accrual of cause of action. In this case; the Claimant's affidavit, and the counter affidavits of the Defendants.



***OMOMEJI VS. KOLAWOLE (2008) 14 NWLR (Pt. 1106) 180*** was cited. Thus, the Claimant's claims as presently constituted raises no reasonable cause of action against the Defendants.

Learned counsel further submits that the appointment of some of the Defendants here in by the NEC of the 1<sup>st</sup> Defendant to serve as Chairman and Members of the Caretaker Extraordinary Convention Planning Committee (CECPC) of the party to steer the affairs of the party in the interim, was made pursuant to the relevant provisions of the Party's Constitution; particularly Article 13.3 (vi) of the Constitution. Similarly, the said appointment was not in any way made to serve as or translate to the said Members of the Committee being constituted as members of any of the Party's organ.

Learned counsel concludes by urging this Honourable Court to hold that the Court is bereft of jurisdiction because the matters before the Court are matters arising out of the internal workings of the political party. Learned counsel urged this Honourable Court to uphold the preliminary objection of the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants to strike out the matter and dismiss the suit.

In line with procedure, the Claimant filed a written address in reply to the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants' Preliminary Objection; wherein sole issue was formulated for determination to wit;

- **Whether the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants' Preliminary Objection before this Honourable Court is meritorious in law to have this Suit dismissed for want of jurisdiction.**

It is the submission of learned counsel that the crux of the questions for determination formulated in the Claimant's Originating Summons before this Honourable Court is seeking for the interpretation of the provisions of the Constitution of the 1<sup>st</sup>, Defendant, but most importantly the 1999 Constitution of the Federal Republic of Nigeria respectively. Section 6(6) of the 1999 Constitution (as amended) vests requisite jurisdiction on this Honourable Court to entertain matters of this nature.

Learned counsel further submits that the constitution provision is clear and unambiguous as to the effect that where there is a violation of the Constitution provisions, the inherent powers to determine same rests solely on a Court of law. It is also the submission of learned counsel that all the cases relief upon by the 12<sup>th</sup> to 14<sup>th</sup> Defendants in urging the

Court to decline jurisdiction on the impression that it bothers on the internal management and or domestic affairs of the 1<sup>st</sup> Defendant as they put it, are not in all fours with the instant suit.

***OSHIOMOLE VS. SALIHU (2021) 8 NWLR Pt. 1775 at 401*** was cited, to further give credence to the above point.

Learned counsel contends, that the argument of the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants that the Claimants have not shown any breach of the 1<sup>st</sup> Defendant's Constitution by the 2<sup>nd</sup> and 14<sup>th</sup> Defendants is false and highly misconceived. It is clear that the argument of the Counsel to the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants is misleading. It is not in contention whether or not the said appointment was made pursuant to Article 13.3 (vi) of the 1<sup>st</sup> Defendant's

Constitution or not. However, such an appointment cannot be said to be validly done in this case. By a community reading of Article 13.3 (vi), Article 17(i) and Article 18(ii) of the 1<sup>st</sup> Defendant's constitution, it can be discerned that the appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants was in flagrant disregard of Article 17(i) and Article 18(ii) of the 1<sup>st</sup> Defendant's Constitution, and the contention of the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants goes to no issue.

Learned counsel concludes by urging this Honourable Court to strike out the Preliminary Objection of the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants in the interest of justice and to grant the Claimant's reliefs in its entirety.

On its part, the 15<sup>th</sup> Defendant filed a Notice of Preliminary Objection dated 23<sup>rd</sup> August, 2021 and counter affidavit to the main action.

A lone issue was formulated for determination in the Preliminary Objection, to-wit:-

***“Having regard to the state of the law, whether the Claimant’s suit is properly constituted before this Honourable Court to clothe this Honourable Court with the requisite jurisdiction on to hear and entertain same.”***

Learned counsel contends, that by the Claimant’s claim, and the character of the instant suit, this Honourable Court with the greatest humility is divested of jurisdiction to determine same.

Learned counsel for the 15<sup>th</sup> Defendant argued that the duty to raise absence of jurisdiction in any matter

before a court in a given case is not placed upon a particular party, or Defendant in a proceeding. Rather, such issue of jurisdiction can be raised by any of the parties at any stage of the proceedings up to the Supreme Court. In the instant suit, the 15<sup>th</sup> Defendant/Objector are entitled to raise the issue.

***IBRAHIM VS.LAWAL (2015) 17 NWLR (Pt. 1489) 490 at 524, Paragraphs B – D, 525, Paragraph C.***

Learned counsel also cited the Supreme Court decision enumerating features that are necessary for the Court to be seized of jurisdiction over a matter.

***MADUKALU VS.NKEMDILIM (1962) 2 SCNLR 341*** to buttress his argument.

Learned counsel also contends, that it is very clear from the totality of the claim of the Claimant in this case that the entire case center on the propriety or

other wise of the step taken by the 1<sup>st</sup> Defendant on the 25<sup>th</sup> day of June, 2020 in line with Article 17(iv) of the Party's Constitution. It is such an issue or matter that is solely within the party's jurisdiction and a "no go area" for any court as they lack jurisdiction to delve into such affairs. The Court's jurisdiction on intra-party disputes have been circumscribed within the confines of Section 87(10) of the Electoral Act.

It is the submission of learned counsel that a calm perusal of the reliefs sought leaves no doubt as to the nature and purport of this action, which in effect, is to use the instrumentality of the law Court to determine who should run or administer the internal affairs of the 1<sup>st</sup> Defendant as a political party and to have use this Honourable Court to install him as the Chairman of the 1<sup>st</sup> Party in Kwara State.



***MBANEFO VS. MOLOKWU (2014) 6 NWLR (Pt. 1403) Page 377 at 409 – 410*** was cited.

Learned counsel further submits that since the Claimant alleged that the 1<sup>st</sup> Defendant violated the provision of Sections 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) by appointing the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as the Caretaker/Extraordinary Convention Planning Committee then he has the burden and onus to show by verifying affidavit how the breach occurred failure of which would occasion a non-disclosure of reasonable cause of action. There is however, nothing in the entire affidavit of the Claimant in support of his case showing the required fact.

Learned counsel submits that a critical appraisal of the case of the Claimant before this Honourable Court will reveal clearly that the Claimant has approached this Honourable Court to challenge the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are all Governors of Yobe, Niger and Osun State on the ground that they all contravened the provision of Section 183 of the 1999 Constitution (as amended) by accepting to serve in another office in the leadership posting of the 1<sup>st</sup> Defendant while still serving as Governor of their respective States. Assuming that the aforementioned parties in this case actually contravened the said provision of Section 183 of 1999 Constitution (as amended) as alleged by the Claimant, the question is what is the nature of the case that can/may be brought against them for the said contravention if indeed it occurred. The

consequence in law will be for the filling of a civil action against the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in the High Court since the said Constitution did not prescribe penalties for holding dual executive office.

***EYITAYO OLAYINKA JEGEDE & 1 OR VS. INDEPENDENT NATIONAL ELECTORAL COMMISSION AND 3 ORS IN SC. 448/2021*** was cited.

Learned counsel argues, that the Claimant's suit before this Honourable Court is an abuse of Court process. Abuse of legal process is of jurisdictional importance as where a condition for initiating a legal process is laid down, any suit instituted in contravention of the precondition provision is incompetent and a Court of law lacks jurisdiction to entertain the same.

***DINGYADI VS. INEC (2011)10 NWLR (Pt. 1255)***

347 was cited. No one including the Claimant has a substantive or vested right to bring this abuse, the Courts have inherent power of their own to check and nip in the bud.

***ADESANOYE VS. ADEWOLE (2000) 9 NWLR (Pt. 6, 71) Page 153, Paragraphs G – H*** was cited.

Learned counsel concludes by urging this Honourable Court to dismiss this suit with substantial cost for being incompetent.

In line with procedure, the Claimant filed a reply to 15<sup>th</sup> Defendant's Preliminary Objection; wherein the issue initially raised by the 15<sup>th</sup> Defendant's Objector was adoption for determination to wit;

- ***Having regards to the state of the law, whether the Claimant's suit is properly constituted***

*before this Honourable Court to clothe this Honourable Court with the requisite jurisdiction to hear and entertain same.*

The arguments of the other Defendants on the same issue was reiterated by learned counsel for the 15<sup>th</sup> Defendant on the issue of sections 183 and 223 of the 1999 Constitution of Federal Republic of Nigeria (as amended).

**COURT:-**

As I stated from the preceding part of this Ruling, the gamut of the objections by Defendants clearly touches on the immunity of the Governors of Yobe, Niger and Osun States who also double as Chairman and Members of the Caretaker/Extraordinary Committee Planning Committee of the All Progressive Congress (APC) i.e the 1<sup>st</sup> Defendant,

and therefore immunized from any such litigation as done by the Plaintiff/Respondent in this case, hence the challenge to the jurisdiction of this court to hear and determine the claim of Plaintiff/Respondent as its were.

In another breathe, the objection are also of the firm opinion that the entirety of the grouse of Plaintiff/Respondent, touches on the internal affairs of a Political Party and therefore this court cannot be competent to determine same.

Arising from the various issues touching on competence raised by the respective Defendants/Applicants i.e abuse of court process, lack of cause of action, which are all jurisdictional in nature, I shall frontally proceed to determine the said issue touching on the immunity of the said

Governors who double as Chairman and Members of the Caretaker/Extraordinary Convention Committee of the 1<sup>st</sup> Defendant before proceeding to determine the substantive questions contained in the originating summons.

I have so decided to dwell on the afore – issue in view of its overlapping effect in determining the entire argument of Defendants touching on jurisdiction.

Jurisdiction of court can easily be challenged by a party to a litigation on different grounds. It could be the subject matter or party.

Whilst a litigant can waive its right to challenge jurisdiction on issue of procedure, such cannot be the case when issues of substantive law is raised, as no litigant can confer jurisdiction on the court where

the constitution or statute or any provision of common law says that the court does not have jurisdiction.

*See NDAYAKO VS DANTORO (2004) 13 NWLR (Pt. 889) page 187.*

*WESTERN UNION VS ALLI & ORS (2012) LPELR – 19730 CA.*

*See NEPA VS EDEGBERO & ORS. (2002) LPELR – 1956 (SC).*

Jurisdiction is the backbone, the special cord and lifeline of a court. It the body and soul of every judicial proceedings before any court and without jurisdiction, all subsequent proceedings are fruitless, futile and a nullity.



See *UZOMA JNR. & ORS. VS EMEANA & ORS*  
(2014) LPELR 22501 (CA);

*PERTROJESSICCA ENTERPRISES LTD. &*  
*ANOR VS LEVENTIS TECHNICAL CO. LTD.*  
(1992) LPELR – 2915 (SC).

Above underscore the reason I have decided to take the consolidated application touching on jurisdiction.

A court that is not properly constituted with regards the number and qualification of judges, subject matter, and its initiation by due process and nothing in such a case dusting such court of court of jurisdiction, cannot be competent jurisdictionally speaking to determine such a matter.

See *MADUKALU VS NKEMDILIM* (1962) 2  
*SCNLR 341.*

Now, my take off point would be to reproduce the relevant provisions of sections 308 (1)(a) – (c) of the 1999 Constitution of FRN (as amended).

“308(1) Notwithstanding anything to the contrary in this constitution, but subject to subsection (2) of this section.

- a. No civil or criminal proceedings shall be constituted against a person to whom this section applies during his period in office.
- b. A person to whom this section applies shall not be arrested or imprisoned during that period either on pursuance of the process of any court or otherwise; and
- c. No process of any court requiring or compelling the appearance of a person to

**whom this section applies, shall be applied for issued.”**

From the afore – reproduced provisions of section 308 of the 1999 Constitution of Federal Republic of Nigeria (as amended) vis – a – vis the Claims of Plaintiff/Respondent, can it be safely concluded that the said 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants who are both serving Governors of their respective states of Yobe, Niger and Osun call safely seek cover under section 308 of the Constitution from Plaintiff/Respondent law suit?

It is settled peradventure in the anals of our jurisprudence that the claim of Plaintiff or Claimant is what shall be considered by court in determining whether or not it has the required jurisdiction to

determine the matter and not the statement of defence.

See *UZANGILA VS JAGABA (2018) LPELR – 43981 (CA)*.

Plaintiff's claims before me are predicated upon the fact that all decisions reached and actions taken by the present Chairman and members of the Caretaker/Extraordinary Convention Committee of the All Progressive Congress (APC) i.e 1<sup>st</sup> Defendant be declared a nullity in view of the presence of three serving Governors of Yobe, Niger and Osun States of Nigeria.

The argument of Defendants/Applicants is simply to the effect that as serving Governors the said Governors cannot still hold their present office in the 1<sup>st</sup> Defendant i.e All Progressive Congress (APC).

It is instructive to note at this juncture that whereas section 308 bans any form of action against a serving Governor, in his personal capacity, the said provision nevertheless permits for action to maintain against occupants of the said office in official capacity and or as nominal party to a suit.

I am minded to observe that Plaintiff's action from the reliefs sought is not targeted at any claim against the Governor on personal grounds.

The claim of Plaintiff is for the court to interpret sections 183 and 233 of the Constitutions of the FRN 1999 (as amended) vis – a – vis Section 308 of the same constitution and Article 17 of the All Progressive Congress (APC) Constitutions on the other hand.

I view the legion of objection filed by the Defendants as an attempt to preclude this court from delving into the merits of the case of the Plaintiff.

There is no process of court that has been abused here, neither is the court not competent under section 6(6)(b) of the 1999 Constitution of the FRN 1999 (as amended).

There is also nothing in the suit of the Plaintiff that offends the principles laid down in *MADUKALU VS NKEMDILIM (Supra)*.

