IN THE HIGH COURT OF JUSTICE EDO STATE OF NIGERIA
IN THE AUCHI JUDICIAL DIVISION HOLDEN AT AUCHI
BEFORE HIS LORDSHIP HON. JUSTICE E.O. AHAMIOJE – JUDGE
ON THURSDAY THE 17TH DAY OF FEBRUARY, 2011

BETWEEN: **SUIT NO. HIG/4/2010**

CHIEF J.A. EMASEALU
CHAIRMAN AKOKO-EDO LOCAL .... PLAINTIFF
GOVERNMENT COUNCIL, IGARRA

AND

1. **COMRADE ADAMS OSHIOMOLE**
   GOVERNOR, EDO STATE
2. **ATTORNEY GENERAL EDO STATE**
3. **EDO STATE HOUSE OF ASSEMBLY**
4. **HON. COMMISSIONER FOR LOCAL GOVT. & CHIEFTAINCY AFFAIRS**
5. **LOCAL GOVT. SERVICE COMMISSION**
   EDO STATE
6. **BARR. AKINOLA AGBAJE**
   VICE CHAIRMAN, AKOKO-EDO
   LOCAL GOVT. COUNCIL, IGARRA
7. **HON. JUSTICE MOMODU RAJE (RTD)**
   (CHAIRMAN, COMMISSION OF INQUIRY INTO
   TENURE OF HON. JOHNSON EMASEALU AS
   CHAIRMAN OF AKOKO-EDO LOCAL
   GOVERNMENT COUNCIL
8. **MR. E.T. IDAHOSA**
   (SECRETARY OF THE COMMISSION OF INQUIRY)
9. **THERESA ITEBIMEI ELEMSON (MRS.)**
   (MEMBER, COMMISSION OF INQUIRY)
10. **S.O UYIGUE**
    (MEMBER, COMMISSION OF INQUIRY)

DEFENDANTS

JUDGMENT

The Plaintiff herein, by an originating summons dated and filed on the 2/3/2010 prayed this Court for the determination of the following questions to wit:

(1) WHETHER under and by virtue of the provisions of Section 20 of the Local Government Law of Edo State, 2000 the 1st Defendant has the power to suspend the Plaintiff as Chairman of Akoko-Edo Local Government Area of Edo State which law has been repealed by the Edo State House of Assembly vide Section 20(1)(b) of the Local Government Law, 2000 (as amended).

(2) WHETHER the 1st Defendantøs letter dated the 17th day of February, 2010 suspending the Plaintiff as Chairman of Akoko-Edo Local Government Area of Edo State is not a denial of the Plaintifføs Right to fair hearing as protected or preserved under the provisions of Section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999.

(3) WHETHER the letter dated the 17th day of February, 2010 written by the 1st Defendant to the Plaintiff as Chairman of Akoko-Edo Local Government Council is not a contravention of the provisions of section 20 (1)(b) of the Local Government Law of Edo State, 2000(as amended) as due process was not followed by the 1stDefendant herein before the suspension of the Plaintiff.

(4) WHETHER the 1st Defendant letter dated the 17th day of February, 2010 suspending the Plaintiff as Chairman of Akoko-Edo Local Government Area of Edo State is unconstitutional, null and void and of no effect whatsoever.

(5) WHETHER the 6th Defendant having been suspended by the Legislative House of Akoko-Edo Local Government Council can still be appointed by the 1st Defendant as acting Chairman of Akoko-Edo Local Government Council of Edo State when due process was not followed by the 1st Defendant in the suspension of the Plaintiff under the provisions of Section 20 (1) (b) of the Local Government Law, 2000 (as amended).

(6) WHETHER the 7th Defendantøs led Commission of Inquiry set up by the 1st Defendant to investigate the tenure of the Plaintiff as Chairman of Akoko-Edo Local Government Council is competent or vested with jurisdiction to so inquire when the conditions precedent to the suspension of the Plaintiff have not been complied with by the 1st Defendant in accordance with provisions of Section 20 (1) (b) of the Local Government Law, 2000 (as amended).

The Plaintiff seeks the following reliefs to the aforementioned question if answer in the negatives thus:

(a) **A DECLERATION** that the suspension of the Plaintiff as Chairman of Akoko-Edo Local Government Council by the 1st Defendant vide letter dated 17th February, 2010 under Section 20 of the Local Government Law,

2000 is unconstitutional, illegal, null and void and of no effect whatsoever as same had been repealed by the 3rd Defendant since 2006 and substituted for Section 20 (1) of the Local Government Law, 2000 (as amended).

(b) **A DECLARATION** that under and by virtue of the provisions of Section 20 (1) (b) of the Local Government Law, 2000 of Edo State (as amended), the 1st Defendantøs letter dated the 17th day of February, 2010 suspending thePlaintiff as Chairman of Akoko-Edo Local Government Council is unconstitutional, illegal, null and void and of no effect whatsoever in the absence of a resolution by the Edo State House of Assembly for the suspension of the Plaintiff as the Chairman of Akoko-Edo Local Government Council before the letter of 17th day of February, 2010 was issued by the 1st Defendant.

(c) **A DECLARATION** that the 1st Defendantøs letter dated the 17th day of February, 2010 suspending the Plaintiff as Chairman of Akoko-Edo State Local Government Council is unconstitutional, illegal, null and void and of no effect whatsoever as the Plaintiff was denied his to fair right hearing as guaranteed under and by virtue of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999.

(d) **A DECLARATION** that the 1st Defendant has no power or vires to appoint the 6th Defendant as the Chairman or acting Chairman of Akoko-Edo Local

Government Council of Edo State as the Plaintiff is still the elected Chairman of Akoko-Edo Local Government as the seat of the Chairman has not been declared vacant.

(e) **A DECLARATION** that the Legislative House having suspended the 6th Defendant as Vice Chairman of Akoko-Edo Local Government Council, the 6th Defendant does not have any constitutional Right to act or parade himself as the Chairman of Akoko-Edo Local Government Council of Edo State.

(f) **AN ORDER OF INJUNCTION** restraining the Defendants either by themselves, servants, agents, officers, officials, bprivies, personal representatives or any person or persons HOWSOEVER from doing any act pursuant to the letter of suspension dated 17th February, 2010.

(g) **AN ORDER OF INJUNTION** restraining the 6thDefendant either by himself, servants, agents, officers, officials, privies or any person or persons HOWSOEVER from performing or take any step to perform the duties and functions of the Chairman or as acting Chairman of Akoko-Edo Local Government Council of Edo State since he had been suspended by the Legislative Council of the Local Government.

(h) **AN ORDER** setting aside the letter of suspension dated the 17thday of February, 2010 issued by the 1st Defendant herein forthwith as same was

issued under a repealed Law and a violation of Section 20 (1) (b) of the Local Government Law, 2000 (as amended).

(i) **AN ORDER** nullifying every step taken or may have been taken by any person or authority pursuant to Section 20 of the Local Government Law of Edo State 2000 as contained in the 1st Defendantøs letter to the Plaintiff dated 17thFebruary, 2010.

