

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN - JUDGE

THURSDAY 14TH APRIL, 2016

BETWEEN:

SUIT NO. B/46/OS/15

HON. OSARO OBAZEE í .

CLAIMANT

AND

1. GOVERNOR OF EDO STATE

2. ATTORNEY GENERAL OF THE EDO STATE

3 EDO STATE HOUSE OF ASSEMBLY

} DEFENDANTS

JUDGEMENT

The claimant instituted this action vide an originating summons filed on 12/11/15 along with the front loaded processes. By a motion filed on 12/2/16 the claimant amended his originating summons. In the amended originating summons the claimant asks for the determination of the following questions:-

1. Whether the 1st Defendant can validly suspend the claimant who is the democratically elected Chairman of Oredo Local Government Area of Edo State from office for inter alia grave criminal allegations of diversion and misappropriation of public funds or for any reason whatsoever without according the Claimant a fair hearing in accordance with the provisions of Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

2. Whether the 1st Defendant can validly suspend the claimant from his position as Chairman of Oredo Local Government Area in breach of section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
3. Whether or not the 1st Defendant can purport to suspend the claimant from office as chairman of Oredo Local Government Area without the input of the Legislative arm of Oredo Local Government as envisaged by section 7(i) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
4. Whether the 1st Defendant having reached a firm conclusion that there was diversion and misappropriation of public funds in Oredo Local Government Area and employment of staff without approval of the Edo State Local Government Service Commission, without hearing from the claimant can still validly constitute a panel of inquiring to investigate the self-same allegations without breaching the claimant's right to fair hearing guaranteed by section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
5. Whether the 3rd Defendant's purported acknowledgement of the claimant's suspension from office as Chairman of Oredo Local Government Area, after the execution of the act of suspension of the

claimant by the 1st Defendant is in conformity with section 20(1)(b) of the Edo State Local Government Law 2000.

6. Whether the resolution of the 3rd Defendant passed on the 3rd February, 2016 during the pendency of the instant suit requesting for the removal of the claimant from office as Chairman of Oredo Local Government Area is not invalid, unconstitutional, illegal, null and void and of no effect whatsoever.

In the event that the above questions are answered in the negative then the claimant claims the following reliefs against the Defendants jointly and severally:-

1. A declaration that the 1st Defendant has no power to suspend the claimant from office as the democratically elected Chairman of Oredo Local Government Area of Edo State for grave criminal allegations of diversion and misappropriation of public funds or for any reason whatsoever without according the claimant a fair hearing in accordance with the provisions of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. A declaration that the Claimant as the democratically elected Chairman of Oredo Local Government of Edo State cannot be suspended at the whims and caprices of the 1st Defendant without regard to the due process of law, especially sections 7(1) and 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

3. A declaration that the 1st Defendant having already reached a firm conclusion on the alleged diversion and misappropriation of public funds in Oredo Local Government Area and employment of new staff without the approval of the Edo State Local Government Service Commission without hearing from the claimant, cannot competently set up a panel of inquiry to investigate the self-same allegations without breaching the claimant's right to fair hearing guaranteed by section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

4. An Order setting aside the report of any purported panel of inquiry set up by the 1st Defendant to investigate the alleged diversion and misappropriation of public funds in Oredo Local Government Area and employment of new staff without the approval of the Edo State Local Government Service Commission in breach of claimant's right to fair hearing guaranteed by section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

5. A declaration that the purported acknowledgement of claimant's suspension by the 3rd Defendant on 6th of October 2015 as chairman of Oredo Local Government is unconstitutional, illegal, null and void and of no effect whatsoever.

6. An Order of injunction restraining the Defendants, their servants, agents and /or privies from interfering with the rights of the claimant as Chairman of Oredo Local Government or disturbing the claimant's exercise of his powers as chairman of Oredo Local Government without due regard to the process of law.
7. A declaration that the resolution of the 3rd Defendant passed on 3rd February, 2016 during the pendency of proceedings in the instant suit requesting for the removal of the claimant from office as the Chairman of Oredo Local Government Area is unconstitutional, illegal, invalid, null and void and of no effect whatsoever.
8. An Order setting aside the aforesaid resolution of the 3rd Defendant passed on 3rd February, 2016 and any action purportedly based on it.
9. An Order setting aside the letter dated 4th February 2016 written to the claimant by the Secretary, Oredo Local Government Area which letter is purportedly based on the 3rd Defendant's aforesaid resolution.

The originating summons is supported by an affidavit of 10 paragraphs deposed to by the claimant. Wherein he states that he was democratically elected as chairman of Ordeo Local Government Area on 20th April, 2013. On 6th of October, 2015, he was suspended as Chairman of Oredo Local Government Area by the 1st Defendant. Before his said suspension which he heard of on electronic media in the state no query or any other form of communication was entered into with him by the 1st Defendant. The 1st Defendant claimed to have suspended him

on alleged grounds of diversion and misappropriation of public funds and engagement of new employees for the Local Government without the approval of the Edo State Local Government Service Commission. The 1st Defendant did not grant him a hearing before suspending him. After his suspension the 1st Defendant wrote exhibit A to inform the 3rd Defendant for record purposes. The 1st Defendant did not consult with the 3rd Defendant or the Legislative Arm of Oredo Local Government Area before suspending him. Upon receipt of exhibit A, the 3rd Defendant on 6th October 2015 merely acknowledged his suspension through the speaker of the 3rd Defendant vide exhibit B. On 3rd February, 2016, the 3rd Defendant purportedly passed a resolution requesting his removal from office as Chairman of Oredo Local Government Area vide exhibit C. He states that based on the aforesaid resolution on 4th February, 2016 the Secretary of Oredo Local Government Area wrote exhibit C1 to him.