In determining its jurisdiction, the court shall only look at the statement of claim and not the statement of defence...Once the claims of a Claimant falls within the jurisdiction of the court by virtue of the subject matter and or parties or by virtue of

constitutional provisions, the court shall be most competent to assume jurisdiction.

On this, I refer to the case of ***OGUNBADEJO VS ADEBOWALE (2008) ALL FWLR (Pt. 405) 1707 at 1717 paragraph C – D (CA)***.

I am firmly of the view that the suit of the Claimant is most competent.

I rely on ***MADUKALU VS NKEMDILIM (1962) SC***.

I find the arguments of the Defendants/Applicants most unmeritoriously argued.

In consequence, therefore, the objections of 1<sup>st</sup> and 3<sup>rd</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> and also the 15<sup>th</sup> Defendants are refused and dismissed accordingly.

I now gravitate to the merits of the case by considering the counter affidavits and written addresses in opposition of the originating summons filed by the respective Defendants.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' counsel filed a 37 paragraph counter affidavit deposed to by one Dare Oketade, Head of Legal Service Department of the 1<sup>st</sup> Defendant's office, that the inclusion of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as Defendants in this case by the Claimant has ultimately rendered the entire originating summons incompetent and liable to be dismissed.

That the Claimant's entire grouse as contained in the said originating Summons, borders essentially on the internal management/control and or domestic affairs of the 1<sup>st</sup> Defendant as a political party which this



Honourable Court does not have the jurisdiction to adjudicate on.

That the facts contained in the entire affidavit particularly paragraphs 8-30 of the affidavit in support of the originating summons are false. Especially paragraphs 16, 17 and 18 of the Claimant's affidavit in support of the originating summons, the Party's National Executive Committee's power of appointing and or removal of an appointed officer or committee Chairman is delegable pursuant to Article 13.3(vi) of the 1<sup>st</sup> Defendant's Constitution and that same power was indeed delegated to the Caretakers/Extraordinary Convention Planning Committee (CECPC) of the party by virtue of the NEC's resolution of 8<sup>th</sup> December, 2020.

That the Claimant was duly informed and was aware that the reason for his suspension and subsequent removal as Chairman Caretaker Committee in Kwara State was because of his overt anti-party activities, inter-alia.

That the State Executive Caretaker Committee of the All Progressive Congress (APC) Kwara State Chapter in their State Executive Committee meeting held on the 5<sup>th</sup> day of November, 2020, Pursuant to a Motion of suspension and a vote of no confidence duly raised by a leader of the party from Kwara South in the person of Rev. Abel Adewumi and seconded by the Secretary of the Party from Kaima, Alhaji Musa Baba Mohammed against their former Caretaker Committee Hon. Bashir OmolajaBolarinwa, (the Claimant herein) suspended him for anti-party activities amongst others, his said

activities/infractions being contrary to the provision of the parties Constitution of the All Progressive Congress (APC) (2014) as amended. Sequel to the adoption of the said motion at the meeting by acclamation, it was then resolved in the said meeting that Abdullahi Samari (the 15<sup>th</sup> Defendant herein) the former Deputy Chairman of the Caretaker Committee of the All Progressive Congress (APC) in Kwara State should step in and take over the affairs of the party in Kwara State in acting capacity for the time being.

That the Claimant was not at any material time elected as a substantive State Chairman of the Kwara State Chapter of the All Progressive Congress (APC) but rather appointed as a Chairman Caretaker Committee of the State Executive Committee of All Progressive Congress (APC) Kwara State pursuant

to the dissolution of the Kwara State Executive Committee in 30<sup>th</sup> July, 2018 by the Adams Oshiomole led National Working Committee. Consequent upon the suspension of the Claimant as the Chairman Caretaker Committee of All Progressive Congress (APC) Kwara State Chapter, the said Kwara State Chapter of the party caused to be forwarded several complaints and or petitions in that respect to the Caretaker/Extraordinary Convention Planning Committee.

That the Kwara State Chapter of the 1<sup>st</sup> Defendant wrote several times to the party at the National level reiterating inter alia their firm stand on the suspension of the Claimant, their erstwhile Caretaker Committee Chairman Bashir OmolajaBolarinwa. Consequent to the above, the Caretaker/Extraordinary Convention Planning

Committee on the 10<sup>th</sup> day of December, 2020 set up a fact Finding/Disciplinary Committee of All Progressives Congress (APC), North Central Zone headed by His Excellency AlhajiAbubakarSani Bello, the Executive Governor of Niger State to investigate amongst others the petitions against the Claimant and make necessary recommendations to the leadership of the party.

That on the 22<sup>nd</sup> day of December, 2020, the aforesaid fact Finding/Disciplinary Committee which had earlier extended invitations to all the parties concerned including the Claimant herein, sat, took and heard both oral and written representations/reactions from all the parties concerned, particularly the petitioners as well as the Claimant, Bashir OmolajaBolarinwa in accordance

with the rules of fair hearing as provided in Articles 21(B)(i) of the Party's Constitution.

At the end of the hearing and consideration of facts, documents and evidence before the Committee as presented by both sides, the Committee issued a report of their findings which confirmed and/or established the petitions against Claimant, for being involved in anti-party activities inter-alia. The Committee found amongst other things that the actions of the said Claimant, Mr. Bashir OmolajaBolarinwa as established before them in accordance with the party's Constitution particularly Article 21(D)(i)(g) ought to have attracted a recommendation for straight expulsion of the Claimant from the party, but decided to magnanimously hand down a minimum recommendation of him being removed from all

party offices in line with Articles 21(D)(i)(e) of the Party's Constitution.

That in the same vein, the Caretaker/Extraordinary Convention Planning Committee on the 5<sup>th</sup> day of January, 2021, wrote to the Claimant notifying him of his suspension from office as the Caretaker Committee Chairman of the Kwara State Chapter of All Progressives Congress (APC).

In response to paragraph 30 of the Claimant's affidavit, the 2<sup>nd</sup> – 14<sup>th</sup> Defendants are not in any way whatsoever in violation of any known law, including but not limited to its own Constitution or the Constitution of the Federal Republic of Nigeria. That the Claimant's Originating Summons before the Honourable Court discloses no reasonable cause of action as the appointment of

Caretaker/Extraordinary Convention Planning Committee (CECPC) by the National Executive Committee (NEC) of the party to steer the affairs of the party in the interim, does not in any way constitute them as members of Constituents of any organ of the party.

That the appointment made as well as the actions of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant are pursuant to the powers donated to it by the National Executive Committee (NEC) of the party in accordance with the provisions of the party's Constitution. It would be in the overriding interest of justice if this suit is dismissed for lack of merit with punitive cost against the Claimant for wasting the judicial time of this Honourable Court. It will serve



the interest of justice if this Honourable Court dismisses the Claimant's case as lacken in merit.

In line with law and procedure, a written address wherein 5 issues were formulated for determination to-wit;

1. *Whether having regards to the facts and circumstances of this case, particularly with respect to the inclusion of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are serving Governors of their respective State as Defendant in this case, the Honourable Court has the requisite jurisdiction to entertain and determine the Plaintiff's case as presently constituted.*
2. *Whether having regards to the facts and circumstances of this case, the Claimant has*

*disclosed reasonable cause of action for the Honourable Court to determine.*

3. *Whether having regard to the facts and circumstances of this case as presently constituted this Honourable Court has the jurisdiction to entertain this case being one founded on the internal management and or domestic affairs of the 1<sup>st</sup> Defendant as a political party.*

4. *Whether having regard to the facts and circumstances of this case as presently constituted before this Honourable Court the Claimant has been able to establish his claims as well as the allegations of purported infringement and or contraventions on the Constitution of the Federal Republic of Nigeria*

*1999 (as amended) as well as the Constitution of the All Progressives Congress (APC) or any other law whatsoever against the Defendants, particularly the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.*

5. *Whether having regard to the facts and circumstances of this case, the Claimant is entitled the reliefs subscribed to in his originating summons.*

On issues 1 and 2 afore formulated, Learned counsel submits, that this Honourable Courts lacks the requisite jurisdiction to entertain and determine the Claimant's case as presently constituted particularly with respect to the inclusion of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are the serving Governors of Yobe, Niger and Osun States respectively as Defendants in this case. This is

because, the said 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants herein are persons envisaged and or covered by the Constitutional Immunity provided in Section 308(1) (a-c) of the 1999 Constitution of the Federal Republic of Nigeria.

Learned counsel also submits, that the Claimant by virtue of his instant originating summons has disclosed no reasonable cause of action worthy of being considered by this Honourable Court. This is because, there is no scintilla of breach of the provisions of the 1<sup>st</sup> Defendant's Constitution with respect to the said appointment. The law is settled, that a matter cannot be heard on its merits unless there is a cause of action and a Plaintiff has the right to bring the action.

***UTIH VS.ONOYIVWE (1991)1 NWLR (Pt. 166)SC.***

**On issue 3,** Learned counsel submits, that the Claimant's suit as presently constituted having been clearly hinged on issues which no doubt, strikes at the basis of the internal management and domestic affairs of the 1<sup>st</sup> Defendant, All Progressive Congress (APC) as a political party, is not in law actionable and or justiciable. This Honourable Court therefore cannot entertain same.

Learned counsel also submits, that this Honourable Court lacks the jurisdiction to entertain the Claimant's claims as contained in their originating summons, same having been predicated on the internal management and domestic affairs of the 1<sup>st</sup>

Defendant, All Progressives Congress (APC), as a political party.

***JEGEDE & ANOR VS. INEC & 3 ORS (2021)***  
***(Supra)*** was cited.

**On issues 4 and 5**, Learned counsel submit, that the Claimant has failed woefully to established his bogus and baseless claims before this Honourable Court, particularly with respect to his claims on the purported infraction and or infringement of any law or Constitution. The Claimant in the entire gamut of his case, has failed woefully to demonstrate before this Honourable Court how the appointment of some of the Defendants herein by the party particularly the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants to serve as Chairman and Members of the Caretaker/Extraordinary Convention Planning

Committee of the party in the interim, the extension of the Committee's duration of service, as well as his suspension as Caretaker Committee Chairman of Kwara State All Progressives Congress (APC) for his anti-party activities, are wrongful and illegal.

Learned counsel further submits, that a calm perusal of the above provisions of Sections 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) will reveal in no uncertain terms that the said Sections are not even applicable to the instant case vis-à-vis the appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants to serve as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee of the party.

Learned counsel also submits, that going by the facts and circumstances of this case, even the Claimant

cannot successfully claim or allege lack of breach of fair hearing against the Defendants with respect to his suspension. This so because, the law on fair hearing is not a blanket rule as the law is trite that a party who was afforded with his right to be heard in a given proceeding cannot turnaround to allege lack of fair hearing.

***OGBORO VS. THE REG. TRUSTEES OF LAGOS POLO CLUB & ANOR (2016) ALL FWLR (Pt. 835) Page 370 at 387 – 388 Paragraphs H – F*** was cited.

Learned counsel concludes by making the submission that the Claimant has failed woefully to prove his unfounded and bogus claims of alleged infractions of the All Progressive Congress (APC) Constitution by the Defendants, particularly the 1<sup>st</sup>



and 3<sup>rd</sup> Defendants with respect to this case. The Claimant is therefore not entitled to the reliefs sought in this suit and urged this Honourable Court to so hold and dismiss this case with substantial cost.

On his part, the Claimant filed further and better affidavit in reply to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' counter affidavit. In his 54 paragraph affidavit deposed to by him, the Claimant states that all the paragraphs of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' counter affidavit are false, not true and puts the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to the strictest proof of same.

That it would be in the interest of justice if the Court grants the reliefs sought in his (Claimant) Originating Summons.

Accordingly, the Claimant filed a reply on point of law against the 1<sup>st</sup> and 3<sup>rd</sup> Defendant's counter

affidavit and written address wherein sole issue was formulated for determination to-wit;

- *Whether the 1<sup>st</sup> and 3<sup>rd</sup> Defendants has sufficiently made out a case before this Honourable Court to dismiss this suit against the Claimant.*

Learned counsel submits, that this is a matter which has absolutely no connection with the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> Defendants in their personal capacities as the current Governors of Yobe, Osun and Niger States respectively, hence the argument of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' counsel that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are immune and cannot be a party in this suit is incompetent is highly misconceived and same is unfounded in law. Section 308(2) of the 1999 Constitution (as amended) was cited.

Learned counsel further submits, that the arguments of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants raising the defence of the immunity of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in this suit under Section 308 of the Constitution cannot successfully avail the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. The defence of immunity under Section 308(1) of the Constitution is a personal right to the occupant of the offices therein.

Learned counsel also submits, that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants purported argument that the Claimant has no cause of action against the Defendants is vague, ambiguous and a misconception of the law and fact before this Honourable Court.

Learned counsel submits, that this Suit is more of a Constitutional infraction than an intra-party dispute. The argument that a Court does not interfere with

the internal affairs of a political party is misconceived as this suit is not questioning the internal affairs of the 1<sup>st</sup> Defendant, but rather, the action taken by the 1<sup>st</sup> Defendant is contrary to Article 17 and 18 of the 1<sup>st</sup> Defendant's Constitution and more importantly, Sections 183 and 223 of the 1999 Constitution (as amended).

Learned counsel submits, that a critical look at the said documents in support of their assertion shows that the extension and donation of power were not done by the National Executive Committee (NEC) but the Caretaker/Extraordinary Convention Planning Committee (CECPC). The said APC4 and APC5 were signed by the 3<sup>rd</sup> Defendant who is acting as Secretary to the Caretaker/Extraordinary Convention Planning Committee (CECPC). The import of this is that the Caretaker/Extraordinary

Convention Planning Committee (CECPC) delegated National Executive Committee (NEC) powers to themselves which ordinarily they do not have powers to do so and they extended their tenure in office.

