IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE EKPOMA JUDICIAL DIVISION
HOLDEN AT EKPOMA

BEFORE HIS LORDSHIP HON. JUSTICE J. O. OKEAYA – INNEH ON THURSDAY THE 28th DAY OF MAY, 2020

BETWEEN: **SUIT NO. HEK/ 9 /2020**

1. **ERUAGA GALLANT C.**
2. **JIDE OBALOWOSHE ESQ.**

} **CLAIMANTS/ APPLICANTS**

AND

1. PEOPLES DEMOCRATIC PARTY (PDP).....1ST DEFENDANT/RESPONDENT
2.INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) ... 2ND DEFENDANT/RESPONDENT

RULING

This ruling is based on a motion on notice filed on the 17th day of March, 2020 on behalf of the claimants/applicants who I shall henceforth refer to as the applicants for ease of reference. The motion is praying this Honourable Court for the following;

1. An Order of this Honourable Court setting aside the purported local government and state congresses organized and conducted by the defendants/respondents on the 7th and 14th of March, 2020 respectively.
2. And for such further order or orders(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The grounds for the application are as follows;

1. This suit was instituted by the claimants/applicants on the 5th day of February 2020 seeking in the main an order of perpetual injunction restraining the defendants/respondents from recognizing or utilizing the purported Ward Congress of the 1st defendant held on the 1st day of February, 2020.
2. The defendants/respondents were also served with a motion on notice seeking the purported result of the ward congress and for an

order restraining the 1st defendant/ respondent from conducting the LGA Congress pending the hearing and determination of the substantive suit.

3. The defendants/respondents were duly served with the said motion on notice and the 1st defendant/respondent indeed, filed a counter affidavit and written address in opposition to the said motion for interlocutory injunction.
4. In order to foist a situation of helplessness and to render any decision that the Court may give nugatory, the 1st defendant/respondent proceeded to publish a time table for the conduct of the said congresses during the pendency of the suit and motion for interlocutory injunction.
5. The 1st defendant/respondent proceeded to conduct the LGA and State Congresses in total disrespect and contempt of court and in order to prejudice the subject matter of this case and the pending motion for interlocutory injunction.
6. That this Honourable Court has the powers to set aside the said congresses and reverse the parties to the status ante bellum.

The motion is supported by an affidavit of 17 paragraphs, 5 exhibits and a written address wherein learned counsel to the applicant formulated one issue for determination which is;

> ***"whether the defendants/respondents action of conducting LGA and State Congresses despite the pending and determination of the suit, pending and determination of the interlocutory application and court directive for parties to maintain status quo, is not liable to be set aside."***

Arguing the issue, learned counsel stated that once parties bring their case before the Court, the parties are precluded from resorting to self help and must allow the law and procedure run its full course. That once a party takes any step that prejudices the substantive case or the pending application before the Court, the Court has the power and in fact the duty

to set aside such steps and reverse parties to the status quo ante bellum without reference to the merits or demerits of the substantive case.

Arguing further, he stated that the applicants who instituted this suit against the respondents also filed an application for interlocutory injunction restraining the respondents from conducting LGA Congress pending the determination of the substantive case. That the respondents joined issue with the applicants on the said motion for interlocutory injunction by filing counter affidavit and written address. Despite being aware of the pendency of this suit and the interlocutory application, the 1st defendant proceeded to publish a time table for the conduct of the LGA and State Congresses.

He continued stating that the respondent being aware of the pendency of the suit and most importantly the said interlocutory injunction still proceeded to conduct the said purported LGA and State Congresses. He referred Court to the case of **A. G. ENUGU STATE .V. MARCEL & ORS (2019) LPELR – 48184 (CA)** wherein the Court held thus;

> "***...however, exhibits E and E1 clearly established the fact that suit no. N/38M/2006 was pending at the time they conducted the election. The conduct of the election while suit no. N/38M/2006 was pending is contemptuous and a gross disrespect for the Court and rule of law. The defendants filed a counter affidavit in that suit on 13/7/2006 and 6/12/2006. They were fully aware of the pendency of the suit and the motion for interlocutory injunction seeking to restrain them from conducting the election. Yet, they proceeded to conduct the election. The law is sacrosanct that once parties have submitted their dispute to the Court for adjudication, they must***

allow the law and the judicial process to run its course. None of them is allowed to embark on any action which may affect the subject matter of the dispute or the outcome of the case. See GOV. OF LAGOS STATE .V. OJUKWU (1986) 1 NWLR (PT. 18) 621. GARBA .V. F. S. C. C. & ANOR (1988) LPELR 1304 (SC) 28 – 29 (C – E).″