In his written address K.O. Obamogie Esq., of Counsel to the claimant adopted as his issues the questions raised in the originating summons. Learned Counsel submitted on issue 1 that section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the claimant's fundamental right to fair hearing citing the case of **Ezenwaji V. University of Nigeria (UNN)** (2006) 3 NWLR (Pt. 967) 325 at 339. The concept of fair hearing is encapsulated in two latin maxims, namely (a) Audi alteram partem (hear the other side) and (b)

Nemo Judex in casua sua (No man shall be a judge in his own cause). The right to fair hearing is so fundamental that a breach of any of the twin pillars set out above is fatal and invalidates the decision reached. See **Omaliko V. Awachie (2002) 12 NWLR (Pt. 780) page 1 at 26 – 27; Jopal Ltd V. Afribank (Nig) Ltd (2003) 8 NWLR (Pt. 822) 290**. He maintained that the application of the principles embedded in the right to fair hearing is not restricted to judicial proceedings. It applies to all persons, government or authority charged with the responsibility of determining questions as to the civil rights and obligations of the citizens. See Section 36(2) of the aforementioned Constitution. He submitted that it is clear that the 1st Defendant breached the fundamental right of the claimant to fair hearing when he unilaterally suspended the claimant on sundry grounds, including grave criminal allegations without a hearing whatsoever. Likewise the 3rd Defendant before acknowledging the suspension of the claimant did not hear from the claimant thus breaching his right to fair hearing guaranteed under section 36(1) of the Constitution. It is trite that every act (be it administrative or judicial) that is subsequent to the breach of the fundamental rights provisions of the Constitution is a nullity and of no legal consequence. See **A.N.P.P. V. INEC (2004) 7 NWLR (Pt. 871) 16**.

Mr. Obamogie submitted on issues 2 and 3 that section 7(1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) guarantees the

system of democratically elected Local Government Councils in the country. This Constitutional provision was given recognition in the case of **Attorney-General of Lagos State V. Attorney-General of the Federation (2004) 18 NWLR (Pt. 904) page 1**. According to learned counsel Local Government Councils do not exist at the whims and caprices of the Governor of a state and should not be treated as mere appendages to be administered without regard to the Constitution or state law that provides for the system of the Local Government Councils. Thus, the suspension of a democratically elected Local Government Chairman is a constitutional aberration. See **Eze V. Governor of Abia State (2010) 15 NWLR (Pt. 1216) 324**. He submitted further that in suspending the claimant from office, the 1st Defendant did not consult with the legislative arm of Oredo Local Government which is not in line with the Constitutional guarantee provided for in section 7(1) of the Constitution and the provisions of the Edo State Local Government Law 2000. He submitted that any action of the 1st Defendant that is not in accordance with the due process of the law is incurably bad and unconstitutional.

Learned Counsel submitted on issue 4 that the act of suspending the claimant without hearing from him with respect to the allegations made against him by the 1st Defendant is a form of sanction or punishment, which sanction was imposed by the 1st Defendant. The 1st Defendant who made the allegations of

diversion and misappropriation of public funds against the claimant, amongst others is the same person who suspended the claimant. He is also now charged with the responsibility to appoint a committee to investigate the said allegations against the claimant. It is noteworthy that the 1st Defendant is also to receive the report of the committee to be set up by him and to act on the report. He submitted that the above scenario is patently unconstitutional and illegal. It runs against the rules of natural justice and due process of law citing the case of, **Legal Practitioners Disciplinary Committee V. Fahewinmi (1985) 2 NWLR (Pt. 7) 300 at 334.**

Mr. Obamogie submitted on issue 5 that the 3rd Defendant's mere acknowledgment in exhibit B of the suspension of the claimant from office of the Chairman of Oredo Local Government Area is not the consultation envisaged by section 20(1)(b) of the Edo State Local Government Law 2000. The 1st Defendant had clearly taken a firm decision to suspend the claimant from office and had executed the suspension order before informing the 3rd Defendant for record purpose. He submitted that where a statute provides a particular method of carrying out a duty, no other method is allowed. Any act carried out contrary to the prescribed mode or method is invalid. See **Atai V. Dangana (2012) 1 ILR 523 at 538.**

Learned Counsel submitted on issue 6 that the Defendantsø purported removal of the claimant from office as Chairman of Oredo Local Government Area on the 3rd of February, 2016 during the pendency of this suit is an act that smacks of lawlessness, it is contemptuous of the proceedings before this Honourable Court. It is designed to undermine the proceedings in court and consequently the purported removal cannot stand because it is illegal, null and void and of no effect whatsoever. He relied on the case of **Saidu Garba V. Federal Civil Service Commission (1988) NWLR (Pt. 71) 449.**

In conclusion, learned counsel urged the court to grant all the claims of the claimant and enter judgement in his favour.

In their counter affidavit of 10 paragraphs to the originating summons filed on 13/1/16 the defendants by one Charles Aiyamenkhue a staff of the 3rd Defendant denied the claims. I reproduce the portions of the counter affidavit that are germane to this case viz:-

- (6). That I know as a fact that before the claimant was suspended from office, there was consultation between the 1st Defendant and 3rd Defendant over the matter as provided under the law.ö
- (7) That as a legal officer in the Edo State House of Assembly the Claimant was called to order on several occasions by the 3rd Defendant upon the complaints from staff of Oredo Local

Government Area to stop diversion of public funds and in the engagement of new employees for the council but the claimant did not to listen to the 3rd Defendant's warnings.ö

(8) That it is therefore not correct to say that the claimant was not queried or given fair hearing before he was suspended from office rather the claimant was queried several times by the 3rd Defendant before he was suspended from office for 2 months.

(9) That I am informed by M.O. Airende Esq., of Counsel at the Ministry of Justice Head quarters Ezoti Street, Benin City by 2 p.m on 30th of December 2015 and I verily believe him as follows:-

1) That at the hearing of this originating summons the 1st ó 3rd Defendants will raise a preliminary objection to the hearing of this matter that in view of section 254C(i) of the 1999 Constitution as amended this Honourable Court lacks the vire/power and jurisdiction to hear and determination same and this Honourable Court will therefore be urged to strike out the matter.ö

- 2) That the ground of the objection is that by virtue of section 254C(i) (a), (b), (d) and (k) of the 1999 Constitution as amended, only the National Industrial Court of Nigeria has exclusive jurisdiction to hear this matter as the issue involved is Labour, Employment, Workplace related or connected matter.ö

The written address of the defendants filed along with the counter-affidavit was adopted by Mr. M.O. Airende.