Learned counsel submits in contradistinction with paragraph 20(c)-(f) of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants', counter affidavit, the Claimant carried out his duties without opposition until the news of his suspension got to him via an online platform. Exhibit "2" attached to the Claimant's further and better affidavit shows that his tenure of office was extended as opposed to the facts contained in paragraph 20 of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' counter affidavit.

Learned counsel concludes by urging this Honourable Court to uphold the arguments of the Claimant in this case and grant all the reliefs sought in this suit.

The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' counsel filed a 4 paragraph counter affidavit deposed to by AdenikeAdelakun (Mrs.) Librarian in the Law Firm of Counsel to the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in this Suit; that all the facts deposed to in the affidavit in support of the originating summons and four annexures marked as annexure "1A", "1B", "1C" and 2 and Exhibits "A", "B", "C", "D", "E", "F" and "G" are false.

That the issuance and service of the originating summons on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in unconstitutional and a nullity.

That the Claimant is challenging the choice of the 1<sup>st</sup> Defendant in appointing some of the Defendants herein to serve as the Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant and also challenging the disciplinary actions of the party taken against him which led to his removal as the Caretaker Committee Chairman of the party in Kwara State sequel to his anti-party activities.

That the entire subject matter contained in this suit borders on the domestic affairs of the 1<sup>st</sup> Defendant which this Honourable Court does not have the requisite jurisdiction to adjudicate on.

It is in the interest of justice for this Honourable Court to dismiss the Claimant's case as lacken in merit with substantial cost.

The following documents were tendered as annexures.

1. Letter appointing the members of the Committee marked as Exhibit “A”
2. Report of the Committee dated the 3<sup>rd</sup> of January, 2021 marked as Exhibit “B”
3. Letter of suspension marked as Exhibit “C”
4. 1<sup>st</sup> Defendant National Executive Committee (NEC) Resolution marked as Exhibit “D”
5. Instrument extending their tenure marked as Exhibit “E”

Accordingly, written address was filed wherein sole issue was formulated for determination to-wit;

- *Whether having regards to the facts of this case, the issuance and service of the*



*originating summons and other processes of this Honourable Court on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants is not unconstitutional having regard to Section 308(1)(A),(B),(C);(2) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); and whether having regards to the facts of this case, the Claimant has disclosed reasonable cause of action for this Honourable Court to determine this suit.*

The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants respectfully adopt all the submissions made in its written address in support of its Notice of Preliminary Objection in urging this Honourable Court to dismiss this suit.

Learned counsel submits, that it is elementary law that issue of jurisdiction is so fundamental and it is

considered as the nerve centre and foundation of adjudication, which the Court must first decide upon before delving into the merits of the case before it.

***WESTERN STEEL WORKS LTD. VS. IRON & STEEL WORKERS UNION (1986)2 N.S.C.C (Vol. 17) 786 at 798*** was cited.

Learned counsel further submits, that this suit was not initiated by due process of law. The originating summons by which this suit was commenced having been issued and served on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Applicants is fragrant disregard of Section 308(1)(a)(b) and (c); (2) and (3) of the Constitution of Federal Republic of Nigeria 1999 (as amended).

Learned counsel contends, that the subject matter of this suit are non justiciable and therefore not

entertainable by this Honourable Court in that they boarder on intra-party and internal affairs of a political party to-wit; All Progressives Congress the 1<sup>st</sup> Defendant in this suit.

***BAKAM VS. ABUBAKAR (1991) 6 NWLR (Pt. 1999) 546 at 573, Paragraph H*** was cited.

***ABDULKADIR VS. MAMMAN (2003) 14 NWLR (Pt. 839)1*** was also cited.

To buttress the point on when a Court can only exercise its jurisdiction. ***MADUKALU VS. NKEMDILIM (1962)1 ALL NLR 587*** was cited.

Learned counsel also submits, that a clinical look at the aggregate of facts contained in the affidavit in support of the originating summons, as well as the reliefs sought reveals that they cannot crystallized into a justiciable or an enforceable claim before this

Honourable Court. The Claimant suit as constituted, failed the cause of action test enunciated by the Supreme Court in the case of *AKIBU VS. ODUNTAN (Supra)*.

Learned counsel concludes by urging this Honourable Court to strike out this suit and hold that this suit as constituted is incompetent and this Court lacks jurisdiction to hear and determine same. This court is prayed upon to dismiss the claims of the Claimant with substantial cost.

On his part, the Claimant filed further and better affidavit in reply to the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' counter affidavit. In his 27 paragraph affidavit deposed to by him, the Claimant states that all the depositions in paragraphs of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' counter affidavit are false, not true and

puts the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants to the strictest proof of same.

That it would be in the interest of justice if the Court grants the reliefs sought in his originating summons.

Accordingly, the Claimant filed a reply on point of law against the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' written address.

Learned counsel submits, that the authorities relied upon by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are clearly distinguishable from the facts of the present suit as the cases are not on all fours with the case at hand. The cases relied upon, unlike the instant case, do not deal with this peculiar situation where the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are sued in their official capacities as Chairman and Members of the

Caretaker/Extraordinary Convention Planning  
Committee of the 1<sup>st</sup> Defendant.

Learned Counsel submits further, that argument of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants on the immunity of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in this suit under Section 308 of the Constitution cannot successfully avail the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. The defence of immunity under Section 308(1) of the Constitution is a personal right to the occupant of the offices listed therein. The purported Constitutional immunity raised by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' counsel in this suit is not in tandem with the facts and peculiarities of this instant case and same cannot warrant this Honourable Court to strike out the Claimant's Suit.

Learned counsel submits, that all the cases relied upon by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in urging the Court to decline jurisdiction simply because it bothers on intra-party affairs are not in all fours with the instant suit.

The case of *UFOMBA VS. INEC* cited in paragraph 3.13 of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' written address is not in any way synonymous to the issue at hand.

Learned counsel draws this Honourable Court's attention to paragraph 4(xi) of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' counter affidavit which clearly offends the provision of Section 115 of the Evidence Act, 2011. The Deponent did not state the circumstances whatsoever in which he allegedly carried out the alleged suspension in relation to the time, place and

manner in which he got the said information deposed to in the paragraphs of their counter affidavit to the originating summons.

Learned counsel concludes by stating that, it is evident that the Claimant's case is based on or derivable from the evidence on record and from facts available before this Honourable Court. The Claimant has discharged the burden of proof placed on them by Sections 131, 132, 133 and 134 of the Evidence Act, 2011. This Honourable Court is urged to uphold the arguments of the Claimant in this case and grant all the reliefs sought in this suit.

The 6<sup>th</sup> – 11<sup>th</sup> Defendants filed a 5 paragraph counter affidavit deposed to by AbimbolaAfolabi, litigation secretary in the law office of the counsel to the 6<sup>th</sup> – 11<sup>th</sup> Defendants states, that contrary to the surmise at



paragraph 8 of the Claimant's affidavit, the appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in the manner done is within the exclusive preserve of the National Executive Committee of the 1<sup>st</sup> Defendant and does not remotely require the approval or ratification of the Board of Trustees of the 1<sup>st</sup> Defendant.

That the Caretaker/Extraordinary Convention Planning Committee (CECPC) did not suspend the Claimant as Chairman of the Kwara State Chapter of the 1<sup>st</sup> Defendant without a reason. It is inevitable suspension was done sequel to proven complaints of grave anti party activities by the Claimant and the even punishment for the fiasco would ordinarily have been an expulsion, but the Claimant got a soft landing.

That following complaints from the Kwara State Chapter of the 1<sup>st</sup> Defendant chronicling grievous anti – party activities of the Claimant, the Caretaker/Extraordinary Convention Planning Committee (CECPC) on the 10<sup>th</sup> day of December, 2020 set up a fact finding/Disciplinary Committee on the 1<sup>st</sup> Defendant, headed by the Executive Governor of Niger State to investigate amongst others the petitions against the Claimant and make necessary recommendations. The said letter appointing the members of the Committee and their terms of reference is herein attached and marked Annexure “A”.

That on the 22<sup>nd</sup> day of December, 2020, the aforesaid fact finding/disciplinary committee which had earlier extended invitations to all parties including the Claimant herein, sat, took and heard

both oral and written representations from all parties concerned, especially from the Claimant and his Petitioners.

That at the end of the hearing and consideration facts, documents and evidence before the committee, the committee issued a report of the findings which was what the Claimant was that the Claimant was involved in anti – party activities – a recommendation of removal from all party offices was handed down as disciplinary measure. The Report of the fact/finding committee issued on the 3<sup>rd</sup> day of January, 2021 is herein attached and marked Annexure “B”.

That following the unequivocal recommendation of the fact finding/disciplinary committee, the Caretaker/Extraordinary Convention Planning

Committee (CECPC) on the 5<sup>th</sup> day of January, 2021 suspended the Claimant as Chairman of the 1<sup>st</sup> Defendant's Kwara State Chapter vide a letter dated the same day which was sent to the Claimant. The letter of notification of suspension is herein annexed and marked "Annexure C".

That the National Executive Committee in the exercise of its powers as provided under Articles 13.3 (vi) of the 1<sup>st</sup> Defendant's constitution, passed a resolution on the 8<sup>th</sup> of December, 2020 empowering the Caretaker/Extraordinary Convention Planning Committee (CECPC) earlier constituted particularly its disciplinary powers under Article 13.3(v) of the party constitution and equally extended the committee's tenure for another six (6) months to expire on the 30<sup>th</sup> of June, 2021. The said Resolution is herein attached and marked "Annexure D".

That the Caretaker/Extraordinary Convention Planning Committee (CECPC) acting under the powers bestowed by the National Executive Committee, appointed the 15<sup>th</sup> Defendant as the Chairman Caretaker Committee of the Kwara State Chapter of the 1<sup>st</sup> Defendant in view of the removal of the Claimant. Consequently, the averments at paragraphs 18, 19, 20, 21, 22 and 29 are grossly untrue.

That it will be in the interest of justice for this Honourable court to dismiss the extant suit for lacking in merit and for presenting academic issues for the determination of the court.

Accordingly, a written address in support of counter affidavit in opposition to Claimant's originating

summons. Wherein issues were formulated for determination to wit;

- *Whether in view of the provisions of section 308 of the constitution employing the phraseology – “Notwithstanding anything to the contrary..”, the issuance and service of the extant originating summons on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants; the fact that the affidavit in support of the originating summons substantially contains indictments against the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants; the entire originating summons and accompanying affidavit are not unconstitutional, warranting a dismissal.*

Learned counsel submits, that the answer to the above is in the affirmative as the provisions of

sections 308 (1) a, b and c; (2) and (3) of the Federal Republic of Nigeria 1999 (as amended) are clear and unambiguous. The present suit was not initiated by due process of law; the originating summons by which this suit was commenced having been issued and served on the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in flagrant disregard of the extant constitutional provisions.

Learned counsel also submits, that it follows from the tenor of the dictum in *UDOM VS FRN & ANOR (Supra)*, that all extant paragraphs of the affidavit in support of the originating summons indicting the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, ought to be expunged for being offensive to the express letters of section 308 of the Constitution.

**Issue Two, *Whether the question endorsed on the originating summons are not an invitation to the High court of the Federal Capital Territory, to review the decision of the Supreme Court as recently pronounced in EYITAYO OLAYINKA JEGEDE & ANOR. VS INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & ORS, delivered on Tuesday, the 28<sup>th</sup> day of July, 2021 is suit No. SC/448/2021.***

Learned counsel submits, that the extant suit as presently constituted is an invitation to the High Court of FCT to review the decision of the apex court of the land. It is a treat to judicial rascality which our Supreme Court took out time to condemn in the celebrated. Case of ***DALHATU VS TURAKI & ORS (2003) LPELR – 917 (SC).***



This Honourable court is bound to uphold and enforce the decisions of the Supreme Court, being an index of subordinate jurisdiction to the supreme. It is indeed the duty of courts of law to enforce the provisions of the constitution, the extant suit is an aberration.

**Issue Three, *Whether the questions submitted for determination by this Honourable Court are not in the realm of internal party affairs of the 1<sup>st</sup> Defendant, and if they are, whether this Honourable Court has the jurisdiction to intermeddle therein.***

Learned counsel submits, that a concurrence of judicial dicta on the point supports the view that issues of appointment of party leaders are in the realm of internal affairs of the political party.

***UFOMBA VS INEC & ORS (2017) LPELR – 42079 (SC) was cited.***

***Issue Four, Whether the reliefs endorsed on the originating summons are grantable in all the circumstances of this case.***

Learned counsel submits, that all the reliefs endorsed on the originating summons are offensive to the provisions of section 308 of the Federal Republic of Nigeria 1999 (as amended), section 87 of the Electoral Act and the decision in ***EYITAYO OLAYINKA JEGEDE & ANOR VS INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & ORS (Supra)***, therefore, this Honourable court cannot grant. In the absence of grantable reliefs, the entire suit becomes a mere academic adventure which this Honourable court

must not dissipate precious judicial time on. ***OKE & ANOR VS MIMIKO & ORS (2013) LPELR – 20645 (SC) was cited.*** In all the circumstances therefore, the only irresistible conclusion remains that the Claimant's reliefs as presently constituted are un-grantable in law.

**Issue Five, Whether the Claimant has established that his right to fair hearing was violated by cogent evidence.**

Learnedcounselsubmits, that it is no longer legal esoteric, but elementary law that he who alleges must prove without more. Section 132 of the Evidence Act was cited.

Learned counsel submits, that the surmise that the Claimant was denied fair hearing is contained at paragraphs 18, 21 and 22 of the affidavit in support

of the originating summons; the correspondence marked Exhibit “E”.