(j) **AN ORDER OF INJUNCTION** restraining the 7th, 8th, 9thand 10th Defendants either by themselves, servants, agents, officers, officials or any person or persons HOWSOEVER from investigating the tenure of the Plaintiff as Chairman of Akoko-Edo Local Government Council or summons the Plaintiff before it or any other witness(es) for the purpose(s) of such investigation forthwith.

(k) **AN ORDER** restraining the Defendants, either by themselves,servants, agents, officers, officials, privies, successors-in-title or any person or persons(s) HOWSOEVER from implementing or take any step to implement, execute or enforce any accepted recommendation of the Hon. Justice MomoduRaje (Rtd) led Commission of Inquiry or any decision by the 1st Defendant that may be contained in White Paper that may be issued by the 1st Defendant relating to and in connection with the inquiry of the Plaintiff as the Chairman of Akoko-Edo Local Government Council.

(l) **AN ORDER OF INJUNCTION** restraining the Defendants, either by themselves, servants, agents, officers, officials, privies, successors-in-title or any person or persons HOWSOEVER from accepting the recommendations of the Commission of Inquiry any time they are made or submitted to the 1st Defendant.

(m) **AN ORDER** setting aside any recommendation(s) that may be made by the Hon. Justice MomoduRaje (Rtd) led Commission of Inquiry to investigate the tenure of the Plaintiff as Chairman of Akoko-Edo Local Government Council.

The originating summons is supported by a 62 paragraph affidavit deposed to by the Plaintiff, and attached thereto are Exhibits 1-7; a further affidavit dated 7/5/2010 and attached thereto, Exhibits 8,9 and 10; a further and Better affidavit filed on the 11/6/2010 and attached thereto Exhibits 11, 12, 13 and 14; a Reply to the counter-affidavit dated 29/3/2010, and further counter-affidavit dated 29/3/2010 of the 1st, 2nd, 4th, 5th, 7th, 8th, 9th and 10th Defendants filed on the 29/3/2010 and attached thereto, ***Exhibit 'A'.***

The 1st, 2nd, 4th, 5th, 7th ó 10th Defendants filed a 9 paragraph counter-affidavit dated the 29/3/2010, and a 3 paragraph further counter-affidavit sworn to by one Kenneth Ugiagbe, dated and filed on the 29/3/2010 and attached thereto, Exhibits A-D.

The 3rd and 6th Defendants did not file any counter-affidavit, but each filed a Notice of Preliminary Objection.

The grounds of objection of the 3rd Defendant are as follows:

(1) An order striking out this suit for want of jurisdiction to entertain this case as presently constituted. In the alternative,

(2) An order striking out the 3rd Defendants from the suit on an account of misjoinder.The 6th Defendant in a Motion on Notice dated the 1st April, 2010, prayed this Court for an order striking or dismissing this suit for want of jurisdiction, same not having been initiated by due process, and consequently incompetent.

It is pertinent to state that when this matter came up for hearing, this Court ordered that the Notices of Preliminary Objection and the substantive originating summons be taken together, in view of the decision of the Supreme Court in the case of ***INAKOJU & ORS V ADELEKE & ORS (2007) 143 LCRN 1.***

The Learned Senior Counsel for the Plaintiff, Roland Otaru Esq. (SAN) filed 59 pages written address. He submitted that the issues for determination had earlier been adumbrated in the questions for determination. He thereafter argued questions 1, 3 and 4 together.

On these issues, Learned Senior Counsel submitted that the 1st Defendant does not have the power to suspend the Plaintiff as the Chairman of Akoko-Edo Local Government Council, as it is the Edo State House of Assembly that can do so under Section 20 (1) (b) of the Local Government Law 2000 (as amended), and

can also not investigate the Plaintiff under Section 78 (1) of the Local Government Law, 2000 and Section 128 (1) & (2) of the 1999 Constitution.

He submitted that the Governor under and by virtue of the Local Government Amendment Law No. 5 of 2006 has no power to suspend the Plaintiff as the Chairman of the Council. That it is only the House of Assembly that can exercise such powers.

He submitted that it is the contention of the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants that the provision of Section 20 of the Local Government Law, 2000, i.e. the principal law is still extant, and that the House of Assembly has not amended the law. He referred to paragraphs 29-32, 50-52 of the Plaintiff's affidavit in support of the originating summons; and paragraphs 6, 14, 15, 16 and 18 of the Plaintifføs Reply to the counter-affidavit and further counter affidavit of the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants. He further referred to paragraphs 2 (a), (b), (c), (d), (e), and (f) of the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants' further counter-affidavit to the originating summons.

The Learned Senior Counsel for the Plaintiff submitted that the 1st and 2nd Defendants attached ***Exhibit 'A'*** (Certified True Copies of the Proceedings) of the House to the further counter-affidavit to show unequivocally the passing of the Local Government (Amendment) Law, 2000 on the 21/8/2006. He submitted that on page 1 of Exhibit ÷Aø, there was a roll call of members of the House. That by

simple arithmetic, contrary to the bare assertion of the deponent Kenneth Ugiagbe, two-thirds (2/3) majority of the twenty-four members of the Edo State House of Assembly is sixteen (16) members. That it is crystal clear that twenty-two (22) members of the Edo State House of Assembly sat when the Bill to amend the Local Government Law, 2000 on Monday 21/8/2006 was introduced. He also referred to page 2 titled õsummaryö. He also referred to pages 3, 4, 5, 6 and 7 of Exhibit ÷Aø, and submitted that Hon. EzomoOmon who allegedly gave information to Mr. Kenneth Ugiagbe that the Bill to amend the Local Government Law, 2000 was not passed by two-thirds (2/3) majority is No. 6 at page 8 of the ***Exhibit 'A'***, wherein he signed as a member of the House when the House read the Bill in it third Reading wherein Nineteen (19) out of twenty-four (24) members signed and passed the Bill to amend Section 20 of the Local Government Law, 2000

Learned Senior Counsel referred to page 9 of Exhibit ÷Aø and the last page of Exhibit 7 as regards the signature of the Clerk of the House of Assembly. He submitted that the passage of the Local Government Amendment Law, 2000 has complied with the provision of the 1999 Constitution as regards the procedure and steps to be observed and taken in law making. That they complied with Section 100 (5) of the 1999 Constitution. He submitted that this Court can take judicial notice of the proceedings of the Edo State House of Assembly under Section 74 (1)

(a) & (c) of the Evidence Act. He urged the Court to invoke the presumption of regularity in favour of the Plaintiff.

Learned Counsel also referred to Section 128 (1) & (2) of the 1999 Constitution and the unreported decision of the High Court of Justice, Afuze in **Suit No.** ***HAF/M2/2006: HON. PALLY IRIASE VS. EDO STATE HOUSE OF ASSEMBLY*** delivered on 27/9/2006 by Hon. Justice E. A. Edigin.