Mr. Airende in his submission relied on his counter affidavit and stated inter alia

öof note is our Objection raised in paragraph 9 of our counter affidavit where in the jurisdiction of this Honourable Court is being challenged to hear and determine this matter.

The objection is based on Section 254C(1) of the 1999 Constitution of the Federation Republic of Nigeria as amended which divested the power of this Honourable Court to hear and determine the issue involved in subsection (a) (b), (d) and K of the aforesaid section and grant exclusive jurisdiction to the National Industrial Court of Nigeria to hear same.ö

Flowing from above, Mr. Airende raised an issue for determination viz:-

Whether having regard to the provisions of Section 254 (C)1 a, b, d and k of the 1999 Constitution as amended the action of the claimant is maintainable in this court as the Honourable Court lacks the jurisdiction to entertain same.

In his argument Mr. Airende stated that the claim of the claimant is based on labour, employment and workplace related issues which clearly ousted the jurisdiction of this court by virtue of section 254 (C), 1a, b, d and k of the 1999 Constitution of Nigeria. Learned counsel pointed out that by paragraphs 2, 3, 4, 5, 6, 7 and 8 of the supporting affidavit of the claimant, he is clearly in the employment of Oredo Local Government Council of Edo State. Emphasizing that the position of the claimant in the said council as a political office holder does not remove him from being in the employment in the council or as a labour related matter as dispute has arisen therefrom. Learned counsel referred to subsection (a) (b) (d) and (k) starting with the words "relating to or connected with" which by Oxford Advanced learner's Dictionary means "connected with in some ways" (2) in the same family. On the guide for determining whether the court has jurisdiction in a matter, he cited the cases of **NNPC and Anor V. Sele & Ors (2013) 219, LRCN Pt. 1 page 1, Okarika V. Samuel (2013) 222 LRCN Pt1, 141.**

It is further submitted that the alleged violation of the Constitutional right of the claimant in section 36(1) of the 1999 Constitution is a mere ancillary to the principal issue of suspension from office. Citing **Tukur V. Government of Gongola State (1989) 4 NWLR 517**. According to Counsel it is the writ of summons and statement of claim that determines the jurisdiction of the court citing **Society Bk SA V. Chazin Ind Ltd (2014) 234 LRCN 182**; **Adeyemi V. Opeyemi (1976) 9 – 10 SC 31**. That “The reliefs 1 ó 6 in the originating summons by the claimant “botherö (sic) on suspension from office and not being heard before suspension order was handed down on him.”

In passing it is argued that this court has no power under the High Court Law of Bendel State as applicable to Edo State to transfer the case to the National Industrial Court.

After the amendment to the originating summons the defendants filed a further counter affidavit wherein by paragraph 6, it is stated that Exhibit C attached to the supporting affidavit to the amended originating summons is not certified by officials of 3rd Defendant. In their written address to the further counter affidavit, reliance was placed on sections 104(1) and 104(2) of the Evidence Act also on the case of **IMB Nig Ltd V. Dabiri (1981) NWLR Pt. 533) 284**. Emphasizing that “Exhibit -Cø could not have emanated from the 3rd Defendant as it was not certified or signed by the officials of the 3rd Defendant.

The implications of not certifying and signing Exhibit C are that the document did not come from 3rd Defendant that such voting and proceedings did not take place. Learned Counsel for the Defendants urged the court to disregard Exhibit C.

On 19/1/16 the claimant filed a further affidavit of 8 paragraphs deposed to by himself K.O. Obamogie Esq, of Counsel to the claimant submitted in his reply on point of law that this court has jurisdiction to entertain this matter as this case does not involve labour matters. In the event that the court finds that it does not have jurisdiction the matter can be transferred to the National Industrial Court in line with Section 24(3) of the National Industrial Court Act 2006 and not to strike out the case.

In conclusion, learned counsel urged the court to overrule the objection.

I have read the originating summons and the amendment thereto along with the supporting affidavits and counter affidavits in this case. I have also very carefully perused the legal submissions of both learned counsel for the parties. This case is quite straight forward as the issues arising for determination are quite easy to ascertain. In my respectful view the first issue is the deposition by Mr. Charles Aiyamenkhhue in paragraphs 9(1) and (2) of the counter affidavit filed on 13/1/16, which purports to raise an objection contrary to the clear provisions of section 115(2) of the Evidence Act 2011 thus:-

“An affidavit shall not contain extraneous matter by way of objection, or prayer or legal argument or conclusion.”(Underlining mine)

The aforesaid paragraphs of the counter affidavit rightly referred to itself as an objection and learned counsel in his written address submitted on this issue that:-

“of note is our objection raised in paragraph 9 of our counter affidavit where the jurisdiction of this Honourable Court is being challenged” .”
(underlining mine)

It is settled that where paragraphs of an affidavit offend the provisions of the Evidence Act, they are to be struck out. Accordingly the aforesaid paragraphs 9(1) and (2) of the defendants counter affidavit of 13/1/16 are ordered struck out. See **Banque De L. Afrique Occidentale V. Sharfadi and Others (1963) NCLR 21; A. G. Anambra State V. A. G. Federation (2007) 12 NWLR (Pt. 1047) 4.**

Again on the counter affidavit, I have looked at paragraph 1 thereof filed on 13/1/16 deposed to by Mr. Charles Aiyamenkhue which states “That I am a staff of the Edo State House Assembly,” In this paragraph the deponent did not state the kind of staff he is, he could be a messenger or a cleaner. In paragraphs 6 ó 9 of the counter affidavit reproduced above, the deponent deposed to facts that are not within his personal knowledge without stating the name of his informant and reasonable particulars regarding the time, place and circumstance of the information contrary to section 115(4) of the Evidence Act 2011. Even if the facts

are within his knowledge and his belief but such belief is derived from any source other than his own personal knowledge, he has not set forth explicitly the facts and circumstances forming the ground of his belief in his deposition contrary to section 115(3) of the Evidence Act 2011.