Indeed, the Claimant’s allusion to breach of fair hearing cannot stand in the face of paragraph 4 (l – q) of the 6<sup>th</sup> to 11<sup>th</sup> Defendants’ affidavit which addresses the issue frontally.

Learned counsel concludes by submitting that this Honourable court that in the face of the manifest irregularities playing the Plaintiff’s process, this Honourable Court is urged to dismiss same and throw it to the judicial trash can without an option to recycle same.

On his part, the Claimant filed further and better affidavit in reply to the 6<sup>th</sup> – 11<sup>th</sup> Defendants’ counter affidavit. In his 31 paragraph affidavit deposed to by him, the Claimant states that the

depositions in paragraphs 4 (e), (f), (g), 4(i), 4(j), 4(k), 4(i), (m), 4(n), 4 (r), 4(s), 4(t), 4(u), (v), 4(w), 4(x) and 4(y) of the 6<sup>th</sup> – 11<sup>th</sup> Defendants’ counter affidavit are untrue and false and puts the 6<sup>th</sup> – 11<sup>th</sup> Defendants to the strictest proof of same.

That the depositions in paragraph 4(h) of the 6<sup>th</sup> – 11<sup>th</sup> Defendants’ counter affidavit are diversionary and appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants was done in contravention of Articles 17 and 18 of the 1<sup>st</sup> Defendant’s constitution, as well as sections 183 and 223 of the Federal Republic of Nigeria 1999 Constitution (as amended).

That the Claimant was not in attendance in any meeting as shown in Annexure “B” and that is why no signature was attached/ascribed to the Claimant’s name. Furthermore, members of the Kwara State

Chapter of the 1<sup>st</sup> Defendant did not attend any proceedings of any fact finding committee. Annexure “B” shows that members of the 1<sup>st</sup> Defendant did not attend, as their names were not stated in the attendance list.

That it would be in the interest of justice if the court grants the reliefs sought in the originating summons.

Accordingly, the Claimant filed a Reply on point of law against the 6<sup>th</sup> – 11<sup>th</sup> Defendants’ counter affidavit and written address.

Learned counsel submits, that the arguments of the 6<sup>th</sup> – 11<sup>th</sup> Defendants raising the defence of the immunity of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in this suit under section 308 of the constitution cannot successfully avail the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.

***OBI VS MBAKWE (1984) 1 S.C.N.L.R 192, SCN was cited to buttress the above point.***

The 6<sup>th</sup> – 11<sup>th</sup> Defendants argued that the case of the Claimant as constituted invites this Honourable Court to review the judgment of the Apex Court in the decided case of ***EYITAYO OLAYINKA JEGEDE & ANOR VS INDEPENDENT NATIONAL ELECTORA COMMISSION (INEC) 7 ORS.***

Learned counsel further submits, that the 6<sup>th</sup> – 11<sup>th</sup> Defendants' argument on the purported invitation of this Honourable Court to review the Apex Court's decision is not tenable as the argument is not substantiated either with facts or evidence in this case. The case of ***DALHATU VS TURAKI & ORS (2003) LPELR – 917 (SC) cited*** by the 6<sup>th</sup> –

11<sup>th</sup> Defendants constitutes an academic exercise in this suit and never addressed the issue coined by the 6<sup>th</sup> – 11<sup>th</sup> Defendants themselves.

Learned counsel submits, that section 6(6) of the 1999 Constitution (as amended) vests jurisdiction on this Honourable Court to entertain matters of this nature. The Constitutional provision is clear and unambiguous as to the effect that where a violation of the Constitution Provisions, the inherent powers to determine same rests solely on a court of law.

Learned counsel submits, that the Claimant has shown enough breach of its hearing. It is trite that fair hearing postulates that where a person's legal rights or obligations are called into question, he should be accorded full opportunity to be heard



before any adverse decision is taken against him with regards to such rights or obligation.

It is an indispensable requirement of justice that an adjudicating authority, to be fair and just, shall hear both sides, giving them ample opportunity to present their case.

Learned counsel contends, that in paragraph 4(1) of the 6<sup>th</sup> – 11<sup>th</sup> Defendants’ counter affidavit, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants asserted that the APC members in Kwara State petitioned and made allegations about the Claimant, and attached “Annexure A” as the setting up of the fact finding committee.

However, it did not contain any reference to the alleged complaints made by the Kwara State Chapter of the 1<sup>st</sup> Defendant. The acclaimed complainant did not attach the appointment letter which begs for the

question, which petition did they base their investigation on?

***TANKO VS FRN (2020) LPELR – 50294 (CA) was cited,*** to shed light on the explanation of inconsistency rule.

Learned concludes by urging this Honourable Court to uphold the arguments of the Claimant in this case and grant all the reliefs sought in this suit.

The 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants' filed a 6 paragraph counter affidavit in opposition to the Claimant's affidavit in support of the originating summons deposed to by RahmatuSalihu, Secretary in the law firm of the solicitors to the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants states, that the constitution of the 1<sup>st</sup> Defendant in making provision for the NEC of the party to appoint any committee it deems fit did not

subject such appointment to ratification by anybody or organ of the party as it clearly stipulated under Article 18 (ii) of the same constitution with respect to the appointment of members of standby/adhoc committees.

That the acting state executive committee held on the 5<sup>th</sup> day of November, 2020 pursuant to a motion of suspension and vote of no confidence duly raised by a member of the party Rev. Abel Alewumi and seconded by the secretary of the party, Alh. Musa Baba Mohammed against the Claimant, suspended the Claimant for acts contrary to the provisions of the party's constitution.

Upon ratification of the Claimant's suspension by the Caretaker/Extraordinary Convention Planning Committee (CECPC), it was then resolved that the

15<sup>th</sup> Defendant being the former deputy Chairman of the Caretaker Committee of the 1<sup>st</sup> Defendant in Kwara State should act in acting capacity as the acting Chairman of the Caretaker Committee.

That the Claimant was not at any time elected as a substantive state chairman of the Kwara State Chapter of the 1<sup>st</sup> Defendant but rather appointed as a Chairman, Caretaker Committee of the Executive Committee of 1<sup>st</sup> Defendant Kwara State Chapter, pursuant to the dissolution of the Kwara State Executive Committee on July, 30<sup>th</sup> by the Adams Oshiomole led NEC.

That the Caretaker/Extraordinary Convention Planning Committee (CECPC) on the 5<sup>th</sup> day of January, 2021 wrote to the Claimant notifying him of his suspension from office as the Caretaker

Committee Chairman of the Kwara State Chapter of APC. The said letter sent to him is herewith attached and marked as Exhibit “DW3”.

That contrary to paragraph 18 of the Claimant’s affidavit in support of his originating summons, the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants state that the assertions therein are incorrect but rather, the Claimant was given a fair hearing before he was suspended from office as the Caretaker Committee Chairman of the 1<sup>st</sup> Defendant in Kwara State.

That contrary to the assertions of the Claimant as contained in paragraph 20, 25 and 30 of his affidavit, the services of the 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> and the entire 2<sup>nd</sup> to 14<sup>th</sup> Defendants is still extant, same having been duly extended by the NEC and the party hierarchy from time to time to enable them plan and prepare

for the upcoming National Convention of the 1<sup>st</sup> Defendant. The instrument evidencing the extension is herein attached and marked as Exhibit “DW4”. Every action carried out by the Caretaker/Extraordinary Convention Planning Committee (CECPC) was in accordance with powers delegated to it by the party’s NEC as provided in the party’s constitution.

That all issues brought before this Honourable Court by the Claimant are issues bordering on the internal working of the 1<sup>st</sup> Defendant (as a political party) which are not justiciable contrary to paragraph 30 of the Claimant’s affidavit in support of the originating summons.

That it would be in the interest of justice for the suit herein to be dismissed for lack of merit and punitive cost granted against the Claimant.

Accordingly, written address in support of their counter affidavit in opposition to the Claimant's affidavit in support of the originating summons was filed wherein 2 issues were formulated for determination to wit;

1. *Whether deducing from the facts and circumstances of this case as arising from the affidavit of the Claimant and the counter affidavits of the Defendants, this Honourable Court has jurisdiction to entertain this case being one founded on the internal management and or domestic affairs of the 1<sup>st</sup> Defendant being a political party.*

2. *Whether having regards to the facts and circumstances of this case, the Claimant has disclosed reasonable cause of action for the Honourable Court to determine.*

## ARGUMENT ON ISSUES

Learned counsel submits, that from the totality of the averments in the Claimant's affidavit in support of his originating summons, the reliefs being sought therein and the various counter affidavits of the Defendants on record, it is quite evidence that the Claimant's suit as presently constituted is clearly anchored on issues hinging on the internal management and domestic affairs of the 1<sup>st</sup> Defendant, a political party. In line with plethora of cases not actionable and not justiciable in law.



Learned counsel submits, that the Claimant's claim before this Honourable Court being hinged on issue of proper management, control and running of the 1<sup>st</sup> Defendant as a political party as well as the relevant disciplinary action and or decisions of the 1<sup>st</sup> Defendant, are purely matters of internal affairs of the 1<sup>st</sup> Defendant which by a myriad of decided authorities. ***OYE VS.ALIIOKE & ORS.(2017) LPELR – 43375, Page. 47 Paragraphs D – E (CA) was cited.***

**On issue two,** Learned counsel submits, that the law is settled that a matter cannot be heard on its merits unless there is a cause of action, and a Plaintiff has the right to bring the action. ***UTIH VS.ONOYIVWE (1991)1 NEW (Pt. 166) SC.*** was cited.

Learned counsel contends, that the Claimant's originating summons is incurably defective and incompetent for the very reason it discloses no cause of action against the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants.

Learned counsel concludes by urging this Court to hold that the Claimant's claims as presently constituted raises no reasonable cause of action against the Defendants and that the Court is bereft of jurisdiction because the matter, before the Court are matters arising and bordering on the internal workings of a political party. This Honourable Court is urged to strike out the matter and dismiss the suit.

On his part, Claimant filed a further and better affidavit in reply to the 12<sup>th</sup> – 14<sup>th</sup> Defendants' counter affidavit of 47 paragraphs deposed to by him.

It is the deposition of the Claimant, that the depositions in paragraphs 4(v), 4(vi), 4(vii), 4(viii), 4(ix), 4(xx), 4(xxii), 4(xxvi), 4(xxi), 4(xxv), 4(xxvii), 4(xxviii), 4(XXXiii), 4(XXXiv) of the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants' counter affidavit are untrue, false and puts the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants to the strictest proof of same.

That the allegation of fact stated in paragraph 5 of the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Defendants' counter affidavit is false and it would be in the interest of justice if the Court grants the reliefs sought in the Claimant's originating summons.

Accordingly, Claimant filed a reply on point of law in response to the 12<sup>th</sup> – 14<sup>th</sup> Defendants' counter affidavit and written address.

Learned counsel submits, that from the onset, this suit does not border on internal party affairs such as to rob this Court of the requisite jurisdiction to entertain same. The argument that a Court does not interfere with the internal affairs of a political party is misconceived, as this suit is not questioning the internal affairs of the 1<sup>st</sup> Defendant, but rather contesting that the action taken by the 1<sup>st</sup> Defendant is contrary to the provision of Articles 17 and 18 of the 1<sup>st</sup> Defendant's Constitution and Sections 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Learned counsel adopts earlier submissions under paragraphs 4.4 – 5.5 of the Claimant's written address in support of the originating summons and the judicial authorities cited in support of same.

On the whole, learned counsel urges this Honourable Court to strike out paragraph 4(ix) of the 12<sup>th</sup> – 14<sup>th</sup> Defendants' counter affidavit for offending the provisions of Section 115 of the Evidence Act, 2011. This Court is further urged to uphold the arguments of the Claimant in the instant suit and grant all his reliefs sought therein.

The 15<sup>th</sup> Defendant's counsel filed a 45 paragraph counter affidavit deposed to by OdusanyaDamilola George, a Legal Assistant in the legal department of the 1<sup>st</sup> Defendant state, that the 15<sup>th</sup> Defendant in this case admit paragraphs 1, 2, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15 and 16 of the Claimant's affidavit in support of the Originating Summons.

That sometime in the year 2020, there were some fractions of internal wrangling with the internal

affair/administration of the 1<sup>st</sup> Defendant whereby some chieftains of the party were not happy with the ways and manner in which the 1<sup>st</sup> Defendant was being run by the then National Chairman of the 1<sup>st</sup> Defendant (Comrade Adams Oshiomole).

That as time went on, the said internal wrangling was becoming very unbearable for the 1<sup>st</sup> Defendant to the extent that several Court cases were filed in different Courts up to the Appellate Court over the matter which at that time was capable of tearing the 1<sup>st</sup> Defendant apart, consequent upon which the Court of Appeal sitting in Abuja upheld the suspension of the then National Chairman of the 1<sup>st</sup> Defendant Comrade Adams Oshiomole. Upon the said Judgment of the Court of Appeal seventeen (17) members of the dissolved National Working Committee (NWC) who are very loyal to the then

National Chairman of the 1<sup>st</sup> Defendant, quickly proceeded to appoint the late former Governor of Oyo State, Senator AbiolaAjimobi as acting National Chairman.

That in another counter move, another faction led by the then Deputy National Secretary (Mr. Giadom), together with two other members of the dissolved National Working Committee (NWC) of the 1<sup>st</sup> Defendant declared the said Mr. Giadom as acting National Chairman of the 1<sup>st</sup> Defendant relying on a Judgment of High Court of Federal Capital Territory, Abuja which in March, 2020, gave the said Mr. Giadom then proceeded to issue a notice of the 1<sup>st</sup> Defendant's National Executive Committee (NEC) meeting slated for the 25<sup>th</sup> day of June, 2020 which will have in attendance, all the concerned stakeholder of the 1<sup>st</sup> Defendant via virtual means

where all the acrimonies would be tabled before the committee for resolution in Order to save the 1<sup>st</sup> Defendant from imminent crisis facing it at the time.