He submitted that from the provisions of Section 128 (1) & (2) of the 1999 constitution, it is very clear that the Governor has no such power to cause any inquiry to be conducted into the affairs of the Plaintiff under any law of Edo State not even under Section 20 of the Local Government Law, 2000 under which the Governor purportedly acted. That this is because the 1999 Constitution is supreme over and above any other law. That the act of the Governor is null and void having regard to the provisions of Section 128 (1) & (2) and Section 1 (1) and 1 (3) of the 1999 Constitution.

He further posited that even under Section 20 of the old or principal law, the Governor did not consult the Edo State House of Assembly before writing the letter of suspension dated 17/2/2010, Exhibit 3.He referred to Blackøs Law Dictionary Deluxe Ninth Edition by Bryan A. Garner (Editor-in-Chief) at page 358 as to the definition of consultation. He submitted that it was on the same 17/2/2010 in Exhibit 3, the Governor wrote to the Hon. Speaker of Edo State House of

Assembly on the suspension of the Plaintiff without any iota of consultation, and cited the cases of ***OYEYEMI V. COMMISSIONER FOR LOCAL GOVT. KWARA STATE & 3 ORS. (1992) 2 NWLR (PT. 226) 661 AT 688-689; ABIODUN V C.J. KWARA STATE (2007) 18 NWLR (PT .1065) 109 AT 168 – 169.*** He urged the Court to answer these questions in favour of the Plaintiff.

On question 2, Learned Counsel submitted that from the tone or tenor of the letter of suspension, Exhibit 3, the 1st Defendant accused the Plaintiff of very grave and serious criminal allegations without asking him to make his representations, and referred to Section 36 (1) of the 1999 Constitution on the right of fair-hearing and Section 78 (1) of the Local Government Law 2000 which incorporated the provisions of Section 36 of the 1999 Constitution. He submitted that no commission or committee of inquiry can be set up by the Governor in respect of the activities of the Plaintiff without observing the twin pillars of the Rules of natural justice i.e. õaudialterampartemö and õmemo judex in causasuaö as guaranteed under the 1999 Constitution; and cited ***NDIC V OKEM ENTERPRISES LTD (2004) 10 NWLR (PT. 880) 107 AT 183; YUSUF V OBASANJO (2003) 16 NWLR (PT. 847) 554 AT 602; and ODJEGBA V ODJEGBA (2004) 2 NWLR (PT. 858) 566.***

He submitted that before the Governor can suspend the Plaintiff as Chairman of the Council, he must observe first and foremost the principles of fair-hearing in

respect of the grave criminal allegation since the provision of the Local Government Law in subject to the provisions of the 1999 Constitution.

Continuing, Learned Senior Counsel submitted that the action of the Governor in not affording the Plaintiff the right of fair-hearing as guaranteed under Section 36 (1) of the 1999 Constitution, and Section 78 (1) of the Local Government Law, 2000, is a flagrant violation of the said provisions, and cited ***GARBA & ORS V UNIVERSITY OF MAIDUGURI (1986) 2 SC 128 AT 185 – 186.***He submitted that all the allegations of criminal acts against the Plaintiff are punishable under the relevant provisions of our penal laws, and cited ***BUHARI V INEC (2008) 19 NWLR (PT. 1120) 246 AT 406, OLUFEAGBA & 4 ORS V PROF. SHUAIB OBA ABDURRAHEEM & ORS (2009) 18 NWLR (PT. 1173) 384 AT 446 – 447.***

Learned Counsel submitted that the contents of the suspension letter, Exhibit 3 amounts to an indictment and cited ***ACTION CONGRESS & 1 OR V INEC (2007) 2 NWLR (PT. 1048) 222 AT 260; AMAECHI V INEC (2008) 5 NWLR (PT. 1080) 227 AT 306 – 307; FEDERAL CIVIL SERVICE COMMISSION V LAOYE (1989) 2 NWLR (PT. 106) 652.***

On question 6, Learned Counsel submitted that the 7th Defendantøs led commission of inquiry is not competent to inquire into the tenure of the Plaintiff as Chairman of Akoko-Edo Local Government as the provisions of Section 20 (1) (b)

of the Local Government Law 2000 (as amended); Section 36 (1) and 128 (1) & (2) of the 1999 Constitution have not been complied with by the 1st Defendant, and cited ***AMAECHI V INEC (SUPRA); BUHARI V INEC (SUPRA); OLUFEAGBA & 43 ORS. V ADBUL-RAHEEM (SUPRA); MADUKOLU & ORS. V NKEMDILIM & ORS. (1962) 1 ALL NLR (PT 4) 557 AT 587.***

He urged the Court to answer this question in favour of the Plaintiff and grant all the reliefs contained in the originating summons.

Learned Senior Counsel further posited that during the pendency of this case, 7th ó 10th Defendants continued to sit despite the order of this Court granted on the 12th day of April, 2010, and cited the case of ***THE MILITARY GOVERNOR OF LAGOS STATE & 2 ORS. V OJUKWU & ANOR.(1986) 2 SC 277, KWREWI V ABRAHAM (2010) 1 NWLR (PT. 1176) 433 AT 465; OBI V INEC (2007) 11 NWLR (PT. 1046) 565 AT 654.***

On the preliminary objections of the 3rd and 6th Defendants, Learned Senior Advocated submitted that the fulcrum of the objections is that this suit ought to have been filed through a writ of summons, and not through an originating summons as the issues are very contentious. He submitted that the suit is properly commenced by way of originating summons, and referred to order 38 Rule 2 of the Bendel State High Court (Civil Procedures) Rules 1988; Order 1 Rule 2 (a) & (b) of the High Court Rules.

He submitted that it is trite law, that it is the Plaintiffø claim that vest jurisdiction on the Court, and placed reliance on the case of ***ADEYEMI V OPEYORI (1976) 9-10 SC 31.*** He further submitted that the claims of the Plaintiff are predicated on the interpretation and construction of the enactments and documents enumerated as (i) ó (vi) at pages 48-49 of the written address.

He submitted that the affidavits in support of the originating summons did not raise any issue which cannot be adjudicated upon through an originating summons and cited ***INAKOJU V ADELEKE (2007) 4 NWLR (PT. 1025) 423 AT 701, HABIB (NIG) BANK V OCHETE (2001) 3 NWLR (PT. 699) 114 AT 135; LSDPC V ADOLD STAMM. INT'L (NIG) LTD (2005) 2 NWLR (PT. 910) 603 AT 606.***

He submitted that from all ramifications, there are no contentious issues which would have warranted the ordering of pleadings in this case.

Learned Senior Counsel submitted that the 3rd Defendant is a necessary and a desirable party because it is the 3rd Defendant that makes laws for the order and good government of Edo State. That the 3rd Defendant has different roles to play in the suspension and removal of a Chairman in Edo State, hence the 1st Defendant wrote ***Exhibit 3*** to the Hon. Speaker of the House of Assembly.