In paragraph 7 of the counter affidavit produced in part "That as a legal officer in the Edo State House of Assembly the claimant was called to order on several occasions" .

A look at the above paragraph in my respectful view will lead a person to take the claimant as the "legal officer". Assuming that it is the deponent that is the legal officer, he has not shown by his deposition/counter affidavit that he was at such meetings or fora where the claimant was called to order on several occasions. No documents were attached to the counter affidavit as exhibits of such proceedings.

It is my candid view that the deponent (Mr. Charles Aiyamenkhue) in the counter affidavit filed on 13/1/16 is not a competent one as he lacks the competence to depose to the facts in the counter affidavit. It is therefore taken that there is no competent counter affidavit in opposition to the originating summons filed on 12/11/15 and as such the defendants are deemed to have admitted the facts as stated in the claimant's affidavit in support of his originating summons except for the issue of jurisdiction. I am well guided on this issue by the authority of

Woherem J.P. V. Emereuwa & Ors (2004) 11 M.J.S.C. 108 at 123. Be that as it may, the question of the jurisdiction of the court is very fundamental and can be raised at any stage of any proceedings and I dare say even in a written address as done by the defendants in this case. The court can also suo moto raise same. And therefore though the paragraph 9 (1) (2) of the defendants counter affidavit has been struck out and by OR 22 of the Edo State High Court (Civil Procedure) Rules 2012 the defendants ought to have raised same by way of notice of preliminary objection, the question must be tackled. Therefore, the jurisdiction of this court to entertain this suit as argued by the defendants in their submissions based on the provisions of section 254C (a), (b), (d) and (k) of the 1999 Constitution of the Federation of Nigeria as amended hereinafter referred to simply as the 1999 Constitution is hereafter considered. I have read intently the aforesaid provisions which at a first glance gives one the impression of very wide jurisdiction to the National Industrial Court, however, an indept study and examination of the provisions will illuminate this issue. I have firstly to examine the status of the Claimant. It is not in doubt as both parties are ad idem that the claimant was duly elected the Chairman of Oredo Local Government Council. It is not contested that section 7(1) of the 1999 Constitution provides for the establishment of the Local Government as a tier of Government. It is therefore necessary in the light of the above to determine whether the claimant is a worker or

an employee within the meaning and context of the provisions of section 254 C (1) a, b, d, k, of the 1999 Constitution. Whereas the learned counsel for the claimant contends that the claim of the claimant is not based on labour, employment and work place related issues and therefore the claimant is not an employee of Oredo Local Government rather he is the elected Chairman of Oredo Local Government who derives his mandate to lead the executive arm of the Local Government from the people of Oredo Local Government, the defendants on the other hand contends that the claimant is a political office holder and his suspension from office by the Governor of Edo State is a matter or cause related or connected with him as public office holder as envisaged in section, 254 (C) (1) K. That the claimants suspension is related/connected with his "work place". The learned counsel urged the court to give the words in section 254 (C) 1 of the Constitution, its literary and ordinary meaning citing **Lufthansa Airline V. Odiose (2006) 7 NWLR Pt. 978) 42.** **Learned Counsel emphasized that Oredo Local Government Council** is a "Workplace" under section (a) to which the suspension of the claimant is connected.

I find that the issue of whether Oredo Local Government Council is a work place or not does not arise because every where there are workers is a workplace. The main question that arises is whether the claimant is a worker or an employee within the contemplation of the National Industrial Court Act 2006.

A worker is defined in Black's Law Dictionary 8th Edition by Bryan Garner at 1367 as "one who labours to attain an end, especially a person employed to do work for another. A person who offers to perform services for compensation in the employ of another".

A cursory interpretation of the above definition does not include a person in position of an executive chairman of a Local Government who was elected into that office by the people of Oredo Local Government Area. Election as defined by the aforesaid legal dictionary at page 557 is "the exercise of choice". The process of selecting a person to occupy an office (usually a public office) "A public office on the other hand is also defined at page 1267 of the law dictionary as "a position whose occupant has legal authority to exercise a government sovereign power for a fixed period".

From the above, the claimant herein was neither employed, contracted or appointed to do any work for Edo State Government, Oredo Local Government or Edo State House Assembly rather by agreement of the parties he occupies an elective office which by definition of the same dictionary at page 558 is "an office that is filled by popular election rather than by appointment".

The next issue is whether there has been a dispute albeit labour dispute, between the parties herein. Labour dispute is defined at page 890 of the aforesaid legal dictionary as "a controversy between an employer and employee concerning the

terms and conditions of employment, or concerning the association or representation of those who negotiate or seek to negotiate the terms and conditions of employment.ö

As can be seen from the above definitions and using them as the basis for determining the status of the claimant viz-a-viz the provisions of the (National Industrial Court Act) 2006 and as stated by Kutigi J.S.C. (as he then was) in the case of K.F.&R V Attorney-General of Kano State (1998) 58 LCR Pg. 3707 at 3735 thus öwhether one literally, widely, liberally, conservatively, narrowly or in any other way, as a cardinal principle of Interpretation, you can never escape giving words their ordinary and naturally meaning once they are clear and unambiguous.ö I therefore find as clear and unambiguous the fact that the claimant is a public officer holding an elective office and not an employee or worker by any stretch of imagination.