That pursuant to the above, the National Executive Committee of the 1<sup>st</sup> Defendant met on the 25<sup>th</sup> day of June, 2020 and in the exercise of its powers under Article 13.3 (iv) under the Constitution of the 1<sup>st</sup> Defendant and in the overriding interest of the 1<sup>st</sup> Defendant dissolved the then National Working Committee (NWC) headed by the then National Chairman whose members were involved in the said crisis affecting the 1<sup>st</sup> Defendant.

That the said National Executive Committee have taken over the affairs of the 1<sup>st</sup> Defendant unanimously appointed the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in this case as Caretaker/Extraordinary Convention



Planning Committee of the 1<sup>st</sup> Defendant for six months tenure in acting capacity and in temporary, pending the time when the convention of the party would be held to elect the new Principal Officers of the 1<sup>st</sup> Defendant which will constitute the New National Working Committee (NWC). At the said meeting, resolution was reached wherein the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in this case were appointed as the Caretaker/Extraordinary Convention Planning Committee to temporarily oversee the affair and activities of the 1<sup>st</sup> Defendant will be organized to elect a new set of Principal Officer of the 1<sup>st</sup> Defendant which will form her National Working Committee (NWC).

That the 2<sup>nd</sup> Defendant herein was appointed as the Chairman of the said Committee in acting capacity without any emolument attached so also the 4<sup>th</sup>, 5<sup>th</sup>,

6<sup>th</sup> and 14<sup>th</sup> Defendants. The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants have been serving Governors of their respective States of Yobe, Niger and Osun States, Defendants did not take any paid employment with the 1<sup>st</sup> Defendant in Order not to violate the provision of Section 183 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). And the provision of Article 17(iv) and 18(ii) of the Constitution of the 1<sup>st</sup> Defendant contrary to the claim of the Claimant.

That all the notices of congress issued by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in the performance of their duties are geared towards the fulfillment of the provision of Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which at the end would resort into the election of the principal officers of the 1<sup>st</sup> Defendant contrary to paragraphs

10<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> of the Claimant's affidavit in support of the Originating Summons. Contrary to paragraph 19 of the Claimant's affidavit in support of the Originating Summons, National Executive Committee of the 1<sup>st</sup> Defendant sanctioned all the actions of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in this case. That the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as constituted into Caretaker/Extraordinary Convention Planning Committee were also given power to temporarily run the affairs of the 1<sup>st</sup> Defendant in acting capacity and take any decision or action incidental to the realization of the goals and aims of the 1<sup>st</sup> Defendant.

That in contrary to paragraph 20 of the Claimant's affidavit in support of the Originating Summons, the National Executive Committee of the 1<sup>st</sup> Defendant met by virtual means and extended the tenure of the

2<sup>nd</sup> – 14<sup>th</sup> Defendants on the 8<sup>th</sup> December, 2020 till 7<sup>th</sup> June, 2021 and on the 7<sup>th</sup> June, 2021 further extended the tenure of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants till further notice. In furtherance to the above, the National Executive Committee (NEC) of the 1<sup>st</sup> Defendant donated some of its powers to the Caretaker/Extraordinary Convention Planning Committee at its meeting held on the 8<sup>th</sup> December, 2020 and 7<sup>th</sup> June, 2021 in line with Article 13.3(iv) and Article 13.3(vi) of the 1<sup>st</sup> Defendant's Constitution and only said Committee can decided otherwise contrary to paragraph 17 of the Claimant's affidavit in support of the Originating Summons.

That contrary to paragraphs 23, 24, 25 and 26 of the Claimant's affidavit in support of the Originating Summons, all the activities of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants are in line with the mandate given to

them by the 1<sup>st</sup> Defendant in line with Article 13.3(iv) of its Constitution and the 1<sup>st</sup> Defendant is happy with the way that function/mandate is being discharged/ carried out which has now placed the 1<sup>st</sup> Defendant in a better position to win any election in the country and performed better than it did in the last general election held in 2019.

That the 1<sup>st</sup> Defendant who appointed the Claimant as the Chairman of its Kwara State Chapter also have the same power to remove him from office through the 2<sup>nd</sup> – 14<sup>th</sup> Defendants to whom it had donated its power to. That the removal of the Claimant from office was done in line with the power given to the 2<sup>nd</sup> – 14<sup>th</sup> Defendants herein by the 1<sup>st</sup> Defendant. Furthermore, the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in this case did not breach any right of hearing of the Claimant in this case as he was not

removed on any allegation but on the need to have the parties restructure in Order to have new people with new ideas to run the affairs of the party in Kwara State.

That all issues brought before this Honourable Court by the Claimant are issues on internal working of the 1<sup>st</sup> Defendant which is not justifiable contrary to paragraph 30 of the Claimant's affidavit in support of the Originating Summons. The Claimant has not disclosed any reasonable cause of action to warrant the questions posed on Sections 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The 2<sup>nd</sup> – 14<sup>th</sup> Defendants rightly removed the Claimant from office as Caretaker Chairman of the 1<sup>st</sup> Defendant's Chapter in Kwara State and replaced him with the 15<sup>th</sup> Defendant herein without violating any Constitution provision

of the 1<sup>st</sup> Defendant or any other law. Therefore the interest of justice would best be served if this Honourable Court dismissed the suit in its entirety.

In accordance with procedure, written address in opposition to the Claimant's Originating Summons was filed wherein 6 issues were formulated for determination to wit;

1. *Whether by the interpretation of the provision of section 183 of the 1999 Constitution of Nigeria (as amended) the appointment of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as Chairman and members respectively of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant is legal and constitutional?*

2. Whether by the interpretation of the provisions of Article 17 (iv) of the Constitution of the 1<sup>st</sup> Defendant, the appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants as Chairman and members respectively of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant is legal and constitutional?
3. Whether by the interpretation of the provisions of section 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the appointment of 2<sup>nd</sup> – 14<sup>th</sup> Defendants as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, made on the 25<sup>th</sup> June, 2020, is legal and constitutional?



4. Whether by the interpretation of section 183 of the 1999 Constitution of Nigeria (as amended), section 223 of the Constitution of Federal Republic of Nigeria (as amended), and Article 17 (iv) of the Constitution of the All Progressive Congress, the issuance of the Notices for the Conduct of Congresses and every other actions and decisions taken by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants acting as Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant, from the 25<sup>th</sup> of June, 2020 are legal and constitutional?
5. Whether the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants functioning as Chairman and Members of the Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant, pursuant to their purported appointment to

those capacities on 25<sup>th</sup> June, 2020, being a gross violation of section 183 and 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), will not operate to disentitled the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants from the immunity provisions of section 308 of the 1999 Constitution?

6. Whether by interpretation of Article 13.3 (v), section 183 of the 1999 Constitution of Nigeria (as amended), section 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Article 17(iv) of the Constitution of the All Progressive Congress, the purported removal of the Claimant as Chairman of the 1<sup>st</sup> Defendant in Kwara State by 2<sup>nd</sup> – 14<sup>th</sup> Defendants without recourse to the National Executive Committee (NEC) and

*without alleging or hearing the Claimant is constitutional and legal in the circumstance of this matter?*

Arguments of all issues taken together.

Learned counsel submits, that the case filed by the Claimant as presently Constituted before this Honourable Court is without merit, frivolous and same is an abuse of Court process based on the fact that the Claimant has not made out any justifiable claim to warrant the grant of all the declaratory reliefs sought therein as same is outside the justification of this Honourable Court to grant. The Claimant has argued strenuously under these issues that the 1<sup>st</sup> Defendant has breached the provision of Section 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria, as well as Article

17(iv) of the 1<sup>st</sup> Defendant's Constitution in constituting the 2<sup>nd</sup> – 14<sup>th</sup> Defendants into the Caretaker/Extraordinary Convention Planning Committee which he now argued are illegal and unconstitutional in law and upon which those declaratory reliefs stated in the Originating Summons were sought against the Defendants in this case. The totality of the arguments canvassed by the Claimant regarding the alleged breach of the provision of Section 183 and Article 17(iv) of the 1<sup>st</sup> Defendant's Constitution can be found in paragraphs 4.1 to 4.16 of the Claimant's written address which spanned through pages 44 to 52 of the Claimant's Originating Summons.

Learned counsel submits further, that the Claimant also argued in his written address in support of the Originating Summons that the 2<sup>nd</sup>, 4<sup>th</sup> and

5<sup>th</sup>Defendants are disentitled from the immunity provision under Section 308 of the 1999 Constitution according to the Claimant having held themselves out as Chairman and members of the said Caretaker Committee which he claimed was a gross violation of provision of Section 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Learned counsel submits that now applying a compass in a ship to navigate the waters to arrive at the intention of the makers of the Constitution as far as the provisions of Section 223 of the Constitution is concerned, it clearly shows that the intention of the lawmakers of the provision is simply that political parties are under obligations to conduct a democratic election for the purpose of electing its

principal officers within an interval of a period not exceeding 4 years.

Learned counsel also submits, that the Claimant has failed woefully to disclose any reasonable cause of action for bringing this action regarding the alleged breach of the provisions of Section 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). A reasonable cause of action is a cause of action which, when only the allegations in the originating process are considered gives a Claimant a right, capable of being claimed against a Defendant.

***DANTATA VS. MOHAMMED (2000) 7 NWLR (Pt. 664) 176 at 203*** was cited.

Learned counsel submits, that there is no dispute to the fact that the 1<sup>st</sup> Defendant took that step of

constituting the 2<sup>nd</sup> – 14<sup>th</sup> Defendants into the said Caretaker Committee based on its internal arrangement in Order to save itself and its house from being destroyed as evidence abound from the record.

Learned counsel contends, that such an issue or matter is solely within the party's jurisdiction. Such claims are non-justiciable, it is not within the jurisdiction of the Courts to interfere with matters which relates to the running of the internal affairs of a political party because intraparty governance is exclusively within the province of the political party and it is not the role of the Court to make appointment of person to hold party offices or decides otherwise.

***ONUOHA VS. OKAFOR (1983) 2 SCNLR 244 at 254*** was cited.

Learned counsel submits, that there is no doubt to the fact that the entire question/issue formulated centers around them for the alleged to violation of the provision of the Constitution consequent upon which the Claimant formulated issue five which he argued has disentitled them from the protection of Section 308 of the 1999 Constitution upon which he sought those reliefs against them all.

Learned counsel concludes by urging this Honourable Court to dismiss the Claimant's case for being incompetent and frivolous without merit.

On his part, the Claimant filed a Further and Better Affidavit in reply to the 15<sup>th</sup> Defendant's counter



affidavit with 25 paragraphs deposed to by him  
(Claimant)

It is the deposition of the Claimant that the deposition in paragraph 6, 13, 14, 15, 19, 20, 23, 27, 28, 29, 30,31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43 and 44 of the 15<sup>th</sup> Defendants' counter affidavit are untrue and false.

That it would be in the interest of justice if the Court grants the reliefs sought in the originating summons.

Accordingly, Claimant filed 12 reply on point of law against the 15<sup>th</sup> Defendant's counter affidavit and written address.

Learned counsel submits, that it is settled law that where the provisions of a statute are clear and unambiguous, the effect should be given to its literal and ordinary meaning.

***A.G BENDEL STATE VS. A.G.F & ORS (1982) (1981)9 SC. Page 1 at Page 78 – 79*** was cited. The literal interpretation of Section, 183 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 17(iv) of the 1<sup>st</sup> Defendant's Constitution undoubtedly reveals the illegality and unconstitutionality of the conduct of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants, occupying executive positions in Government, as well as Executive positions as members of Caretaker/Extraordinary Convention Planning Committee (CECPC) of the 1<sup>st</sup> Defendant.

Learned counsel also submits, that the 15<sup>th</sup> Defendant's purported argument that the Claimant has no cause of action against the Defendant in vague and a misconception of law and fact before this Honourable Court.

This argument goes to no issue, at best all that the 15<sup>th</sup> Defendant did was to supply several judicial authorities on the meaning of ‘cause of action’, but however failed to link the said authorities to the instant case to show how the Claimant has not established a cause of action against the Defendants.

Learned Counsel further submits that the case relied upon by the 15<sup>th</sup> Defendant in urging the court to decline jurisdiction simply because it bothers on intraparty affairs were all decided before 2018 when the Supreme Court handed down its Judgment in ***OSUDE VS. AZODO (Supra)***. It is trite that where there are conflicting decisions of a Superior Court of record, the latest in time prevails.

***OSAKUE VS. FCE, ASABA (2010)10 NWLR (Pt. 1201)1 at 34 Para C (SC)*** was cited

***OSHIOMOLE VS. SALIHU (2021)8 NWLR Pt. 1775 at 401*** was also cited.

Learned counsel concludes by urging this Honourable Court to uphold the arguments of the Claimant in this case and grant all the reliefs sought.

**COURT:-**

I have considered the respective counter affidavits filed by the Defendants in opposition to the originating summons of the Claimant, on the one hand, and the respective written address in support of the counter affidavits, as aptly reproduced in the proceeding part of this judgment.

Defendants' argument is same, hook, line and sinker on the alleged infractions of the 1<sup>st</sup> Defendant's constitution vis – a – vis the constitution of the Federal Republic of Nigeria 1999 (as amended).

The six issues formulated by the 15<sup>th</sup> Defendant seem to have covered the whole areas of argument.

I hereby adopt the said issues as mine, for the determination of this legal conundrum.

I shall conjunctively take the arguments on the issues but resolve same in seriatim.