He submitted that the Plaintiff in his declaratory and injunctive reliefs stated that the Court should restrain all the Defendants from implementing the

recommendations of the Commission of Inquiry, and any white paper issued by the 1st Defendant in respect of the inquiry should not be implemented or enforced by any person or person(s).

He further submitted that under the Local Government Law, 2000 (as amended), the House of Assembly is vested with the power to ratify the report of Commission of Inquiry by two-thirds majority before the Governor can take further steps.

He submitted that misjoinder or non-joinder of a party or parties does not defeat a cause of action, and referred to Order 11 Rule 5 (1) & (2) of the Rules of Court. That mis-joinder or non-joinder of a party in an action does not go to the jurisdiction of the Court, and cited ***M/S OLUCHI ANYANWOKO V CHIEF (MRS) CHRISTY O.N. OKOYE & ORS. (2010) 5 NWLR (PT. 1188) 497 AT 515 – 516; IYERE V BFFM LTD (2008) 18 NWLR (PT. 1119) 300 AT 336 – 337.***

He submitted that the affidavit in support of the originating summons dated the 2/3/2010 complied with all the requirement of the Evidence Act, which was duly sworn before the Commissioner of Oaths as required by law. He referred to Section 79 of the Evidence Act. He submitted that the parties are bound by the records of the Court. He urged the Court to dismiss the whole preliminary objections as lacking in merit, and grant the Plaintifføs reliefs.

On his part, I.M.C. Ohio, Esq., Learned Counsel for the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants formulated four issues for determination as follows:

(1) Whether this suit is properly commenced by originating summons process in view of the fact that the facts are contentious, riotous, hostile, and are irreconcilable, and in the alternative.

(2) Whether the suspension of the Plaintiff as the Chairman of Akoko-Edo Local Government Council under Section 20 of the Local Government Law, 2000 is proper and legal under the law;

(3) Whether the 1st Defendant who is the Governor of Edo State can set up a Commission of Inquiry under the Commission of Inquiry Law Cap 41 Laws of Bendel State, now an existing law to investigate the activities of the Plaintiff who was a public officer in the State, and

(4) Whether the suit does not now bother merely on academic and/or hypothetical question having regard to the fact that the office of the Plaintiff, the erstwhile Chairman of Akoko-Edo Local Government Council is no more vacant.

On issue 1, Learned Counsel submitted that this action ought to have been commenced by filing a writ of summons under our Rules of Court since the facts are highly contentious and hostile, and referred to various paragraphs of the affidavit evidence filed by the parties. He submitted that our Courts have held that when a law is being disputed, the Courts can look beyond the proceedings of the

house, and urged the Court to look beyond ***Exhibit 'A',***particularly page 8 which are the proceedings of the 3rd Defendant. He relied on the case of ***A. G. BENDEL SATE V A. G., FEDERATION (1982) 3 NCLR 1 AT 136.***

Learned Counsel drew the attention of the Court to ***Exhibit 'B'*** attached to the originating summons, particularly page 9 (line 25 from the bottom of the page), where the Speaker stated that he has a paper duly assented to without compulsion by 2/3 members of the house. He submitted that a demand for this paper by ***Exhibit 'D'*** attached to the further counter affidavit was not met by the Clerk of the House, and this simply means that the paper does not exist. He submitted that the Court should call oral evidence to resolve the issue. He relied on the case of ***A. G. BENDEL V A.G. FEDERATION (SUPRA), and AMASIKE V THE REGISTRAR GENERAL 2010 39 WRN 1 AT 11 RATIO 3 (B).***

Learned Counsel referred to ***Exhibit 'A',*** pages 2 & 4, ***Exhibit 'C';*** **4, items 17 and 21, 12** and submitted that 10 members out of the 24 Honourable members did not sign the Amended Law. He submitted that the House of Assembly did not muster the required 2/3 majority (that is 16 members) to pass the Bill.

He submitted further that there is no such law as Local Government Amendment Law 2000. That if the Court is in doubt, oral evidence should be called to resolve the matter. He submitted that the law was not authenticated as required by the Authentication Law, Cap 86 Laws of Bendel State, 1976 now

applicable to Edo State. That the failure to authenticate the law means that the condition precedent to bringing the said law into effect was not complied with; and the legal effect is that the law has not come into force or operation until it is authenticated. He placed reliance on ***YARO V NUNKU (1995) 5 NWLR (PT. 394) 129 AT 135.***

Learned Counsel submitted on the merit of the case that ***Exhibit 3*** attached to the originating summons shows that the 1st Defendant relied on Section 20 (b) of the Local Government Law, 2000 to suspend the Plaintiff from office. That he complied with all the requirements therein. He submitted that the law did not stay that the Governor must/shall consult the House before suspending the Plaintiff, since the word õmayö and õshallö or õmustö was used in the statue. He referred to the definition of õmayö in ***Blacks' Law Dictionary 6th Edition pages 979;*** and the case of ***RIMI V INEC (2005) 6 NWLR (PT. 920) 56 AT 60 RATIO 6 (b).***

He submitted that the Court cannot ordinarily punish the 1st Defendant for the breach of his duty if any under Section 20 (b) of the law. He posited that word õmayö as used in the law is merely directory and not mandatory. That the 1st Defendant having acted in accordance with the law, the suspension of the Plaintiff is lawful, constitution and legal.

He submitted further that this suit as it is, is now an academic and/or hypothetical question that should not be entertained, and cited ***AMANCHUKWU V***

FRN (2009) 37 NSCQR 616; ALLI V ALESINLOYE (2000) 6 NWLR (PT. 660) 177 AT 190 RATIO 25. He urged the Court to take judicial notice of the fact that Local Government Councils in Edo State have been dissolved by the Edo State Government thus putting an end to the Tenure of the Plaintiff as the Chairman of Akoko-Edo Local Government Area, Edo State.

He submitted that the 1st Defendant who is the Governor can set up Commission of Inquiry to investigate the activities of the Plaintiff as a public officer in the State Civil Service, and referred to items 19 of the 5th schedule (part 1) of the 1999 Constitution which defines a public officer. That the Commission of Inquiry set up to investigate the activities of the Plaintiff as a public officer was set up under the Commissioner of Inquiry Law Cap 41 Laws of Bendel State, and referred to Section 2 (1) of the law, and cited ***GOVERNOR OF KADUNA STATE V LAWAL KAGOMA (1982) 3 NCLR 1032 AT 1044 – 1045.*** *He also referred to Section 15 (5) of the 1999 Constitution, and the case of* **A.G.** ***ONDO STATE V. A.G. FEDERATION (2003) 99 LRCN 1329.*** He finally urged the Court to dismiss the Plaintifføs case.