He contended that the acts of the defendants/respondents are contemptuous and a gross disrespect for the Court and the rule of law. He also referred Court to the case of **A. G. ENUGU STATE .V. MARCEL & ORS (SUPRA)** where the Court held thus;

"Where a party takes an action during the pendency of a suit which affects adversely the subject matter of the suit or steals a match on his opponent, the Court will invoke its disciplinary power to reverse the action and return the parties to the status quo.″

He submitted that the said Congresses held by the defendants/respondents during the pendency of this suit and the pendency of the interlocutory motion ought to be set aside. He urged this Court to grant this application in the interest of justice.

On the 19th day of May, 2020, learned SAN, counsel to the 1st defendant/ respondent whom I shall henceforth refer to as the respondent for ease of reference filed a counter affidavit of 24 paragraphs, 1 exhibit and a written address vide an application for extension of time granted by this Court.

From the written address, learned counsel formulated 2 issues for determination which are;

1. Whether this Honourable Court has the competence and jurisdiction to entertain the claimants/applicants application without first

resolving the challenge to its jurisdiction by the 1st defendant and if so, whether the application is not a veiled attempt at arresting the delivery of the ruling of this Honourable Court on the challenge to jurisdiction, which is not permissible under the law.?

2. Whether the claimants/applicants have made out a proper case and established their entitlement to the reliefs sought on the face of the motion paper as required by law, and in all the circumstances of this case.

Arguing issue one, learned counsel to the respondents reiterated the well settled position of the law that jurisdiction is the life wire of adjudication and where the jurisdiction of a court is challenged, it must be resolved first and the court is not entitled to conduct any other proceedings or make any other order than to resolve the issue of jurisdiction. He referred Court to the case of **NDIC .V. C.B.N (2002) 7 NWLR (PT 766) PG 272 AT 292 PARA H** where the Supreme Court held thus,

> ***"the Court must not give an order in the suit affecting the defendants until the issue of jurisdiction is settled when it has been raised."***

Arguing further, he stated that in making the above submissions, they are not unmindful of the decision of the Supreme Court in **EBHODAGHE VS. OKOYE (2004) LPELR-987(SC)** where it was held that issues of contempt of court can be inquired into at the discretion of the court in priority over a challenge to the jurisdiction of the court but that the said decision is clearly inapplicable to the facts and circumstances of this case for the following reasons:

i. The principle established in **EBHODAGHE VS. OKOYE (SUPRA)** is only applicable where the contempt or other wrongful act complained of occurred in *facie curie* such as can be dealt with summarily but not for complaints alleged to have happened *ex-facie curie* and requiring consideration of evidence for their resolution, as in the instant case. See **DANGOTE VS. A.P PLC&ORS (2012) LPELR-7974(CA) PAGES 35 – 37 PARAGRAPHS F-A** where the Court of Appeal per DANJUMA, J.C.A clarified the position of the law and held as follows:

"The epicenter of this case on appeal is as to whether a contempt proceedings should be proceeded with in spite of the Appellant's challenge to the jurisdiction of the Court or Tribunal to proceed with the main suit from whence the complaint relating to contempt arose. This is the basis of and fulcrum of this appeal. Ordinarily, the power to punish for contempt is an inherent power in all Superior Courts of record and Tribunals. It is for the preservation of its dignity and for the preservation of the sanctity of the law. In this wise, the power inures and is exercisable where the contempt is committed in-facie curie i.e. before the Court, whether the Court has jurisdiction to try the substantive case i.e. has jurisdiction in the matter or not.