These issues as formulated by the Claimant border on the validity or otherwise of the resolution of the National Executive Committee of the 1<sup>st</sup> Defendant made on the 25<sup>th</sup> June, 2020 to dissolve the National Working Committee or any other organ of the 1<sup>st</sup> Defendant and in place constituted by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants into the Caretaker/Extraordinary Convention Planning Committee to work towards conducting the National Convention of the 1<sup>st</sup> Defendant that will democratically elects the

principal officers of the 1<sup>st</sup> Defendant in Order to keep in tune with the provision of Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Claimant with greatest respect has argued strenuously under these issues that the 1<sup>st</sup> Defendant has breached the provision of Sections 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria, as well as Article 17(iv) of the 1<sup>st</sup> Defendant's Constitution in constituting the 2<sup>nd</sup> – 14<sup>th</sup> Defendants into the Caretaker/Extraordinary Convention Planning Committee which he now argued are illegal and unconstitutional in law and upon which those declaratory reliefs stated in the Originating Summons were sought against the Defendants in this case.

The totality of the arguments canvassed by the Claimant regarding this alleged breach of the provision of Section 183 and Article 17(iv) of the 1<sup>st</sup> Defendant's Constitution can be found at paragraphs 4.1 to 4.16 of the Claimant's written address which spanned through pages 38 to 44 of the Originating Summons.

Also, at paragraphs 4.17 to 4.49 of the Claimant's written address, it was the contention of the Claimant that the appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 16<sup>th</sup> Defendants into the said Caretaker/Extraordinary Convention Planning Committee are illegal and unconstitutional for contravening the Constitutional Provision of Sections of 183 and 223 of the 1999 Constitution of Federal Republic of Nigeria (as amended) but later feared off by saying that assuming same is correct it

still contravene the Provision of Article 17(iv) of the 1<sup>st</sup> Defendant's Constitution which according to the Claimant forbids anybody holding any Executive Officer in government from holden any position in any organ of the 1<sup>st</sup> Defendant concurrently. This argument spanned through pages 44 to 52 of the Claimant's Originating Summons.

It is equally important to mention that the Claimant also argued in his written address in support of the Originating Summons that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are disentitled from the immunity provision under Section 308 of the 1999 Constitution according to the Claimant haven held themselves out as Chairman and Members of the said Caretaker Committee which he claimed was a gross violation of provision of Sections 183 and 223 of the 1999 Constitution of the Federal Republic of



Nigeria (as amended). The said argument of the Claimant can also be found at paragraphs 5.0 to 5.13 at pages 52 to 56 of the Originating Summons under issue five.

Lastly, Claimant further canvassed argument at paragraphs 6.0 to 6.05 at pages 56 to 58 of the Originating Summons that the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in the exercise of their power wrongfully removed the Claimant from office as the Chairman of the 1<sup>st</sup> Defendant's Chapter in Kwara State and replaced him with the 15<sup>th</sup> Defendant in this case. The Claimant in argument this issue six, relying on the argument canvassed under issues 1 – 5 of the Originating Summons.

The Court has taken the pain to do the break down and analysis of the full argument and submission of

the Claimant's case in Order to properly address all the issues raised therein as stated above. We submit with respect on the contrary, that the Claimant's contention in this case is borne out of a misinterpretation and misconception of the provisions of Section 183, Section 223(1)(a) and (2)(a) of the 1999 Constitution as well as the Provisions referred to by the Claimant in this case which clearly shows the Claimant's failure to appreciate the essence and purpose of the resolution of the National Executive Committee (NEC) of the 1<sup>st</sup> Defendant held on the 25<sup>th</sup> day of June, 2020 in the entire circumstance of this case.

To start with, from the Claimant's affidavit in support of the Originating Summons and the issue formulated, the fulcrum of the Claimant's complaint against the dissolution of the National Working

Committee of the 2<sup>nd</sup> Defendant can be summarized thus:

- a. That the appointment of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants into the said Caretaker Committee by the 1<sup>st</sup> Defendant as Chairman and Members contravened the provision of Section 1883 of the 1999 Constitution of Federal Republic of Nigeria (as amended) as well as Article 17(iv) the 1<sup>st</sup> Defendant's Constitution;*
- b. That the appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants by the resolution of the National Executive Committee of the 1<sup>st</sup> Defendant on the 25<sup>th</sup> June, 2020 as Caretaker Committee to take the place of the National Working Committee was not by democratic election as*

*prescribed by the Section 223 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

- c. That the Provision of Article 13.3(vi) of the 1<sup>st</sup> Defendant's Constitution relying upon by the 1<sup>st</sup> Defendant in constituting the 2<sup>nd</sup> – 14<sup>th</sup> Defendants into the said Caretaker Committee and donated those power to them in contrary to the clear and unambiguous provision of Section 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended); and*
- d. That the removal of the Claimant by the 2<sup>nd</sup> – 14<sup>th</sup> Defendants and replacement of same with the 15<sup>th</sup> Defendant is illegal and unconstitutional.*

However, all the aforementioned allegations and complaints as made by the Claimant have all been robustly denied by the Defendants in this case thereby putting the Claimant to the strictest proof of same. Not only that Defendants herein have also gone extra mile to substantiate their defence with cogent affidavit evidence showing copiously that the dissolution of the National Working Committee (NWC) as well as the appointment of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants on the 25<sup>th</sup> June, 2020 as Chairman and Members of the Caretaker Committee and all its actions, steps and decision taken so far were done in substantial compliance with the provisions of the Constitution of the Federal Republic of Nigeria and the 1<sup>st</sup> Defendant's Constitution, thereby knocking the bottom off the case of the Claimant.

To drive home this point, Defendants in this case have demonstrated in earnest the frivolity of the Claimant's case by drawing your lordship's kind attention to the relevant provisions of the Constitution of the Federal Republic of Nigeria as well as 1<sup>st</sup> Defendant's Constitution which are the bedrock of the Claimant's claim before this Honourable Court which the Claimant is misinterpreting and misapplied to the fact of this present case.

I herein reproduce the said provision of Sections 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria, Article 17(iv) of the 1<sup>st</sup> Defendant's Constitution and Article 13.3(vi) for ease of reference are hereby reproduced as follows:

Section 183 of the Constitution

***“The Governor shall not, during the period when he holds office, hold any other Executive Office or paid employment in any capacity whatsoever.”***

**Section 223 of the Constitution**

***“Section 223(1) “The Constitution and rules of a political shall:-***

- a. Provide for the periodical election on a democratic basis of the Principal Officers and Members of the Executive Committee or other governing body of the political party; And***
- b. Ensure that the Member of the Executive Committee or other governing body of the political party reflect the Federal Character of Nigeria;***

**2. For the purpose of this Section-**

**a. The election of the Officers or Members of the Executive Committee of a political party shall be deemed to be periodical if it is made at regular interval not exceeding four (4) years; and**

**b. The Members of the Executive Committee or other governing body of the Political Party shall be deemed to reflect the Federal Character of Nigeria only if the members thereof belong to different states not being less in number than two-third of all the States of the Federation and the Federal Capital Territory, Abuja.”**

**Article 17(iv) of the 1<sup>st</sup> Defendant’s Constitution**



The onus is always on that person who assert a fact to proof same since the allegation of the Claimant in the Originating Summons is that the 1<sup>st</sup> Defendant violated the provision of Section 183 of the 1999 Constitution in appointing the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants into the Caretaker Committee, then he had legal duty as a matter of law to show to this Honourable Court by credible and cogent evidence that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants herein who are all sitting and serving Governors in their respective State of Yobe, Niger and Osun respectfully took up the said appointment in full capacity or are in paid employment in that Executive official capacity to constitute an infraction or contravention of the provision of Section 183 of the 1999 Constitution.

Claimant has not shown from the entire affidavit filed in support of Originating Summons going by

the record that 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are all in paid employment or took up that office in full capacity to contravene the provision of Section 183 of the 1999 Constitution which will justify the filling of this action by the Claimant.

What is even more, evidence abound from the counter affidavit of Defendants that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are Chairman and Members of the said Caretaker Committee were constituted to temporarily perform the function of conducting the National Convention of the 1<sup>st</sup> Defendant.

See Paragraphs 24, 25, 26, 27 and 28 of the counter affidavits filed by the Defendants in this case. For ease of reference, I hereby reproduce them as follows:-

*24. That I know as a fact that the appointment of the said Caretaker/Extraordinary Convention Planning Committee of the 1<sup>st</sup> Defendant is temporary in nature till when the National Convention of the 1<sup>st</sup> Defendant will hold to elect new principal officers.*

*25. That I also know as a fact that the 2<sup>nd</sup> Defendant hereinwas appointed as the Chairman of the said Committee in acting capacity without any emolument attached so also the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants.*

*26. That I know as a fact that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> of Defendants been serving Governors of their respective States of Yobe, Niger and Osun States as well as the 6<sup>th</sup> and 14<sup>th</sup> Defendants did*

*not take any paid employment with the 1<sup>st</sup> Defendant.*

*27. That contrary to paragraphs 6 and 10 of the Claimant's affidavit in support of the Originating Summons, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in this case did not breach any provision of Sections 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as claimed by the Claimant to warrant the filing of this action.*

*28. That I also know as a fact that the appointment of the 6<sup>th</sup> and 14<sup>th</sup> Defendants into the said Committee by the 1<sup>st</sup> Defendant did not also contravene the Provision of Article 17(iv) and 18(ii) of the Constitution of the 1<sup>st</sup> Defendant contrary to paragraph 10 of Claimant's*

*affidavit in support of the Originating Summons.*

It is my Judgment that until that is done, i.e by stating clearly that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants took up another Executive Office in full capacity or paid employment in contrary to the stipulation of the above stated provision of Section 183 of the Constitution, then there cannot be any basis for this matter to be filed by the Claimant on this ground and failure to fulfill this obligation cast upon the Claimant by law rubs the Claimant's case of the non-disclosure of reasonable cause of action. I so hold.

Having shown that there is no any evidence place on record by the Claimant to proof that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants violated the provision of Section 183

of the Constitution 1999 (as amended) and haven also stated clearly from Defendants' counter affidavits that the appointment is temporary in nature, can it now be said or validly argue that accepting to act in this kind of committee in temporary manner and in acting capacity by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> and by extension the 6<sup>th</sup> and 14<sup>th</sup> Defendants will constitute an infraction or Constitutional breach of Section 183 and Article 17(iv) of the All Progressive Congress (APC) on the part of Governor Mai Mala Buni the Executive Governor of Yobe State, His Excellency Governor Abubakar Bello of Nigeria State and His Excellency, Governor IsiakaOyetola of Osun State as well as other Members of the Committee who are also currently serving in government in other capacity to

constitute a breach of the provision of Article 17(iv) of the All Progressive Congress (APC) Constitution?

On this score, the decision of Supreme Court in ***SC.447/2021 BETWEEN EYITAYO OLAYINYA JEGEDE & 1 OR VS. INEC & 3 ORS DELIVERED ON THE 28<sup>TH</sup> JULY, 2021***, is apt. See page 30 of the said Judgment where it was held while approving the finding of the Court of Appeal as thus:

***“It is clear in the Provision of Section 183 of the said Constitution that it is the Governor of a State that is prohibited and not a Political Party. The question that also calls for consideration is, ‘what is the legal implication of a Governor accepting a second executive officer? Would it result in an automatic***

*resignation from the Governor's current position as a Governor? Another salient question is, since Governor Mai Mala Buni, the serving Governor of Yobe State, was appointed as the National Chairman of the Caretaker/Extraordinary Convention Planning Committee of the 2<sup>nd</sup> Respondent, a temporary appointment, would he be considered as having taken another executive office where the appointment is merely temporary?' It is said that if a person takes a position that is merely temporary, it is usually not considered to be a second office for the purpose of dual office. In order for a position to be considered to be an office, it must have duties that are continuing in nature rather than temporary or intermittent. In a foreign case of DE*



*ALEJANDRO VS.HUNTER 951 S.W 2d 102, 107 (Tex App. Corpus Christi 1997, no pet) (Texas Dual Office Holding Law Made Easy), it was said to have been ruled by a Court that the temporary performance of the Mayor's duty by a Mayor pro tem during a period before a special election to fill the Mayor's position did not constitute dual office holding. It is clear that no criminal penalties were prescribed by the Constitutional Provision prohibiting dual executive office holding. Since it is a temporary appointment, could the Governor have been held as having violated the said provisions? The only means for ascertaining or challenging whether such violation ever took place, is through a civil action in a Court of law. It is only in Court of law during the*

*challenge that the implications of the violation can be pronounced upon by the Court. It is only the Court that can pronounce or declare the consequence of such violation.”*

It is my Judgment that the above majority Judgment of the Supreme Court in the cited case had laid to final rest the hullabaloo been generated by the Claimant in this case since it has been established beyond doubt that the said Committee of the 2<sup>nd</sup> – 24<sup>th</sup> Defendants were temporary pending the conduct of the National Convention of the 1<sup>st</sup> Defendant.

It is further my Judgment that the argument and submission made by the Claimant at paragraphs 5.06 to 5.10 which traversed pages 54 to 55 of the Originating Summons are Judgment of the minority view which is not the Judgment of the Supreme

Court. The law is that the minority Judgment of the Court no matter the industry or erudition put in same does not and cannot represent the Judgment of the Court in a given case. It is just an opinion which is not binding at all as it has no efficacy in law and counsel has been admonished not to rely on dissenting Judgment in whatever situation.

See the decision of the Supreme Court in the case of ***PROFESSOR B.J OLUFEAGBA & ORS VS. PROFESSOR SHUAIB OBA ABDUR-RAHEEM & ORS (2009) LPELR – 2613(SC) at Page 73 Paragraphs A – F;***

The said argument is discountenanced.