On HIS PART, LugmanMuhammed, Esq. of Learned Counsel for the 3rd Defendant in respect of the 3rd Defendantøs Notice of Preliminary Objection to the originating summons submitted that this Court has no jurisdiction to hear and determine the Plaintifføs case. On the issue of jurisdiction, he cited ***MADUKOLU***

V. NKEMDILIM(2001) 46 WRN 2 AT 13. He submitted that Plaintiffø case is not initiated by due process of law, the commencement of the suit by originating summons instead of writ of summons. He submitted that on the face of the varying affidavits, counter-affidavits and reply to counter-affidavit, it is clear that the proceeding is hostile and contentious. That originating summons is not the appropriate mode of commencement of proceedings that are hostile and contentious; and placed reliance on ***OSSAI V WAKWAH (2006) 16 WRN 136.***

He submitted that nothing in the documents attached in support of the originating summons, counter-affidavits and reply to the counter-affidavit that can assist this Court to resolve the controversy except oral testimony, and cited ***FEDERAL POLY IDAH V ONOJA (2003) 12 WRN 95; BASSEY V MINISTER OF DEFENCE (2006) 45 WRN 190; INAKOJU V ADELEKE (2008) 30 WRN 1 AT 105.***

He submitted that the 3rd Defendant is not a proper party to be joined in this case as its presence is neither crucial, or critical to the resolution of the Plaintiffø case; and cited ***ADISA V OYINWOLA (2006) 6 SCNJ 290 AT 298 RATIO 23, ORDER 11 RULE 1 of the High Court (Civil Procedure) Rules 1988.***

He submitted that there is no question directly touching on the 3rd Defendant to require its presence for determination, nor is there a direct relief sought against it. He submitted that the Plaintiff has not disclosed any cause of action or

reasonable cause of action against the 3rd Defendant from the totality of the depositions in the supporting affidavits to the originating summons, and cited ***EGBE V ADEFARASIN (1987) 1 NSCC (PT. 1) vol. 18, 1 AT 10; IBRAHIM V OSIM (1999) 3 NWLR (PT. 82) 257 AT 271 – 272.***

He urged the Court to order pleadings, and in the alternative strike out the name of the 3rd Defendant from the suit.

On his part, Chief S. S. Obaro, Esq. of Learned Counsel for the 6th Defendant raised preliminary objection to the suit on three grounds namely:

(1) That originating summons is incompetent on the ground that it is not supported by any valid affidavit.

(2) That the originating summons being founded on disputed and contentious facts and the reliefs not being interpretation or construction of Section 20 of the Local Government Law of Edo State it was inappropriate to approach this Honorable Court by way of originating summons, and

(3) That in view of the patently õhostileö and contentious nature of the facts alleged in the purported affidavit in support of the originating summons, it is a proper case which should have been commenced by a writ of summons and tried on pleadings.

On issue 1 above, Learned Counsel referred to Order 38 Rule 4 of the High Court Rules of 1988, and submitted that in the originating summons, there is no

suggestion that the Plaintiff sought and obtained and direction from õthe Court or a Judge in chambersö as to what evidence is required to support the application. He submitted that the use of originating summons procedure is a special procedure specifically provided for use in specified circumstances. That being so, the procedure for its use must be strictly complied with, and cited ***NWAOGWUGWU V PRESIDENT (2007) 6 NWLR (PT. 1030) 237; RE: APOLOS UDO (1987) 4 NWLR (PT. 63) 120.*** He submitted that in this case, the purported evidence in support of originating summons is not in compliance with Order 38 Rule 4 and consequently that õevidenceö must be discountenanced and struck out, and the Court should hold that it is not supported by any valid evidence, and therefore incompetent. He submitted further that the õaffidavitö evidence is irredeemably defective, and indeed invalid in law, and consequently does not constitute õsuch evidence as the Court or Judge may requireö, or any legally admissible evidence at all that can sustain the originating summons, and referred to Section 90 (b) of the Evidence Act. Learned Counsel also referred to paragraph 1 of the Plaintifføs affidavit in support of the originating summons sworn to on the 2/3/2010 to the effect that õthe full name, trade, or profession, residence and nationality of the deponentö are not stated therein or any other paragraph of the entire affidavit. He submitted that the result is that the deponent to the affidavit is not disclosed or

unknown. Thus, the affidavit is made in total disregard of the clear and mandatory provisions of Section 90 (b) of the Evidence Act.

On issue 2, Learned Counsel submitted that the Plaintifføs affidavits are in õriotous conflictö with the affidavits of Kenneth Ugiagbe, Esq. of the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants, and cited ***INAKOJU & ORS V ADELEKE & ORS (2007) 143 LRCN 1, RATIO 2, PAM V MOHAMMED (2008) 161 LRCN 216 RATIO 6, OSSAI V WAKWAH (2006) 135 LRCN 756, RATIO 4.*** He submitted that issues raised and the reliefs claimed in the originating summons went far beyond the mere interpretation of construction of Section 20 or Section 20 (1) (b) of the Local Government Law of Edo State 2000 (as amended). He submitted that no issue about the construction or interpretation of those sections is raised by the Plaintiff. Learned Counsel proceeded to itemize the issues raised in the affidavits and counter-affidavits at pages 8-9 of the written Address. Learned Counsel submitted that the various allegations disclosed in the affidavits in support of the originating summons, together with the counter-affidavits sworn to by one Kenneth Ugiagbe, Esq., and the Plaintifføs deemed admission of the 6th Defendantøs affidavit cannot bring this case within the circumstances envisaged by Order 1 Rule 2 (2) of the High Court Rules, to justify this suit being commenced by originating summons, and cited ***ALEGBE V OLOYO (1983) NSCC 315 AT 328, 335-336.*** He urged the Court to hold that this suit qualifies hostile proceedings and

that it ought not to have been initiated by originating summons, and that it should consequently fail and be struck out. He urged the Court in the alternative that pleadings are ordered so that the material facts could be properly pleaded and evidence led thereon.

I note that at pages 15-18, Learned Counsel addressed extensively on what he sub-titled õPlaintifføs Counseløs Written Address on originating summonsö. I also note that Learned Senior Advocate for the Plaintiff filed 3 separate Written Address on points of law to the Written Addresses of Learned Counsel for all the Defendants. I shall revert to these addresses later in this Judgment whenever necessary.

Before I proceed to appraise the submissions of Learned Counsel for the parties, it is apposite to reiterate that when this matter came up for hearing on the 7/10/10, by consent of Learned Counsel for the parties (but not without initial objections by Learned Counsel for the Defendants), this Court ordered that the preliminary objections and originating summons be taken together because of the peculiar nature of this matter.

It is, well settled law, that where a Court takes or hears the preliminary objection on the competence of the suit along with the substantive matter, the Court is still under a duty to determine the preliminary objection first before delving into hearing the substantive matter. Where the preliminary objection is

upheld, that is the end of the substantive matter before the Court especially where the challenge is against the competence and jurisdiction of the Court. See ***A.N.P.P.V R.O.A.S.S.D. (2005) 6 NWLR (PT. 920) 140; OGOJA V OFFOBOCHE (1996) 8 NWLR (PT. 485) 48; MILITARY ADMINISTRATOR, TARABA STATE V JEN (2001) 1 NWLR (PT. 694) 416,*** just to mention but a few.