However, where the contempt is committed ex-facie curie, i.e. outside the face of the Court, it cannot be tried brevimanu; thus, this constitutes an exception where the Court would need to first determine and decide on whether it has jurisdiction or not. This would have to be done first before it assumes jurisdiction to try for contempt. Aside contempt in facie curie the law is that once jurisdiction is raised in challenge, the Court has a duty to determine that issue first before proceeding."

ii. There is no question of priority of applications in this case and therefore no question of exercise of discretion because the

motion challenging jurisdiction has already been taken and heard by this Court at a time when there was no pending application for contempt before this Court. Having heard the application challenging its jurisdiction, this Honourable Court is duty bound under the law to deliver its ruling on that application first before proceedings to consider any other issue or issues. He referred Court to the case of **SHA'ABAN & ANOR. V. SAMBO & ORS. (2009) LPELR-4949(CA).**

iii. In any case, even if there were two pending applications, the hearing of the application challenging jurisdiction first will be judicious exercise of discretion. See **CHUKWUOGOR & ANOR VS. CHUKWUOGOR (NIG) LTD &ORS (2007) LPELR-8268(SC) PAGES 10 – 11** where the Supreme Court per NGWUTA, J.S.C held as follows:

> ***"I have had the opportunity of reading before now the judgment just delivered by my learned brother, Omage, J.C.A. Though the issue raised in the appeal is simple, its import is of fundamental importance in justice delivery. The reliefs in the two motions before the lower Court are diametrically opposed. The first motion is a quasi-criminal matter, seeking to punish the respondents therein for alleged violation of Court order. The 2nd motion questions the competence of the trial Court to make the order allegedly breached. As demonstrated by His Lordship in the lead judgment, common sense should have guided the lower Court in the exercise of its discretion to hear one motion before the other. If common sense had prevailed it would have been clear to the Court below that the decision to take the motion for***

committal before the one on jurisdiction cannot be said to be judicial or judicious exercise of discretion. In effect, the appellant's case is that the order allegedly disobeyed by them should not have been made for want of jurisdiction. Once the issue of jurisdiction is raised in any proceedings the power of the Court is limited to determining whether or not it has jurisdiction in the matter. See Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Chiedozie v. Omosowan (1999) 1 NWLR (Pt. 586) 317. Apart from the essential issue of jurisdiction the order in which the Court below decided to proceed would violate S. 36(1) of the 1999 Constitution for the Court has a duty to hear the appellant on why the order sought to be enforced against them should not have been made in the first place before hearing the motion for committal if need be. It would appear that the Court below adopted an unnecessary sentimental approach to alleged disobedience of its order and forgot the fact that lack of jurisdiction alleged by the appellant would render the entire proceedings null and void. See Sanyaolu v. INEC &Ors. (1999) 7 NWLR (Pt. 612) 600 CA. The decision of the Supreme Court in Ojukwu v. Military Governor of Lagos State (1986) 3 NWLR (Pt. 26) 39 was misinterpreted and was applied by the trial Court. In Ojukwu's case contempt was not in issue. The Lagos State Government was in contempt and the Apex Court held that in the circumstances, a contemnor

cannot be allowed to invoke the powers of the Court. In this case not only has contempt not been established but the appellants sought to show that in law they cannot be held guilty of contempt."

He contended that this Honourable Court ought to hold and come to the conclusion that the Claimants application cannot be taken or heard in priority over the pending challenge to the jurisdiction of this Honourable Court and this Court lacks the competence and jurisdiction to entertain the application without first resolving the issue of challenge to its jurisdiction.

He submitted that in so far as the 1st respondent's application challenging jurisdiction has been duly taken and heard and ruling reserved, the applicant's application under review is nothing short of a veiled attempt to arrest the delivery of the said ruling, which is not permissible under the law. He referred to the case of **OJONYE VS. ONU & ORS., (2018) LPELR-44212(CA) PAGES 28 TO 34 PARAGRAPHS E – A** where the Court of Appeal per SANKEY,J.C.A held as follows:

"It is evident that although the motion purports to set aside the order for Judgment by the lower Court, to all intents and purposes it was aimed at "arresting" the Judgment slated for delivery on the said date. The law is since settled that any application aimed at effectively stalling and/or arresting the delivery of the Judgment of a Court after a matter has been duly heard is unknown and/or alien to our laws. There is no provision for the arrest of a Judgment in our Rules of Court as firmly stated by the apex Court in Newswatch Communications Ltd V Attah (2006) 12 NWLR (Pt. 993) 144 at 179, paras F-G. In effect, such an application is at all times incompetent."