Furthermore, it is also alleged from the Originating Summons filed by the Claimant that the 1<sup>st</sup> Defendant breached/contravened the provision of

Section 223 of the Constitution in appointing the 2<sup>nd</sup> – 14<sup>th</sup> Defendants into the said Caretaker Committee.

From the Provision of Section 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) the primary consideration when interpreting provisions in the Constitution of the Federal Republic of Nigeria 1999 is to find out the intention of the lawmakers, who made the Constitution. This, we submit with humility can best be deciphered by the Court from the actual words used in the Constitution or the statute as the law is trite that the words of the Constitution are to be given their plain, ordinary and grammatical meaning. Thus, where the language of a statute is clear and explicit, the Court must give effect to it,

for in that case, the words of the statute speak the intention of the legislature.

See the case of ***GLOBAL EXCELLENCE COMMUNICATIONS LTD. & ORS VS. MR. DONALD DUKE (2007) LPELR 1323 (SC)*** where it was held thus:

***“In the interpretation of the Constitution, the Court is bound by the Provisions of the Constitution. Where the Provisions of the Constitution are clear and unambiguous, the Court must give a literal interpretation to them without fishing for a likely or possible meaning. This is because by the clear and unambiguous provision, the makers of the Constitution do not intend any other likely or possible meaning. However, where the***

*provisions are not clear, a Court of law can fish for a likely or possible meaning to bring out or arrive at the intention of the makers of the Constitution. Even here, the Court has no jurisdiction to go outside the intention of the makers of the Constitution. The Court is expected to apply a compass in a ship to navigate the waters to arrive at the intention of the makers of the Constitution.” (Underling ours for emphasis).*

In the case of ***GARBA & ORS VS. THE UNIVERSITY OF MAIDUGURI (1986) LPELR 1305 (SC)***, the Supreme Court also held that:

*“The attitude of this Court to the construction of our Constitution has been stated by this Court in **NAFIU VS. THE STATE (1981)2***

***NCLR 293, THE ATTORNEY GENERAL OF  
BENDEL STATE VS. THE ATTORNEY  
GENERAL OF THE FEDERATION & ORS  
(1983) 3 NCLR 1;***

***SENATOR ADESANYA VS THE  
PRESIDENT OF THE FEDERAL  
REPUBLIC OF NIGERIA & ANOTHER  
(1981) 5 SC 112. It is that the provisions of the  
Constitution are to be given liberal  
construction so as to best carry out the  
intention of the founding father. Their  
construction is not to be guided by the  
constructions in other common law  
jurisdictions unless similar provisions in pari  
material were in question. This court will not  
give to any provision of the constitution a  
construction, which will defeat it obvious***

*intention. It therefore appears to me that the provisions of section 33 (1) and (4) of the constitution have to be construed as they stand in our statute book and in the context of or their objective which is to ensure that justice is available to all and sundry in our courts or other tribunal.”*

The language of the constitution, where clear and unambiguous, must be given its plain meaning and a constitutional provision should not be construed so as to defeat its purpose.

It is common knowledge that a political party like the 1<sup>st</sup> Defendant consists of many organs (i) National Convention (ii) Board of Trustees (iii) National Executive Committee (iv) National Working Committee (v) Zonal Committee (vi) State



Congress (vii) State Executive Committee among others with different functions as stated in the constitution of the 1<sup>st</sup> Defendant. Of relevance are the powers and functions of the National Executive Council (NEC) as stipulated in the provisions of Article 13.3 (v) and (vi) which include to:

**“(v) Exercise control and take disciplinary actions on all organs, officers and members of the party and determine appeals brought before it by any member or organ of the party.**

**(vi) Create, elect and appoint any committee it may deem necessary, desirable or expedient and assign to them such powers and functions as it may deem fit and proper.” (Underlining for emphasis).**

It has been established through the Counter affidavit evidence filed by the Defendants in this case that there was a serious crisis in the 1<sup>st</sup> Defendant particularly during the reign of the then National Working Committee (NWC) of the 1<sup>st</sup> Defendant which led to the institution of several cases in court which called for emergency response of the National Executive Committee of the party to resolve the said crisis.

The said National Executive Committee exercised its powers under Articles 13.3 (v) and (vi) of the party's constitution to rescue the 1<sup>st</sup> Defendant from the crises, and created a committee of 2<sup>nd</sup> – 14<sup>th</sup> Defendants to pilot the affairs of the National Working Committee temporarily for a period of six (6) months within which the said committee was given the mandate to organize a convention to elect

a new National Working Committee (NWC), the tenure which was also further extended. See Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 31 of the 15<sup>th</sup> Defendant's counter affidavit and the Exhibits "APC1" and "APC2" respectfully attached herein to the 15<sup>th</sup> Defendant's counter affidavit.

Evidence is also abound from the counter affidavits filed by the Defendant that steps were been taken toward fulfilling the requirements of section 223 of the 1999 Constitution (as amended) and there is no contrary assertion to that effect.

The operative phrase in section 223 (2) (a) of the Constitution is the phrase "*not exceeding*" and it is very essential in the interpretation of the said section 223(1)(a) and 223 (2)(a) of the Constitution. The

Black's law Dictionary Edition, page 1602 defines the phrase, "*not exceeding*" as "*any time before the expiration or any time at the end of or any time not beyond or any time not later than*". See *ADESIDA VS ABEGUNDE & ORS (2009) LPELR 3613 (CA)*;

*AGBEBAKU VS UNUIGBE & ORS.(2009) LPELR 3654 (CA).*

It is my judgment that construction of the above referred provision of sections 223 of the Constitution of the FRN is, therefore, not guarantee of any tenure of office of four years to any elected party officer but rather a stipulation as to the period for conduct of election into the party elective offices by the political party. It will amount to over stretching of the provision section 223 for the Claimant to argue

as done in this case without showing how the Defendants in this case contravene same and we urge my noble lord to so hold.

The Claimant's submissions at paragraphs 4.20 to 4.28 which spanned through pages 45 to 47 of the originating summons are totally misconceived and all legions of cases of ***DOMINIC ONUORAH IFEZUE VS LIVINUS MBADIGHA & ANOR (Supra)***;

***GOVERNOR EKITI STATE & ORS VS PRINCE SANMI OLUBUNMI & ORS (Supra)***;

***ABACHA VS FAWEHINMI (Supra)***;

***A.G ABIA STATE VS A.G FEDERATION (Supra)***

that were all cited and relied upon by the Claimant therein are totally inapplicable to the fact and circumstance of this case. I so hold.

This is because the constitution of the 1<sup>st</sup> Defendant derives its validity from the provision of section 223(1)(a) of the Constitution of the Federal Republic of Nigeria. There is no express prohibition on the administration of a political party by persons not elected in the said provision, particularly during a period of crisis within the party, and none can be traced to the said provision of the constitution or read into same as contended by the Claimant in this case and we urge this Honourable Court to so hold.

Claimant in this case has failed in its duty to prove that the Defendants particularly the 1<sup>st</sup> Defendant indeed contravene the said provision of section 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) in appointing the 2<sup>nd</sup> – 14<sup>th</sup> Defendants as Caretaker Committee and

we urge my noble lord to so hold and resolve this point in favour of the Defendants.

From all that has played out, Claimant has failed woefully to disclose any reasonable cause of action for bringing this action regarding the alleged breach of the provisions of section 183 and 223 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as paragraphs 18 to 25 of the 15<sup>th</sup> Defendant's counter affidavit is clear that the 2<sup>nd</sup> – 14<sup>th</sup> Defendants were appointed temporarily and not receiving any payment or emolument.

This is because a cause of action is the fact or combination of facts which gives rise to a right to sue or institute an action in a court of law or tribunal. The term also includes all things which are necessary to give a right of action and every material

fact which has to be proved to entitle the Claimant to succeed. See the case of ***UWAZURONYE VS GOVERNOR IMO STATE (2013) 8 NWLR (Pt. 1355) 28 at 50.***

On the important of the Cause of action the court of competent jurisdiction had this to say emphatically in the case of ***SEAGULL OIL LTD. VS. MONI PULO LTD. (2011) 15 NWLR (Pt. 1271) at 547 – 548 Paragraphs F – H when it held thus:***

***“A cause of action or reasonable cause of action is constituted by either a single fact or a combination of fact averred to by a Plaintiff in his pleadings which the law will recognize as giving him a right to make a claim against a Defendant for a remedy or relief in court. The factual situation disclosed by the facts in the***



*Plaintiff's pleading on which he relies to support the claim made must be recognized as giving him the right capable of being claimed against the Defendant. In this context, a cause of action is different from the right to enforce a cause of action."*

See also the case of *EGBE VS. ADEFARASIN (NO. 2) (1987) 1 NWLR (Pt. 47)1*.

On the alleged breach of the provision of Article 17(iv) of the 1<sup>st</sup> Defendant's constitution which had been reproduced above. It is my judgment that looking at the fact and circumstance of this case, there is no dispute to the fact that the above issue relates to the alleged breach of the said Article 17(iv) constitutes an internal affair of the 1<sup>st</sup> Defendant which is not justiciable in law.

It is very clear from the totality of the claim of the Claimant in this case that the entire case center on the propriety or otherwise of the step taken by the 1<sup>st</sup> Defendant on the 25<sup>th</sup> day of June, 2020 in line with Article 13.3(v) of the constitution when it dissolved the then National Working Committee headed by the then Chairman of the 1<sup>st</sup> Defendant (Comrade Adams Oshiomhole) consequent upon which the 2<sup>nd</sup> – 14<sup>th</sup> Defendants were temporarily constituted/appointed as Caretaker/Extraordinary Convention Planning Committee (CECPC) for the purpose of conducting the National Convention of the 1<sup>st</sup> Defendant herein for the sole purpose of electing the new principal officers that will take over the administration/affair of the 1<sup>st</sup> Defendant.

From the above state of fact which is very clear from the record, there is no dispute to the fact that the

1<sup>st</sup> Defendant took that step of constituting the 2<sup>nd</sup> – 14<sup>th</sup> Defendants into the said Caretaker Committee based on its internal arrangement in order to save itself and its house from being destroyed as evidence abound from the record.

The issue of the breach of Article 17(iv) of the 1<sup>st</sup> Defendant's constitution which the Claimant has now brought before this Honourable Court is an issue of how the affairs of the 1<sup>st</sup> Defendant is been run which is against the letter and spirit of the law. It is now established that issues relating to leadership and/or membership of a political party are domestic and/or internal affairs of the party which is not justiciable in any court as such issue cannot be subject matter of adjudication before any court of the land.

Such an issue or matter is solely within the party's jurisdiction and a **“no go area”** for any court to intervene as the court lack the jurisdiction to delve into such affairs or matter. In clear terms, such claims are non “justiciable”. It is not within the province or jurisdiction of the courts to interfere with matters which relates to the running of the internal affairs of a political party because intra-party governance is exclusively within the province of the political party and it is not the role of the court to make appointment of person to hold party offices or decided otherwise.

The position of the law has been stated by the Supreme Court of the land that any issue bothering or touching on an internal running/affair of a political party regarding the management of that political party and the selection of its leader on

decisions or action that had already been taken based on popular votes/decision will not be justiciable in law. I rely on the case of *ONUOHA VS OKAFOR (1983) 2 SCNLR 244 at 254 where per Obaseki JSC as he then was held as follows:*

*“The practice of the Court is not to run associations (corporation and unincorporated associations) for the Members. It leaves the Members to run their association.” The Court further held per Aniagolu JSC thus “the issues raised on whether the various internal committee proceedings of the party were regularly conducted and whether there was laps in the observance of the rules of natural justices are issues which the court will go into after it has decided that the matter is one in respect of which the High Court ought to have*

*assumed jurisdiction. It would have been different if the appellant had sued for a breach of contract.”*

Also, in the case of ***JOE ODEY AGI, SAN VS. PEOPLES DEMOCRATIC PARTY & ORS (2016) LPERL – 42578 (SC)*** the apex court of the land while dealing over a case which had questioned the decision taken by the People’s Democratic Party in running its affairs also had this to say in emphasizing the need for the court not to dabble on such issue of internal running/affair of the political party when it held thus at page 94 – 95 Paragraphs A – B of the above judgment as follows:

*“The above makes it very clear that a party is supreme over its own affairs. See DALHATU*

*VS TURAKI (2003) 15 NWLR (Pt. 843) Page 310;*

*PDP VS SYLVA (2012) 3 NWLR (Pt. 1316) Page 85. A party is like a club.*

*A voluntary association. It has its rule. Regulations, guidelines and Constitution. Members join the party on their own free will. By joining they have freely given their consent to be bound by the rules, regulations, guidelines and constitution of the party. These rules of the party must be obeyed by all member of the party, as the party's decision is final over its own affairs. Members of a party will do well to understand and appreciate the finality of a party's decision over its domestic or internal affairs. The court would only interfere where*

*the party has violated its own rules. Where the National Working Committee of the 1<sup>st</sup> Respondent regards a person as a member of the party eligible to contest the primaries, no member of the party can complain against such a person. Both courts below were correct that the 3<sup>rd</sup> Respondent is member of the 1<sup>st</sup> Respondent. Such an issue is within the domestic and internal affairs of the 1<sup>st</sup> Respondent over which the courts have no jurisdiction as such is not justiciable.”*

Assuming without conceding at all, that the 1<sup>st</sup> Defendant breached the provision of Article 17(iv) of its constitution in appointing the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Defendants into the said committee, this Honourable Court will still not have jurisdiction to hear and entertain same because the issue constitutes



an internal affair of the party which is clearly outside the jurisdiction of this Honourable Court.