I am fortified in this finding by the submissions by the very Learned Honourable Justice B.B. Kanyip (PHD), Judge of the National Industrial Court, Lagos in his paper öa Global Overview of Labour standards in the Judiciary,ö delivered at the 2013 Biennial All Nigeria Judgesø conference which I am persuaded by in which some aspects are very germane to the issue of whether the claimant is a worker or employee within the contemplation of the National Industrial Court Act 2006 were addressed. Although his paper dealt more on

whether a Judge is an employee, he inevitably considered other categories or classes of persons at par with the Judge. At page 11 of his paper it was his view that "the traditional view held by especially common law jurisdiction is that judges are not employed under contract of employment and so are not employees." Quoting the case of Haryana & Ors V Nathsingh & Anor. decided on 4th February 2009 by the High Court of Punjab, thus "... The judicial service is not service in the sense of "employment". The judges are not employees. As members of the judiciary they exercise the sovereign judicial powers of the State. They are holders of public offices in the same way as the members of council of ministers and the members of the legislators. Their parity is between the political executives, the legislators and the judges and not between the judges and the administrative executive . . . " It is important to note that the High Court of Punjab and Haryana in the cases of Harayana judges Association V Haryana decided on the 7th of February 2013 and M.S. Chawla & Ors V The State of Punjab and others where it was held that "the fact that judges are not held out as employee does not preclude them from enjoying any benefit (and whether additional or not) that other State employees enjoy." The Learned justice Kanyip at page 12 of his paper posed some questions thus "what is the status of the other arms of Government? Are legislators and ministers employees? The thinking here is since ministers

(representing the executive) and legislators (representing the legislature) are not treated as employees, why should judges (representing the judiciary) be?

Following the above, it can be argued and does make sense that the claimant herein who was democratically elected as Chairman Oredo Local Government and exercise sovereign executive powers over the local government should not be regarded as an employee even though he receives remuneration and Oredo local government is his workplace.

It is regrettable that the executive and legislative arms of Edo State Government have sought to reduce the person of the executive Chairman of Oredo Local Government, the claimant herein, to a mere employee of theirs or the Oredo Local Government Council by the argument of their Counsel.

I find apt the question posed by Niki Tobi, JSC, in the case of *Inokoju V Adeleke* (2007) All FWLR (Pt. 353) 96, that is, "Is the speaker just one cleaner in the Oyo State House of Assembly that can be removed just for the asking?"

And so may I ask the defendants, "is the Chairman Oredo Local Government one messenger in the Local Government Council that can be removed from office just for the asking? My firm answer is NO!"

Having determined that the claimant is neither an employee or a worker or a political appointee but an elected public officer. The next issue is to determine

whether this court by the provisions of Section 254 C(1) of the Constitution 1999 (as amended) has jurisdiction to entertain the claims as contained in the Originating Summons of the claimant. As earlier found by me that paragraph 9 (1&2) of counter-affidavit of the defendant offends the provisions of section 115 (2) of the Evidence Act 2011 and is accordingly struck out. This does not deprive the court from considering the issue of jurisdiction suo motu, See *Odiase V Agho* (1972) 1ANLR (Pt.1) Pg.170 Where it was held that Jurisdiction can be raised by any of the parties or by the court; also per B. Rhodes ó Vivour in *Obiuwevbi V C.B.N* (2011) Jan ó Mar. N.S.C.Q.R. Pg. 51 at 81. òNow when the jurisdiction of a court is challenged, the court is entitled under section 6 of the 1999 Constitution to consider the plaintiff's claim before it, in order to decide whether it has jurisdiction to entertain it.ö

I have therefore carefully scrutinized the amended claim in the originating summons and find it deals with issues bordering on constitutionality as regards breach of fundamental rights, powers of the executive Governor and Legislature viz-a-viz the removal of the executive Chairman from office. In the light of the above, I find that as the executive Chairman of Oredo Local Government Area the claimant herein is an elected public officer and the issues in the claim do not relate to any matters of labour, employment, trade unions, industrial relations per se

e.t.c. arising from his workplace within the contemplation of Section 254 C (I) (a & k) of the 1999 Constitution (as amended) to deprive this court of jurisdiction.

I am fortified in the above, by the fact that the Constitutional provision for the removal of certain public officers like the President, Vice President, Governor, Deputy Governor, Speaker, Deputy Speaker e.t.c is akin to the removal of the Chairman of a Local Government and his vice from office as provided for under section 20 of the Local Government Law of Edo State 2000 which is generally referred to as an impeachment process. Therefore there is no legal reason for viewing the removal from office of a local government Chairman as a dispute between employee and employer or labour matter as ridiculously contended by Defendants' counsel in this court. It is judicially noticed that the oath of office and oath of allegiance subscribed to by the above named officers were also subscribed to by the Chairmen of the Local Government Councils and those cadre of Public Officers are never regarded as employees and their removal from office is termed an impeachment. Black's Law Dictionary 8th Edition Pg. 768 define impeachment as:-

- õ(1) The act (by a legislature) of calling for the removal from office of a public official, accomplished by presenting a written charge of the officials alleged misconduct especially the initiation of a proceeding in the US House of Representative against a Federal official such as PRESIDENT or a Judge. CONGRESS' authority to remove a Federal official

stem from ARTICLE II Section 4 of the Constitution (USA) which authorizes the removal of an official for TREASON, BRIBERY or other high crimes and MISDEMEANORS.ö

The grounds upon which an official can be removed do not, however have to be criminal in nature. They usually involve some type of abuse of power or breach of the public trust. Articles of impeachment which can be approved by a simple Majority in the House ó Serve as the charging instrument for the latter trial in the Senate. If the President is impeached the Chief Justice of the Supreme Court presides over the Section trial. The defendant can be removed from office by a two third majority of the Senators who are present. In the United Kingdom impeachment is by the House of Commons and trial by the House of LORDS. But no case has arisen there since 1801 and many British scholars consider impeachment obsolete. The act of challenging the accuracy of authenticity of evidence.ö

Accordingly, I find and hold that this court is eminently qualified and has the legal capacity and therefore competence to adjudicate over this case. I therefore proceed to examine the claims in the originating summons.

The first issue for consideration in this originating summons is whether the claimant was given a fair hearing before all the steps taken by the 1st and 3rd Defendants were taken. Section 7 (I) of the 1999 Constitution (as amended) provides as follows:-

öThe system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to section 8 of this Constitution, ensure

their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.ö

It can be seen that by the said provision in section 7 (1) of the aforesaid Constitution that the Constitution guarantees the existence of the local government as the third tier of government and every State government is to ensure their existence by enacting a law, which the Edo State Government has ensured by enacting the Local Government Law 2000 which came into being on 2nd of May 2000.