Firstly, I wish to deal with the objection of the 6th Defendant that the originating summons was not supported by any valid affidavit evidence having not disclosed the full names, nationality, and the residential address of the deponent as required by law.

There is no doubt that the said affidavit of 2/3/2010 in support of the originating summons is a process filed in the Registry of the Court. It is, settled law that a Court is entitled to look at the contents of its file or records, and refer to it in consideration of any matter before it. See ***NDAYAKO V DANTORO (2004) 13 NWLR (PT. 889) 187; TSOKWA MOTORS (NIG.) LTD. V U.B.A. PLC (2008) 2 NWLR (PT. 1071) 347.***

In the circumstances of the above established law, I shall therefore reproduce the said paragraph 1 of the affidavit of 2/3/2010 thus;

õI, Chief J. A. Emasealu, male, Christian, Nigerian of Old AuchiRoad, Igarra, Akoko-Edo Local Government Area, Edo State do hereby make oath and state as follows:ö

It is demonstrably clear from the excerpt reproduced above that the full names, religion, nationality and address of the deponent is conspicuously stated on the affidavit. Moreso, the said affidavit was duly sworn before the Commissioner for Oaths as required by law.

It is my firm view that the Plaintiff has fully complied with the relevant provisions of the Evidence Act by stating his name, religion, address, nationality and occupation. I, therefore, hold that the objection of the Learned Counsel for the 6th Defendant is grossly misconceived in this regard. I shall return to the 2nd ground of objection later in the course of this Judgment, when dealing with the same issue in respect of the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants.

The 3rd Defendant contended that it ought not to be joined in this suit, and therefore was wrongly joined.

My simple answer is that the 3rd Defendant is a necessary and desirable party in this suit. The 3rd Defendant (Edo State House Assembly) has statutory roles to play in the suspension and removal of a Chairman in Edo State under the Edo State Local Government Law. It is in recognition of this role of the 3rd Defendant, that

the 1st Defendant wrote Exhibit 3 to it in which the Plaintiff was suspended as Chairman of Akoko-Edo Local Government Council.

It is instructive to note that under the Local Government Law, the 3rd Defendant is vested with the power to ratify the report of the Commission of Inquiry by 2/3 majority before the Governor can remove any Chairman.

What is more, it is now settled law that misjoinder or non-joiner or a party or parties does not defeat a cause of action, and does not go to the issue of jurisdiction of the Court. See ***IYERE V BFFM (SUPRA).***

I therefore hold that the 3rd Defendant is a proper party in this suit.

Let me now return to the second ground of objection. Learned Counsel for the 3rd and 6th Defendants inclusive of the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants have submitted that this suit is incompetent because it was commence by originating summons instead of writ of summons. They submitted that the action should have been commenced by writ of summons because the facts are hostile and riotously in conflict or seriously in dispute. On the contrary, Learned Senior Counsel for the Plaintiff contends that the action was properly commenced by originating summons, and it deals essentially with the interpretation of Section 20 of the Local Government 2000 (as amended).

I have carefully read through the originating summons, the affidavit and further and better affidavits in support of the originating summons, and the

counter-affidavit and further and Better counter-affidavit in opposition to the originating summons. I have equally given detailed consideration to the submission of the Learned Counsel for the parties.

Now, by Order 1 Rule 2 (2) of the Defunct Bendel State High Court (Civil Procedure) Rules 1988 applicable in Edo State, proceedings may be begun by originating summons where:

(a) The sole or principal question in issue is, or likely to be, one of the construction of a written law or of any instrument made under any written law, or of any deed, will, contact or other document or some other question of law; or

(b) There is unlikely to be any substantial dispute of fact.

The aim of commencing an action by originating summons is to simplify and speed up procedure, since it is envisaged that there is no serious dispute as to the facts in the case, because what is in dispute is the construction of an enactment or instrument made under any law upon which the Plaintiff is basing his right to a declaration or a claim in his favour. Where however there is a serious dispute as to the facts then a writ of summons must be issued. Also, where it is not clear whether to commence proceedings by the issue of a writ or by originating summons, the former procedure should be adopted. See the following cases.

É *ATTORNEY-GENERAL OF ADAMAWA STATE V ATTORNEY – GENERAL OF THE FEDERATION (2005) 18 NWLR (PT. 958) 581.*

É *FASHEUN MOTORS LIMITED V UNITED BANK FOR AFRICA LTD (2000) 1 NWLR (PT. 640) 190.*

É *DIN V ATTORNEY- GENERAL OF THE FEDERATION (1986) 1 NWLR (PT. 17) 471.*

É *KEYAMU V HOUSE OF ASSEMBLY, LAGOS STATE (2002) 18 NWLR (PT. 799) 605.*

É *EGBARIN V. AGHOGHOVBIA (2005) 16 NWLR (PT. 840) 380.*

É *AKIBU V RACE AUTO SUPPLY LTD .(2000) 14 NWLR (PT. 686) 190.*

It has been held that the originating summons procedure does not envisage a situation where there is no dispute at all as to facts between the parties. Rather, it envisages a situation where there is no substantial dispute of facts. In other words, there can be disputed facts but such dispute must not be substantial. Cases come to Court because of one dispute or the other. In fact, Court exist for settlement of disputes. The Court will cease to be relevant if there are no disputes at all. See the following cases:

É *JIMOH V OLAWOYE (2003) 10 NWLR (PT. 828) 307 and*

É ***HABIB NIGERIA BANK LIMITED V OCHETE (2001) 3 NWLR (PT. 699) 114.***

In the instant case, I have carefully compared the support affidavits with the counter-affidavits. Firstly, it must be stated that it is the Plaintifføs claim that vests jurisdiction on the Court. In the instance case, it is manifest that the reliefs claimed by the Plaintiff are essentially premised on the interpretation and construction of the Local Government Law and Section 36 (1) of the 1999 Constitution bordering on the right of fair hearing. Furthermore, it is demonstrably clear that the issue of whether or not the Governor has right/power to suspend the Plaintiff, vide Exhibit 3 can be resolved from the provisions of the Local Government Law and not by oral evidence. Also, the issue whether or not the amendment of the Local Government Law 2000 (as amended) by two-thirds majority of the members of Edo Sate House of Assembly (if it is an important issue to be decided), can be resolved through the Certified True Copies of the proceedings of the House of Assembly attached to the further counter-affidavit of the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants, without the necessity of calling oral evidence. Admittedly, the filing of affidavits of 98 paragraphs by the Plaintiff in a simple matter of construction of the Local Government Law, and Section 36 (1) of the 1999 Constitution, is in my view, rather prolix and unnecessary. Counsel ought to be more circumspect in this regard.