The resolution of this present issue before this Honourable Court caught the attention of the apex court of the land in its recent decision where the issue of the breach of the said Article 17(iv) of the All Progressives Congress was tested on this similar fact like in this instant case. The apex court did not mince word, when it declared such claim as an internal affair of the 1<sup>st</sup> Defendant in this case which is not justiciable in law before any court of the land. May we briefly invite the attention of this Honourable to the said recent decision of the Supreme Court in the case of *SC. 448/2021 between EYITAYO OLAYINKA JEGEDE & 1OR VS. INEC AND 3ORS UN REPORTED delivered on*

*the 28<sup>th</sup> July, 2021. See pages 40 – 41 of the said judgment where it was held thus:*

*“Let me consider the argument that the 2<sup>nd</sup> Respondent should not have appointed Governor Mai Mala Buni as its acting National Chairman contrary to Article 17(iv) of its Constitution that provides that “No officer in any organ of the party shall hold Executive position/office in government concurrently.”*

*The limited scope of the jurisdiction vested in the Election Tribunal by section 285 (2) of the 1999 Constitution cannot extend to the determination of this issue. It is clearly out of its jurisdiction. It is therefore incompetent. See OBASANJO VS YUSUF (Supra).*

*In any case, the 2<sup>nd</sup> Respondent, a registered political party being a voluntary organization, the question of who should hold offices in it and whether it has violated its own constitution by appointing a member to hold a particular office in it or discharge the functions of that office, cannot be entertained by an court. Those questions deal with internal administration of the internal affairs of the political party. Those are non-justiciable questions. Courts have no jurisdiction over the internal affairs of a political party except where a statute expressly gives a Court jurisdiction to deal with any internal affairs of a political party. As this Court held in ONUAHA VS.OKAFOR (1983)2 SCNLR 244 at 254 per Obaseki JSC “the practice of the*

*Court is not to run associations (corporation and unincorporated associations) for the members. It leaves the members to run their association.” The Court further held per Aniagolu JSC thus “the issues raised on whether the various internal committee proceedings of the party were regularly conducted and whether there was lapse in the observance of the rules of natural justices are issues which the Court will go into after it has decided that the matter is one in respect of which the High Court ought to have assumed jurisdiction. It would have been different if the Appellant had sued for a breach of contract.” The recent decision. See also PDP VS. SYLVA (EMPHASIS MINE).*

Gravitating from the above position of the law as stated by the apex court in the above-mentioned cases, I am left in no doubt that the entire issue submitted by the Claimant before this Honourable Court for adjudication is an internal affairs of the 1<sup>st</sup> Defendant and further confirm the fact that the purported issue of 1<sup>st</sup> Defendant acting in breach of the Article 17(iv) of its Constitution is also an issue within the internal affair of the 1<sup>st</sup> Defendant which robs this Honourable Court the requisite power to delve into.

It is further my judgment that the issue of dissolution of the National Working Committee (NWC) being challenged by the Claimant before this Honourable Court is not a pre-election (primary election) matter, that may cloth the Court with jurisdiction pursuant to Section 87(9) of the Electoral Act. Complaints

bordering on the running of the affairs of the political party and/or the leadership of the 1<sup>st</sup> Defendant is completely, an internal-affairs, and has nothing to do with the conduct of party-primary for the election of candidates or flag bearers for the party in respect of a general election. Thus, this action is not justiciable. The Supreme Court per Olabode Rhodes-Vivour, JSC, held in the case of *UFOMBA VS. INEC (2017) 13 NWLR (Pt. 1582) 175 at 212, Paragraphs D – G.*

*“In this case the Appellant as Plaintiff asked for six reliefs in his case where he claims to have won the primaries of his party. A diligent examination of these reliefs reveals that there is no claim against the conduct of the primaries, rather the claims deal with issues of membership, leadership of the party. These are*

*claims/reliefs which do not come within the purview of Section 251 of the Constitution or Section 87(9) of the Electoral Act. The claims are not justiciable. Courts cannot hear and determine ancillary claims if it has no jurisdiction to entertain the main claims. Reliefs 1, 2 and 3 are principal claims/reliefs, being issues on party leadership and membership. No Court has jurisdiction to consider them as they are not justiciable being issues that fall within the internal affairs of the party.”*

It therefore important to state, and I do hereby state that Claimant herein has not made out justifiable case in law to warrant been granted all the reliefs sought from this Honourable Court and having made

the above position of the law I hereby resolve this issue four in favour of the Defendants.

I need also mention that all the reliefs sought by the Claimant herein are declaratory in nature which place him in a position to prove by credible evidence all the assertion made in the entire case as the law is very clear that in every action filed in Court where any party asserts the existence of any fact, such a party has a burden to prove that every fact which exists in his case as the failure to do so will lead to the case been dismissed for lack of prove as the position of law is that he who assert must prove.

Sections 131, 132, 133, 134 and particularly Section 135 of the Evidence Act, 2011 (as amended) are instructive.

They provide as follows;



- “(1). If the commission of a crime by a party to any proceedings is directly in issue in any proceeding civil or criminal, it must be beyond reasonable doubt.***
- (2). The burden of proving that any person has been guilty of a crime or wrongful act is, subject to Section 139 of this Act, on the person who asserts it, whether the Commission of such act is or is not directly in issue in the action.***
- (3). If the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the Defendants.”***

See also the case of *MAIHAJA VS. GAIDAM (2018)4 NWLR (Pt. 1600) 454 at 486 Para F* where the Supreme Court held as follows:

*“The law is that whoever desire any Court to give Judgment as to any legal right or liability dependent on the existence of facts, which he asserts, shall prove that those fact exist. It is also the law that the burden of prove in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. Where the commission of crime is directly in issue in any proceedings, civil or criminal, it must be proved beyond reasonable doubt. See section 131, 132 and 135 of the Evidence Act, 2011.*

It is the law that any party who seeks declaratory reliefs before any Court of competent jurisdiction as a matter of law is under a legal obligation to prove same by cogent and credible evidence even where the other party i.e the Defendants admit such fact as stated by the Claimant which is not the situation herein. Claimant will still not be relieved of proving his case by credible, cogent and admissible evidence as the Claimant in this case is bound to succeed on the strength of his own case alone in order to be entitled to the reliefs sought and cannot rely on the admission of the opposing party assuming such exists as the Claimant is under legal obligation to prove his case by credible evidence.

It is my Judgment that the claim of the Claimant as founded before this Honourable Court on the violation of Sections 183 and 223 of the 1999

Constitution (as amended) without proving the actual breach by credible evidence leaves the case of the Claimant in the realm of speculation which is against the law as the Court does not act on speculation. I rely on the case of ***KENTA BEST (NIG) LTD. VS. A.G RIVERS STATE (2008)6 NWLR (Pt. 1084) 612 at 649, Paragraphs F – G.***

Claimant from all I have stated which is what the law provides, has not discharged the obligation placed on him to succeed.

I hereby resolve issues 1, 2, 3 and 4 in favour of the Defendants against the Claimant.

On issue five, the record before this Honourable Court is very clear that 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who are been sued in this case are all sitting Governors of their respective State of Yobe, Niger

and Osun States. There is no doubt to the fact that the entire question/issue formulated centers around them for the alleged or violation of the provision of the Constitution consequent upon which the Claimant formulated issue five which he argued has disentitled then from the protection of Section 308 of the 1999 Constitution upon which he sought those reliefs against them all.

There is nothing under the law that will disentitled or take away the protection constitutionally offered to the sitting Governors by virtue of section 308 of the 1999 Constitution of the Federal Republic of Nigeria (as amend). The said provision is very clear that no civil or criminal proceedings shall be instituted or continue against a person to whom this section applies. For the sake of clarity and ease of

reference, may we with humility reproduced the said provision as follows:

***308 (1) “Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section.***

- a. No civil or criminal proceedings shall be instituted or continue against a person to whom this section applies during his period of office;***
- b. A person to whom this section applies shall not be arrested or imprisoned during that period either on pursuance of the process of any court or otherwise; and***
- c. No process of any court requiring or compelling the appearance of a person to whom this applies, shall for or issued;***

*Provided that in ascertaining whether any period of limitation has expired for the purpose of any proceedings against a person to whom this section applies, no account shall be taken of his period of office.*

- (2) The provision of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official or to civil or criminal proceedings in which such a person is only a nominal party.*
- (3) This section applies to a person holding the office President or Vice – President, Governor or Deputy Governor; and the reference in this section to “period of office” is a reference to the period during which the person holding*

*such office is required to perform the functions of the office.”*

Courts in several instances have made pronouncement on the efficacy and purport of the above – mentioned provision of section 308 that the category of person mentioned in the above section are not subject to any proceedings either civil or criminal save for the exemption created in subsection (2) which is not the case herein. See the following decision of Supreme Court in the cases of ***BOLA TINUBU VS. I.M.B SECURITIES PLC. (2001) LPELR – 3248 (SC) at Pages 42 – 43 Paragraph D***, per Karibi Whyte where it was held as follows:

*“It is however important to advert to the meaning and effect of the expression in Section 308 (1)(a). “No civil or criminal proceedings*



*shall be instituted or continued against a person to whom this section applies during his period office.” Section 308 is only subject to the provisions of sub – section (2) which excludes action in civil proceedings in an official capacity, or civil or criminal proceedings in which such person is only a nominal party. The immunity ensures during the period of office of the incumbent. The literal construction of section 308 (1)(a) is that no action, civil or criminal can be brought, or continued against any of the persona stated in section 308(3). Such a person cannot be arrested or imprisoned during his tenure either in pursuance of the process of any court or otherwise – section 308 (1)(b). No process of any court requiring of compelling the*

*appearance of a person to whom the section applies, shall be applied for or issued. It would seem unarguable that apart from the matters excluded in section (2) there is an absolute bar to actions in civil or criminal proceedings against the person named in section 308(3). Concisely stated, civil or criminal proceedings in a private capacity against the persons named in section 308(3) cannot be initiated during their tenure and if pending before they assumed office shall not be continued.”*

The position of the law is clear, like night and day, that when the word of a statute or any legislation begins with the phrase “Notwithstanding” the legal implication is that it is meant to exclude an impinging or impending effect of any other provision of statute or other subordinate legislation.

See the following cases of ***MR PETER OBI VS. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS (2007) LPELR – 24347 (SC) at Page 41 Paragraphs B – F;***

The law is settled that the essence of the provision of section 308 in our constitution is to have the persons occupying such offices to be focused and perform his duties without any form of hindrance, embarrassment or difficult that may face him if this kind of situation exist. See the case of ***ALHAJI JIBRIN BALA HASSAN VS. DR. MU' AZU BABANGIDA ALIYU & 7ORS (2010) LPELR – 1357 (SC) Page 93 – 94 Paragraphs F – B;***

Defendants have also further corroborated the evidence of the Claimant where he stated that the Claimant was actually appointed by the 1<sup>st</sup> Defendant

and was removed as such. The following paragraphs are revealing;

*“36. That I also know as a fact that all the action of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants herein are not in violation of any constitutional provision contrary to paragraph 30 of the Claimant’s affidavit and such will cause an irreparable harm to the 1<sup>st</sup> Defendant.*

*37. That I know as a fact that the 1<sup>st</sup> Defendant who appointed the Claimant as the Chairman of its Kwara State Chapter also have the same power to remove him from office through the 2<sup>nd</sup> – 14<sup>th</sup> Defendants to whom it had donated its power to.*

*38. That I also know as a fact that the removal of the Claimant from office was done in line with*

*the power given to the 2<sup>nd</sup> – 14<sup>th</sup> Defendants herein by the 1<sup>st</sup> Defendant.*

*39. That I know as a fact that the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in this case did not breach any right of hearing of the Claimant in this case as he was not removed on any allegation but on the need to have the parties restructure in order to have new people with new idea to run the affairs of the party in Kwara State.”*

Looking at the above paragraphs, it is clear that 1<sup>st</sup> Defendant who appointed the Claimant into office using its power also removed him from the said office as such. There is nothing placed on record by the Claimant other than saying he was not heard before he was removed. It is my judgment that the appointment of the Claimant in the first place was

done at the mercy of the 1<sup>st</sup> Defendant by virtue of its power.

From the Constitution of the 1<sup>st</sup> Defendant, the National Executive Committee (NEC) of the 1<sup>st</sup> Defendant had donated some of its power to the said Caretaker Committee of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants. The power which was exercised by 2<sup>nd</sup> – 14<sup>th</sup> Defendants in removing the Claimant from office on 4<sup>th</sup> January, 2021 and replaced him with the 15<sup>th</sup> Defendant was exercised in line with the mandate given to him by virtue of Article 13.3(v) of the Constitution of the 1<sup>st</sup> Defendant.

It is further my judgment that 2<sup>nd</sup> – 4<sup>th</sup> Defendants need not give any reason for the removal of the Claimant. We submit with humility that the law is very trite that he who have the right to appoint can

also exercise that power to remove by virtue the provision of Section 10(1) and (2) of the Interpretation Act. Haven stated clearly that the power of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants was derived from the Article 13.3(v) of the 1<sup>st</sup> Defendant's Constitution, then removal of the Claimant was rightly done in law and the appointment of the 15<sup>th</sup> Defendant in place of the Claimant was also legal including all the actions and decisions of the 2<sup>nd</sup> – 14<sup>th</sup> Defendants in this case.

Claimant has failed woefully to justify the grant of all the reliefs sought in his Originating Summons. The entire suit having regard to the fact and circumstances of same, constitutes an abuse of judicial process and is liable to be dismissed.

I shall so dismissed the said suit by consigning same to a forlon of judicial debris.

Accordingly, Suit No. CV/2006/2021 is hereby dismissed for the reason advanced.

I thank you all.

*Justice Y. Halilu*  
*Hon. Judge*  
*1<sup>st</sup> March, 2022*

**APPEARANCES**

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– for the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.

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Tairu Adebayo, Esq., - for the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup>  
Defendants.

L.O Fagbemi, Esq. – for the 15<sup>th</sup> Defendant.