By section 9 (1) the qualifications of the occupier of the position of Chairman are given. By section 10 (1) of the said law it is stated as follows:-

öSubject to the provisions of this law, the council shall stand dissolved at the expiration of 3 years unless the House of Assembly, upon the request of the Governor, otherwise, by a Resolution so directs.ö

By Section 11 (I) of the above law in every local government council there shall be both executive and legislative arm. By the same token the executive Chairman shall be the Chief executive of the local government council. By section 19 (i) the Chairman or his vice may be removed in accordance with the provisions of this section. By paragraphs 4 ó 8 of the supporting affidavit to the amended originating summons the claimants deposed as follows:

4. That before my said suspension, which I heard of on the electronic media in the state, no query or any other form of communication was entered into with me by the 1st Defendant.
5. That the 1st Defendant claimed to have suspended me on alleged grounds of diversion and misappropriation of public funds and engagement of new employees for the Local Government without the approval of the Edo State Local Government Service Commission.
6. That the 1st Defendant did not grant me a hearing whatsoever before clamping the suspension order on me.
7. That after suspending me the 1st Defendant wrote to inform the 3rd Defendant for record purposes. A copy of the said letter is attached herewith and marked as exhibit A.
8. That the 1st Defendant did not consult with the 3rd Defendant or the Legislative arm of Oredo Local Government before suspending me.ö

These depositions have not been seriously denied in the counter-affidavit of the defendants, which paragraphs 1, 6 and 7 of as earlier reproduced in this judgment have been found incompetent. Government business is serious business, for the Defendants to be taken seriously they should have tendered legislative papers letters, petitions, complaints written against the claimant to the legislative arm of the Oredo Local Government Area as required in section 19 of the Local Government Law 2000 or to the Governor of Edo State as in section 20 of the Local Government Law 2000.

It is noted that the removal of a Local Government Chairman is provided for in sections 19 and 20 of the aforesaid law. There is no notice of any allegation in writing from 2/3 of members of the legislative council of Oredo Local Government Area as required in section 19 of the aforesaid law. It was the Governor of Edo State that suspended the claimant by announcing in the electronic media as stated by the claimant in paragraph 4 of the supporting affidavit to which the Defendants had no convincing and competent response showing that there was consultation between the 1st and 3rd Defendant, contrary to the clear provisions of the law on how the chairman is to be removed. However I find there was no consultation as consultation according to Black's Law Dictionary at page 335 is "the act of asking the opinion or advice of some one. (2.) A meeting which parties consult or confer. (3.) The interactive methods by which states (i.e. parties) seek to prevent or resolve dispute."

From the definition above, it is easy to see that the Defendants have no iota of evidence to show that there was consultation between the 1st and 3rd Defendants in that no minutes of meetings or letters were tendered in proof of such consultations.

Section 20 (2) of the Local Government Law 2000 requires that for the two months the governor has right to suspend the Chairman he shall cause an inquiry to be held within that period to look into the affairs of an erring Local Government

Chairman. The grouse of the claimant herein is that he was not given a fair hearing before he was suspended and eventually removed from office by the defendants, as guaranteed by section 36 of the 1999 Constitution (as amended).

Fair hearing as a rule of natural justice is represented by the twin latin maxims of *Nemo iudex in causa sua* (No man shall be a judge in his own cause) and *Audi alteram partem* (hear the other side). I also refer to the principle that no man is to be judged unheard which is as old as the garden of eden. See *Nishizawa V Jethwani* (1984) 12 S.C. Pg.234 at 285 ó 285, per Shaidu Kawu J.S.C. In the case of *R V Chancellor of University of Cambridge* (1723) 1 S.T.R. 557 at 567. Fortescue J. affirmed that even God himself did not pass sentence upon Adam before he was called upon to make his defence í ö. And what was Adam's defence? It was this öthe woman whom thou gavest to be with me, she gave me the fruit of the tree, and I did eat.ö Genesis 3.12. God did not also condemn Eve unheard. On being questioned her defence was öthe serpent beguiled me and I did eat.ö Having heard both of them the Almighty God proceeded to pass his sentence.ö He expects us to do the same. Thus Coke, the indomitable and fearless Lord Justice of the Common pleas was able to assert that öaudi alteram partermö was a principle of divine justice proceeding with 1.) vocat 2.) Interogat 3.) judicat See *Olatubosun V NISER* (1988) 3 NWLR (Pt. 80) Pg. 25 per Oputa J.S.C. (of blessed memory) at page 49.ö

I therefore find from the available affidavit evidence placed before me by both parties that at no stage of the entire process leading to the suspension and eventual removal of the claimant by the 1st and 3rd Defendants that the claimant was called upon to explain any perceived wrong doing during his tenure as Oredo Local Government Area Chairman, either by appearing before a panel as provided by sections 19 (7) and 20 (2) of the Local Government Law 2000 or by way of query. It is trite that government business is conducted mainly by documentary means. This lack of consultation, as well as setting up of a panel of inquiry and observation of the Constitutional provisions of section 36 of the Constitution 1999 (as amended) is made glaring in exhibit A attached to the supporting affidavit which is a letter from the Secretary to Edo State Government to the Speaker of the Edo State House of Assembly.

The tenor in exhibit A confirms that the Governor put the horse before the cart by suspending the Chairmen stated therein including the claimant herein with effect from today Tuesday October 6 2015. The said exhibit A reads in part as follows
October 6, 2015

The Honourable Speaker

Edo State House of Assembly

Suspension of Some Local Government Council Chairmen from office

I am directed by the Governor of Edo State Comrade Adams Aliyu Oshiomole to inform you that in compliance with the relevant sections of the Local Government Act (sic) which mandates consultation with Edo State House Assembly. The Governor wishes to inform Mr. Speaker and members of the House that the under listed local government chairmen are hereby suspended with effect from today, Tuesday October 6, 2015.

The Chairmen are:-

i. í í í í í í í í í í í í ..

ii. í í í í í í í í í í í í .

iii. Hon. Osaro Obazee Chairman Oredo Local Government Council

iv. í í í í í í í í í í í í .

v. í í í í í í í í í í í í .