He also referred to the case of **BELLVIEW AIRLINES LTD VS. CARTER HARRIS (PROPRIETARY) LTD (2016) LPELR-40989(CA) PAGE 33 – 34 PARAGRAPHS F – D** where the Court of Appeal per GEORGEWILL, J.C.A held as follows:

> ***"... thus in law, such an application clearly amounted to an ill - fated attempt to arrest the ruling of the Court below, which procedure is unknown to law. See Newswatch Communications Limited v. Atta (supra) @ pp. 178 - 179. In Nicholas Ukachukwu v. Peoples Democratic Party &Ors (2014) 4 NWLR (Pt 1396) 65 @ p. 90 - 91, where Kekere - Ekun JSC, had succinctly pronounced inter alia thus:***
>
> > ***"The Applicant herein is seeking a stay of proceedings. It raises the question as to what proceedings are still pending before the lower Court that could be stayed? Once an appeal has been argued, there is no other pending proceeding, save the delivery of judgment. In this case, although the application purported to seek a stay of proceedings at the lower Court, to all intents and purpose it is aimed at arresting the judgment already reserved."***

He urged Court to resolve this issue in the favour of the 1st respondent.

On issue 2, learned Counsel argued that the applicants' application before this Court seeks the discretion of this Court which is never exercised on the mere asking but must be judicially and judiciously exercised having regard to the established principles of the law. That it is generally the duty of the applicants to satisfy the court by their affidavit evidence of their entitlement to the relief sought and generally place sufficient materials

before the Court to enable the Court exercise its discretion judicially and judiciously. He relied on the case of **FORBY ENGR. CO. LTD .V. AMCON (2018) LPELR – 43861 (CA) PAGE 33 PARAGRAPHS B – F** where the Court of Appeal held thus;

> ***"Another trite position of the law is that a judicial discretion is not granted as a matter of course or just because it is applied for by a party, but on satisfaction of a court that from the relevant material facts and circumstances of a case, a party has met the requirements of the rules of court and is entitled to the exercise of the discretion owes the duty and bears the burden of placing sufficient materials before the Court to enable it to exercise the discretion one way or the other, otherwise the application would fail, outright…"***

Arguing further, he stated that the applicants have woefully failed to meet the requirements of the law and this application is therefore unsubstantiated and liable to be struck out. He continued stating that the reliefs sought in the statement of claim before this Court are all related to and targeted at the ward congress election of 1st February, 2020 and the subject matter of this suit strictly relates to the conduct of the ward congress election of the 1st February, 2020 which means that the conduct of the Local Government and State Congresses of the 1st Respondent on the 7th and 14th March, 2020 now sought to be set aside in this application was never the subject matter of this suit and as such, the pendency of this suit cannot therefore be relied upon as the basis for adjudging the said Congresses unlawful or denying the right of the 1st respondent to conduct same.

He also stated that the order of this Court restraining the 1st respondent from conducting its congresses was vacated by this Court and there was no subsisting Order restraining the 1st respondent in that regard. He continued stating that as a result of the withdrawal of Victor Idiakhheoa Esq.(former 2nd claimant). And the consequential striking out of his name from this suit,

all the pending processes and applications of the claimants including the motion for interlocutory injunction which reflected him as among the claimants became mis-constituted and incompetent before the Court and liable to be amended and/or refiled by the applicants to remain extant. He referred Court to Order 13 Rule 25(1) of the Edo State High Court Civil Procedure Rules which provides as follows;

> ***"where after the institution of a suit, any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other may become defective or incapable of being carried on, any person interested may obtain from the court, any order requisite for curing the defect or enabling or compelling proper parties to carry on the proceedings."***

He contended that the applicants did not amend or re-file their processes and did not also seek or obtain the leave of this Court to enable them carry on the proceedings and as such the bare existence of the motion paper before this Honourable Court at the time of the holding or conduct of the congresses of 7th and 14th of March, 2020 cannot invalidate them or justify the drastic measure of setting them aside to the detriment of the survival an existence of the 1st respondent.