It is, settled law, that where facts are easily discernible from the documents presented to the Court, and the resolution of the questions set for determination to the extent that there is no difficult in resolving the issues involved, then there is no hostility or hot contest of facts in the proceedings and originating summons is appropriate procedure for instituting such. See ***ORUKANAM LOCAL GOVERNMENT V. IKPA (2003) 12 NWLR (PT. 835) 558.***

I am, therefore of the view, that the facts are not substantially in conflict. There is no conflict to be resolved as the documents attached by the Plaintiff and the 1st , 2nd , 4th, 5th, 7th ó 0 10th Defendants to the affidavits have resolved the alleged conflict, making the calling of oral evidence unnecessary. In the result, I hold that the objections of the 3rd and 6th Defendants are lacking in merit, and they are hereby dismissed.

Before I proceed further, I wish to deal with an aspect of this case which I find quite intriguing or fascinating. Learned Counsel for all the Defendants except the 3rd Defendants have strenuously argued in their respective Written Addresses, and in the counter-affidavits filed in this case that the Local Government Law 2000, (as Amended) is a non-existent law. They argued that it was not passed by two-thirds majority votes as required by Section 100(5) of the Constitution.

Now, section 4 (6) of the Constitution of the Federal Republic of Nigeria 1999 stipulates thus:

> *"The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State".*

Whilst Section 4(7) provides that the House of Assembly has power to make law for the peace, order and good Government of the State or any part thereof with respect to any matter not included in the exclusive legislative list; any matter included in the concurrent legislative list and other matter with respect to which it is empowered to make law in accordance with the provisions of the Constitution. See ***A.G. ABIA STATE V A.G. FEDERATION (2002) 6 NWLR (PT. 763) 264.***

Also, Section 7(1) of the 1999 Constitution guarantees the establishment of Local Government by democratically elected Local Government Council. Every State is to ensure their existence under a law enacted by the House of Assembly of a State.

In other words, the structure of a Local Government Council is a matter for the State House of Assembly to legislate upon.

However, the powers of the State House of Assembly to legislate cannot be construed in such a way as to contravene the express provision of the Constitution because the Constitution is the foundation law on which every other law in Nigeria rests.

It should be noted that based on the enablement of section 4 (6) of the 1999 Constitution, the Edo State House of Assembly enacted the Local Government Law 2000 (as amended).

The Defendants, as I had earlier stated, contended that the Local Government Law 2000 (as Amended) was not passed by 2/3 majority votes of members as required by Section 100 (5) of the Constitution.

With the greatest respect to the Learned Counsel for the Defendants, it is to be pointed out that the dispute between the Plaintiff and the Defendants is that the 1st Defendant has no power under the Local Government Law 2000 (as Amended) to suspend the Plaintiff from office as Chairman of the AKoko-Edo Local Government Council, and not that the Local Government Law 2000 (as Amended) was not validly passed by the Edo State House of Assembly. It is trite law, that it is the Plaintiffø claim before the Court that determines the jurisdiction of the Court. It is, also trite that the parties and Court are bound by the pleadings filed by the parties, and the Court has no power to go outside the pleadings. In other words, the Court is without jurisdiction to decided issues not raised or covered by the pleading of the parties. In the instant, there is no claim or relief by the Plaintiff seeking the other of this court to void, nullify or declare the Local Government Law 2000 (as Amended) unconstitutional, null and void for non-compliance with section 100 (5) of the 1999 Constitution. There is equally no counter-claim by the Defendants

seeking a declaration that the Local Government Law 2000 (as Amended) is null and void.

It is, trite law, that a declaratory relief sought from a court is essentially an equitable relief in which the Plaintiff or (Defendant in Counter-Claim) prays the Court, in exercise of its discretionary jurisdiction, to pronounced an existing state of affairs in law in his favour as may be discernible from the averments in the statement of claim or counter-claim. See ***SPRING BANK PLC V. ADEKUNLE (2011) 1 NWLR (PT. 1229) 581 AT 592-593.***

If the Defendants believed or conceive that the Local Government Law 2000 (as Amended) by the Edo State House of Assembly was not validly passed by 2/3 majority votes of the members in 2006 as required by Section 100 (5) of the 1999, they ought to have initiated a proper action to challenged its validity, and not by a counter-affidavit and further and better-counter-affidavit as they have done in the instant case.

The point I am struggling to make is that the Defendants or any group of persons having not challenged the Local Government Law 2000 (as Amended) from 2006 till date in any court of law, and more importantly the Local Government Law 2000 (as Amended) having not been repealed by any law or declared unconstitutional null and void by any competent court of jurisdiction in Nigeria; I hold that it is the extant or existing law governing the conduct of the

affairs of the Local Government Council in Edo State. Regrettably as it may seem, Learned Counsel for the parties dissipated a lot of energy and precious time canvassing the issue of validity or otherwise of the law in their Written Addresses, and the various affidavit filed which are unnecessary and irrelevant. For this reason, I hereby discountenance all the submissions, the Exhibits and the affidavits in the consideration of the issues raised for determination.

Furthermore, I hold that the extant law or the existing law by virtue of Section 315 of the Constitution when the cause of action arose in this case, is the Local Government Law 2000 (as Amended) or cited as Local Government (Amended No. 5 (2000)).

Let me now return to the substantive issues for determination in the originating summons. It is perhaps quite apposite to give a brief summary of the facts leading to the filing of this action as encapsulated in the supporting affidavit to the originating summons. The Plaintiff was elected as the Chairman of Akoko-Edo Local Government Council on the 15/12/2007, on the platform of the Peoples Democratic Party in the concluded Local Government Election held in Edo State. He was duly sworn in as the Chairman with the 6th Defendant as the Vice Chairman for a period of 3 years commencing from 18th December, 2007 to 17th December, 2010.

The 1st Defendant, the Governor of Edo State, vide a letter dated the 17th day of February, 2010, Exhibit 3, suspended the Plaintiff from office as the Chairman of Akoko-Edo Local Government Council under the provision of Section 20 of the Local Government Law, 2000 based on allegations of embezzlement of Council funds which was premised on the petition allegedly written by Councilors and Stakeholders. The Plaintiff, being dissatisfied with the letter of suspension, Exhibit 3 written by the 1st Defendant filed this originating summons challenging the powers of the 1st Defendant to suspend him from office as the Chairman of the Council.

In this action, the Plaintiff contends that the 1st Defendant has no such powers under Section 20(1) of the Local Government Law 2000 (as Amended) to suspend him as Chairman of the Local Government Council.

Now, Section 20(1) (b) of the Local Government (Amendment) Law No. 5 state as follows:

> (*b) Where "The Governor is satisfied that the Chairman of a Local Government Council is not discharging the Council's function under the law in a manner conducive to the welfare of the inhabitants of the area of its authority as a whole upon the request of the Governor, the House of Assembly may be*

resolution suspend the Chairman for a period not exceeding two months."

It is patently clear that Section 20(1) (b) of the Local Government (Amendment) Law No. 5 is a special provision designed to regulate exclusively the removal procedure of the elected Chairman of Local Government in Edo State .