Their suspension which is for two months is to pave way for unhindered investigation into several allegations against the Chairmen which include non payment of salaries í . Diversion of funds í í ..

In the mean time the period of suspension relevant panel would be constituted to investigate the allegation against the affected Chairmen.

The purpose of this letter therefore is to inform the Honourable Speaker and the House of this development for record purpose.

Signed

Prof. Julius Ihonvbere OON
Secretary to State Government

The above letter speaks for itself, it conclusively shows that the same day the letter was dated, was also the same day he (1st Defendant) caused the claimant to be suspended from office evidencing and supporting the claim of the claimant that he was not given any hearing contrary to natural justice, the provisions of section 20 of the Local Government Law and section 36 of the Constitution which guarantees fair hearing.

The claimant having alleged that he was not given any hearing the onus is on the defendant to show that the rules of fair hearing were adhered to. In exhibit A it was expected that a panel of inquiry be set up but the defendants have not shown any iota of evidence that one was set up to which the claimant was invited before decisions were taken affecting his tenure in office as an elected chairman of Oredo Local Government.

In the circumstance, I find and hold that by exhibit A, the 1st Defendant suspended claimant from office without consultation with the 3rd Defendant and without giving the claimant a fair hearing. Whereas the claimant being a democratically elected chairman of Oredo Local Government Council his removal

from office is guaranteed under section 7 (1) of the 1999 Constitution (as amended).

In the case of Governor of Kwara State V Ojibara (2007) 1 M.J.S.C.I, although a case of removal of Chairman of a Commission which is not an elective office, the Supreme Court per Tabai J.S.C. at page 17 stated thus:- "The protection afforded the Respondents by the Constitution (section. 201) cannot just be wished away by the sheer whims and caprisis of those in authority."

On a general note I would like to refer to the case of PDP V INEC (2007) 1 WRN 1 per Ayoola J.S.C at page 108 thus:-

" . . . A person who is elected to an office acquires a right protected by public law to assume that office. It is a right which only persons elected have and which a person not elected does not have. It can only be taken away by clear and express provisions of the law. Any proposition that a person elected to a political office, such as that of the Deputy Governor (in this case Chairman Oredo Local Government Council) which is relevant to this case has no right, is not only fallacious but dangerous to the democratic process. To say that such person has no enforceable right to assume that office would strike at the very root of democracy and render the process of election a sham. " "

For emphasis, I find that for the removal of a Local Government Chairman from office to be valid, the procedure provided for under sections 19 and 20 of the

Local Government Law 2000 must be strictly followed but regrettably this appears not to have been done.

However I must in passing observe that section 20 of the Local Government Law 2000 provides another method for the removal of Chairman of local government which in my respectful view negates the concept of true federalism. I am fortified in this by the words of Eso J.S.C. in the case of *A.G. Ogun State V Aberuagba* (1985) 1 NWLR (Pt. 3) Pg. 395 at 438 ó 439 where he stated thus:

“On Nature of Federalism: Indeed, I have to reiterate my earlier opinion which I expressed in *Ogun State V The Federation* (1982) 3 N.C.L.R. 202 that the bedrock of Federalism lies in each tier of government being a master in its own domain. Further, for each unit to be master in its own domain is not one of compartmentalization.”

Although the claimant has not specifically claimed in his originating summons that section 19 (I) of the Local Government Law 2000 that gives the Executive Governor and Edo State House of Assembly the power to remove any Local Government Chairman be struck down, it is my opinion that the said section 19 combined with section 20 of the Local Government Law 2000 appears to be a hybrid provision for the removal of a local government chairman and as earlier stated it negates the concept of true federalism and in my respectful view has given rise to unnecessary exercise of over lordship and control by the 2nd tier of

Government over the 3rd tier of Government which is not contemplated by the Constitution since the Federal Government has no such control over the State Governments. Eso J.S.C. in the case of Nkwocha V Governor of Anambra State (1984) N.S.C.C. 484 at 493 put it succinctly when he held that:-

“It has always been my contention that the bedrock of federalism lies in each tier of government being a master of its own domain: See Ogun State V Federation (1982) 3 N.C.L.R. sic (166) but then, the Land Use Act is a hybrid. And the hybridity is produced by the Constitution itself. For that reason, it is bound to produce an exception to the general rule.”

Following the above, the provisions for the removal of a Local Government Chairman under the Local Government Law 2000 in sections 19 and 20 do not make the Local Government Chairman a “master of his domain” rather it creates a hybridity within the Local Government Law and unless an executive who is well guided/advised on the provisions of the rule of law to steer clear from the hybridity arising thereto, he is bound to run into troubled waters with the law as the defendants have currently found themselves in the purported removal of the claimant.

In sum, I have read through the provisions of section 19 (2 ó 11) and 20 of the Local Government Law 2000 on how a Chairman of a Local Government may be removed from office and find that there was non compliance with the provisions

of section 19 (2 ó 11) and 20 of the said law before the claimant was removed from office.

In the light of the findings made in this case, I have no difficulty and hesitation whatsoever in answering the questions posed in the amended originating summons as follows:-

- 1.) In answer to question 1, I find that the 1st Defendant cannot validly suspend the claimant who is the democratically elected Chairman of Oredo Local Government Council without Consultation with the House of Assembly of the State as provided for in section 20 of L.G.L. 2000 and without fair hearing as guaranteed under section 36 of the 1999 Constitution of Federal Republic of Nigeria (as amended).
- 2.) On the second question I find it irrelevant as section 7 (1) of the Constitution provides for and guarantees a local government system. In the case of Government of Kwara State V Ojibara (supra) the Supreme Court Per Muhammed J.S.C. at 125 stated inter alia.