Contending further, he stated that there is nothing prejudicial about to this case about the conduct of the Local Government and State Congresses of the 1st respondent which does not form the subject matter of this case and in respect of which there is no relief sought in the originating processes of this suit. That if the applicants succeed in their claim, there is nothing preventing the Court from granting their reliefs and making any other consequential orders but on the other hand, if the congresses are set aside at this stage, the 1st respondent will become comatose and bereft of elected officers to manage its affairs including defending this suit. He

referred Court to the case of **EZEBILO .V. CHINWUBA (1997) 7 NWLR (PT 511) 108 AT 124 H – B** where the Court held thus;

> ***"A trial judge should be reluctant to grant an interlocutory injunction if it will result in the instability or disequilibrium of society or give rise to unnecessary oppression or hardship to the society and its people…***
>
> ***In such situation and their like, a trial judge, instead of granting the application, should order an acceleration of the hearing of the matter and give judgment expeditiously."***

He continued stating that the applicants who duly participated in the said congresses of the 1st respondent are therefore seeking to tear down the process because it did not favour them which is a reprehensible act and amounts to approbating and reprobating. That the reliefs sought by the applicants is an equitable one and he who comes to equity must come with clean hands but the applicants have not come with clean hands and their attitude has been tardy and reprehensible and as a result, they cannot therefore be entitled to the exercise of the court's discretion in their favour. He referred to the case of **SEED VEST MICROFINANCE BANK PLC & ANOR .V. OGUNSINA & ORS (2016) LPELR – 41346 (CA) PG 30 – 31 PAR. F – B** where the Court held thus;

> ***"It is often stated that one who comes to equity must come with clean hands (or alternatively, equity will not permit a party to profit by his own wrong). In other words, if you ask for help about the actions of someone else but have acted wrongly, then you do not have clean hands and you may not receive the help you seek. I am not saying that a 'bad person' cannot obtain the aid of equity, no, equity does not***

demand that its suitors shall have led blameless lives. All I am saying is that if there is a nexus between the applicant's wrongful act and the rights he wishes to enforce, then the defence of unclean hands may apply."

He submitted that the applicants have not been prejudiced in any way in the conduct of their case before this Court and have not suffered any damage or loss on account of the congress. He urged this Court to resolve issue 2 in the 1st Respondent's favour and strike out their application with substantial cost.

On the 18th day of May, 2020, learned counsel to the applicants filed a further affidavit of 9 paragraphs, 1 exhibit and a reply on points of law in support of the applicants' motion on notice before this Court.

From the reply, learned counsel stated that for an Affidavit to be valid, it must have been sworn to before the appropriate authority (in this case, before a Commissioner for Oaths). The said deponent must have signed the said Affidavit in the very presence of the Commissioner for Oaths and thereafter, the said Commissioner of Oaths would sign the Affidavit.

He referred to **Sections 108, 109 and 117 (4) of the Evidence Act 2011** which provides thus:

108. "Before an affidavit is used in the court for any purpose, the original shall be filed in the court, and the original or an office copy shall alone be recognised for any purpose in the court." (emphasis, mine).

109. "Any affidavit sworn before any judge, officer or other person duly authorised to take affidavits in Nigeria may be used in the

court in all cases where affidavits are admissible." (emphasis, mine).

117(4) "An affidavit when sworn <u>shall be signed by the deponent</u> or if he cannot write or is blind, <u>marked by him personally with his mark in the presence of the person before whom it is taken</u>". (emphasis theirs).

Arguing further, he stated that the purported Counter Affidavit of Chief Dan Orbih, was not deposed to, or sworn to before the Commissioner for Oaths. Their submission is predicated on the following grounds:

a. The said purported affidavit of Chief Dan Orbih is not an original signature but it is a photographed and scanned impression. This is so clear on page 6 of the said Purported Counter Affidavit. It is very clear that the signature of the Commissioner for Oaths was signed and the signature on top of the deponent- shows scanned or photographed impression, not an original signature of the deponent.

b. The very fact that the signature on top of the Deponent's column in the Supporting Affidavit is a scanned or photographed impression is clear proof that the said signature was not SIGNED before the Commissioner of Oaths contrary to the mandatory provision of **Sections 108, 109 and 117(4) of the Evidence Act 2011.**

c. Inferentially, the said Affidavit was not signed. Rather, a signature was photographed on top of the column for signing of signature.

He continued stating that flowing from the fact that Chief Dan Orbih did not sign the supporting Affidavit before the Commissioner for Oath, he therefore submits that the supporting Affidavit is incompetent and thus liable to be struck out.