It is, trite law, that in interpreting a statute, or indeed the Constitution, the language of the statute or Constitution, where clear and unambiguous, must be given its plain meaning. See ***OJUKWU V.OBASANJO (2004) 12 NWLR (PT. 886) 169 AT 197.***

Thus, in the instance case, the language of Section 20(1)(b) is clear and unambiguous on the procedure to be adopted before a Local Government Chairman can be suspended from office.

In the instance case, the 1st Defendant on the 17/2/2010, issued Exhibit 3, suspending the Plaintiff from office as the Chairman of Akoko-Edo Local Government Council.

It is manifestly clear from the provision of section 20 (1) (b) of the Local Government (Amendment) Law No. 5 of 2006 that the only person or body which has statutory power to suspend the Plaintiff in this case is the Edo State House of Assembly (the 3rd Defendant). I therefore, hold that the 1st Defendant has no Statutory Power under Section 20(1) (b) of the Local Government (Amendment)

Law to suspend the Plaintiff from office as Chairman of the Akoko-Edo Local Government Council. The purported suspension of the Plaintiff by the 1st Defendant, vide Exhibit 3 pursuant to Section 20 of the Local Government Law 2000 which is a non-existent law having been repealed by the Local Government (Amendment) Law No. 5 of 2006 is hereby declared null and void, and of no effect whatsoever, and the letter Exhibit 3 is accordingly set aside.

I also hold that the 7th Defendantøs led Commission of inquiry set up by the 1st Defendant to investigate the tenure of the Plaintiff as Chairman of the Akoko-Edo Local Government Council is not competent or vested with jurisdiction to so inquire when the conditions precedent to the suspension of the Plaintiff have not been complied with by the 1st Defendant, in accordance with Section 20 (1) (b) of the Local Government Law 2000 (as Amended), and its recommendation is hereby set aside.

Having held the suspension of the Plaintiff by the 1st Defendant, vide Exhibit 3 to be null and void, what is the final order to be made in this case.

It is a common fact that the Plaintiff was elected to the office of the Chairman of the Council for a fixed period of 3 years commencing from 18th December, 2007 to 17th December, 2010. Therefore, by the 17th day of December, 2010, the Res in this matter no longer exist by reason of the expiration of the fixed term of 3 years.

In other words, by 17th December, 2010, the Plaintiff is expected to vacate the office as required by law. Therefore, the period the Plaintiff is required to stay in the office (3 years) has expired, and therefore cannot be reinstated to the office of the Chairman of Akok-Edo Local Government Council. The Plaintiff can not also be reinstated for the period he was unlawfully suspended as Chairman of the Council since it will amount to tenure elongation.

Learned Counsel for the Plaintiff, Roland Otaru, Esq (SAN) on the 25/11/2010 while adopting his Written Address urged this Court in the alternative to make a consequential order awarding the Plaintiff his salaries and other allowances for the period of his suspension till the time of the expiration of his tenure.

On his part, M.I.C. Ohio, Esq of Counsel for the 1st, 2nd, 4th, 5th, 7th ó 10th Defendants submitted that this Court has no such powers to make the award sought.

In the instant case, it is manifest from the reliefs sought by the Plaintiff that he did not claim for award of salaries and allowance. Can this court by way of consequential order award the Plaintiff his salaries and allowance in this case?

What then is a consequential order?

In the case of ***UBA V ETIABA (2010) 10 NWLR (PT. 1202) 343 AT 398,*** the Court of Appeal defined a consequential order thus:

"A consequential order is not one merely incidental to a decision but one necessarily flowing directly and naturally from, and inevitably consequent upon it. It must be giving effect to the judgment already given, not by granting a fresh and unclaimed or unproven relief... Nor can a consequential order be properly made to given to a party entitlement to a relief he has not establish in his favour". See ***INAKOJU V ADELEKE (2007) 4 NWLR (PT. 1025) 423.***

In the instant case, as earlier stated, the Plaintiff never sought an order for special damages in respect of his salaries and allowances and issues were never joined on them by the parties.

In is, settled law by a legion of decided authorities, that whatever order a Court make at the end of a matter is usually based on the claim before the Court. See ***ADEOGUN V. EKUNRIN (2003) 2 NWLR (PT. 856) 52 AT 69.***

In the instant case, the Plaintiff prayers are as contained in the originating summons which I have earlier reproduced. There is no prayer seeking an award of salaries for the period of his unlawful suspension from office as the Chairman of the Council. It is the position of the law that a Plaintiff is required to set out the relief he is seeking from the Court in clear term in his claim.

The law is well settled that while a Court can grant less than what a Plaintiff claims, it cannot grant a claimant more than what he claims. In other words, it is a

basic and well settled principle that a Court must not grant to party a relief in declaration which he had not sought or which is more than he has sought. This is because, the Court not being a charitable institution, is only restricted to either granting exactly what is claimed, or refusing the claim if not proved, or granting less than what a claimant claims. But under no condition can it grant more than what is claimed. This principle is buttressed by a plethora of cases amongst which to mention a few. ***EKPENGONG V.NYONG (1975) 2 SC 71, KALIO V KALIO (1975) 2 S.C. 15; EMAPHIL LTD V ODILI (1987) 4 NWLR (PT. 67) 915, UNION BEVERAGES LTD. V. OWOLABI (1988) 1 NWLR (PT. 68) 128, ADEFULU V. OKULAJA (1996) 9 NWLR (PT. 75) 668, and AKINDE V. ADELUSOLA (2002) 15 WRN 31 AT 41; JIM-JAJA V. C.O.P (2011) 2 NWLR (PT. 1231) AT 396.***

In the instance case, there is no deposition in the supporting affidavit to the originating summons as to the salaries and allowances which the Plaintiff would have earned from the 17/2/2010 to 17/12/2010, when he was unlawfully suspended by the 1st Defendant from office as Chairman of the Council.

It is, also trite, that salary and allowances are in the nature of special damages which must be strictly proved. This Court being not a Father Christmas which doles out unsolicited gifts cannot award the Plaintiff salary and allowances which were neither claimed nor proved.

On the whole, and arising from the analysis aforesaid, this action succeeds only to the extent that the suspension of the Plaintiff by the 1st Defendant, vide Exhibit 3 is null and void being not in accordance with Section 20(1)(b) of the Local Government Law 2000 (as Amended). All the actions taken by the 1st Defendant pursuant to the issuance of Exhibit 3 are equally declared unlawful, null and void.

I make no order as to costs.

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Hon. Justice E.O. Ahamioje
JUDGE
17/02/2011

COUNSEL:

Roland Otaru, Esq (SAN) -------- For the Plaintiff
(with him is B.S. Oisamoje, Esq)

M.I.C. Ohio, Esq
(Director Civil Litigation) --------For the 1st, 2nd, 4th , 5th, 7th ó 10th Defendants

Chief S.S. Obaro -------- For the 3rd Defendant

Luqman Mohammed -------- For the 6th Defendant