ō í The Constitution is specific as to the terms in which the President, the Governor, the members of the National Assembly and State Houses of Assembly will serve. But is silent in regard to the Councillors of Local Government. The silence is understandable because the State Government under section 7 of the Constitution have been given a mandate to establish the Local Government Councils and draw up structure, composition, finance and functions of such councilsí ö

In exercise of this mandate the Edo State Government passed the Local Government Law 2000 which made provision for the removal of elected officers including the Chairman of Council in sections 19 and 20 thereof. Thus the question 2 has no bearing with the State of the Law. See also *Oteri V Awihinawhi* (1982) 3 NCLR 680 at 695.

- 3.) On question 3, the answer thereto is the same as given in question 2 above.
- 4.) Question 4 appears speculative because there is no evidence showing that a panel was constituted during or after the two months suspension of the claimant. The Local Government law 2000 provides that the Governor can set up a panel to look into such matters for which the claimant was allegedly accused. The issue of claimants right to fair hearing guaranteed by Section 36 of the Constitution 1999 (as amended) if such panel was set up is not for this court to speculate or adjudicate on as there is no evidence before the court of the establishment of any panel.
- 5.) Question 5 is answered in the negative as exhibit A clearly shows a non compliance with the provision of section 20 (1) (b) of the Local Government Law 2000.
- 6.) On question 6, I find that by paragraph 9 (a) of the further affidavit in support of the amended originating summons the claimant deposed to the fact that on 3rd February 2016 the 3rd Defendant passed a resolution removing him as Chairman. This sack was followed by a letter exhibit C 1, the defendants have not denied in their further counter-affidavit of 29/2/16 that the claimant was removed by the 3rd Defendant. Their quarrel is with Exhibit C not being certified. This is not tantamount to a denial of the fact contained in the further affidavit of claimant in the originating summons. Such facts not

expressly denied are deemed admitted.

See *Badejo V Minister of Education* (1996) 9 ó 10 SCNJ at 69.

I find it rather appalling that a State House of Assembly that is to uphold the Constitution and is a symbol of the rule of law and all of its actions must be done in accordance with the rule of law will shy away from bringing its proceedings on the steps its took leading to the removal of the chairman of a local government before the court to justify its actions in accordance with the rule of law. It is apt at this stage to re-state the words of Ejiwunmi J.S.C. in the case of *Government of Lagos State V Ojukwu* (1986) 1 NWLR (Pt. 18) 621 thus:- ò In this regard the judiciary cannot shirk its sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all persons in Nigeria.ö

I find it amazing that learned counsel for the defendants instead of addressing the issue and justifying the removal of the claimant was beating about the bush on the non-certification of exhibit C. The judiciary has a duty to check the functions of not only the executive but also the legislature. See *A.G. Bendel & ors V A.G. Federation* (1981) 10 S.C.1. and Section 4 (8) of the 1999 Constitution which effectively provides for separation of powers.

I recall the ever green words of Oputa J.S.C. when he said thus òThe judiciary is a mighty fortress against oppressive and tyrannous laws. It is the judiciary that has to ensure that the State is subject to the law; that the Government

respects the rights of the individual under the law; the Courts adjudicate between the citizens and state. The courts therefore have to ensure that the administration conforms with the law: they have also to adjudicate upon the legality of the exercise of Executive power . . . The Judiciary by the nature of its function and role is the citizen's last line of defence in a free society that is, the line separating constitutionalism from totalitarianism. ÷

I note the purported removal from office of the claimant by the 3rd Defendant based on exhibit A sent to it by the 1st Defendant without recourse to the clear provisions of section 20 of the Local Government Law 2000, and section 36 of the constitution. This act even though to the knowledge of the 3rd defendant the matter was subjudice is tantamount to the interference with proceedings before this court which is contemptuous and negates the principles of separation of powers.

Be that as it may, I find and hold in answer to question 6 that the resolution of the 3rd Defendant passed during the pendency of the instant suit is unconstitutional, illegal null and void and of no effect whatsoever.

Consequently, it is hereby declared that:

- 1.) The claimant as the democratically elected Chairman of Oredo Local Government Council cannot be suspended from office without regard to the due process of law provided in sections 19 and 20 of the L.G.L. 2000 and section 36 of the 1999 Constitution (as amended).

- 2.) The purported acknowledgement of the claimant's suspension by the 3rd Defendant on 6/10/15 as Chairman of Oredo Local Government Council is unconstitutional, illegal, null and void and of no effect
- 3.) It is declared that the resolution of the 3rd Defendant passed on 3/2/16 during the pendency of the instant suit for the removal of the claimant from office as Chairman of Oredo Local Government Council is Invalid, unconstitutional, null and void.

Accordingly, I hereby make the following orders:-

- 1.) The aforesaid resolution of the 3rd defendant passed on 3/2/16 for the removal of the claimant from office as Chairman of Oredo Local Government council is invalid, unconstitutional, null and void and any consequential action based on that resolution as shown in Exhibit C is hereby set aside. Consequently, the letter dated 4/2/16 written to the claimant by the secretary of the Oredo Local Government council is hereby ordered set aside.
- 2.) The defendants their servants, agents and/or privies are hereby restrained from interfering with the rights of the claimant as the democratically elected Chairman of Oredo Local Government Council or disturbing the claimant's exercise of his powers as Chairman of Oredo Local Government Council forthwith.

For emphasis and clarity, the import of these orders in this case is as stated by Oguntade J.S.C. in the case of Governor Kwara State V Ojibara (supra) at page 12, where it was held that "where the court pronounces the removal of a person from office as null and void the consequence is that in the eyes of the law the person has not been removed from office."

Thus, in this case the claimant is and remains the Chairman of Oredo Local Government Council as judgement is entered in his favour.

E.F. IKPONMWEN
JUDGE
14/4/16

COUNSEL:-

K.O. Obamogie with E.O. Afolabi Esq, B.O. Okoduwa
D.O. Obazee Esq, C.O. Eguamwense Esq, S.U. Obazee
Esq. G.O. Onuwabhagbe Esq, V.O.A. Aziegbe Esq,
E.O. Uhunamure Esq, Miss M.O. Asumah.

For the Claimant

M.O. Airende Esq. (Assist Director) with
Mrs. Ama-Iyamu (Senior State Counsel)

For the Defendants