He referred Court to the case of **ALIYU v. BULAKI (2019) LPELR-46513(CA)**, wherein the Court of Appeal, per Wambai J.C.A at pages 16-17, paragraphs D-C, and while referring to the provisions of Section 117(4) **the Evidence Act 2011**, held thus:

> ***"Further to the requirement of swearing to the affidavit by a deponent and the exclusion of any affidavit or deposition shown to have been sworn before any of the four classes of persons mentioned in Section 112, a further requirement to authenticate an affidavit sworn before a person duly authorized to take oaths is provided in Section 117 (4) as follows; "An Affidavit when sworn shall be signed by the deponent or if he cannot write or is blind, marked by him personally with his mark in the presence of the person before whom it is taken." The combined effect of Sections 112 and 117 (4) is that for an affidavit to be admitted in evidence or allowed to be used as evidence, it must not only be sworn before a person so authorized to administer the oath such as the commissioner for oaths or a Notary Public, IT MUST ALSO BE SIGNED IN THE PRESENCE OF SUCH AN OFFICER."(emphasis, theirs).***

He contended that the failure of Chief Dan Orbih to sign the said Affidavit before the Commissioner for Oaths is a fundamental vice which vitiated the Affidavit and he urged Court to so hold.

He also stated that when the supporting affidavit of Chief Dan Orbih is struck out, then all the facts and circumstances in support of the Claimants/Applicants' Motion filed on 17th March 2020 will remain unchallenged, credible, admitted and established.

Contending further, he stated that at pages 7, 8, 9 10 and 11 of the 1st Respondent's Written Address, they contended that this Honourable Court has no jurisdiction to entertain the Claimants/Applicants' Motion on Notice filed on the 17th day of March 2020 on the alleged ground that the Court must determine the issue of jurisdiction before taking any further steps in this proceedings. He continued stating that this Honourable Court has the requisite jurisdiction to entertain and determine the Applicant's motion under consideration, because the said application relates to inherent powers of this Honourable Court in a contempt proceedings to protect the sanctity and majesty of this Court and to protect the subject matter of this case. This contempt proceedings, indeed, rank higher and above any other application that has not been determined by this Court.

He referred Court to the case of **EBHODAGHE VS. OKOYE (2004) LPELR – 987 (SC)**, where the supreme Court held thus:

> ***"While it is a settled law that when an issue of jurisdiction is raised by a party, the court ought generally to take it first, where however due to a combination of factors an act which would impugn on the majesty of a court and likely to bring the court to odium and disrespect is done, it is I dare say, not just desirable but essential for the court to first look into the matter of contempt before proceeding on the issue of jurisdiction.***

For the Court of Appeal to view the situation in this case as purely based on the recognised settled law that once an issue of jurisdiction is raised it must be taken first, shows with greatest respect that it missed the essence of the matter. In other words, at all times it is the duty of the court to guard jealously its powers and should give first consideration to the proceedings in contempt of its court even when the court is faced with the question of its competence to adjudicate on a matter from which the contempt issue arises."

He urged Court to apply the above position of the law as stated by the Supreme Court and accordingly hold that this Court has the jurisdiction to entertain the applicant's motion on notice filed on the 17th day of March 2020.

He also stated that the contention by the 1st Respondent that the contempt proceedings herein was done outside the face of the Court, and thus the Court has to determine the jurisdictional challenge first, holds no water when placed with the decision of the Supreme Court in **Ebhodaghe Vs. Okoye (supra).** He continued stating that it is not the law that the Court must deliver its ruling or judgment once it has been adjourned for Ruling or judgment as contended by the Respondent. It is the law that deserving circumstances, such as in the present case, the Court can defer its Ruling or judgment.

Contending further, learned counsel stated that the 1st Respondent cannot seriously contend that it did not take any step that are prejudicial to the

subject matter in this case. That the 1st Respondent upon being served with the originating process in this case, has no such powers or option of taking any steps that will undermine the subject matter of this case.

He also stated that once parties submit to the adjudicatory powers of the Court, it can no longer resort to self help. He referred to the case of **APC & ors v. Karfi & Ors (2017) LPELR-47024 (SC).** He submitted that the actions of 1st Respondent in recognising the results of the Ward congresses by using same to conduct the Local Government Area and State Congresses in utmost prejudice to the subject matter of this case, is contemptuous and such actions are invariably liable to be set aside. That the 1st Respondent also recklessly flouted and treated with contempt, the directive of this Court issued on the 11th day of March 2020 for the parties to maintain the status quo.

What then is the meaning of status quo he asked? He referred Court to the case of **AKAPO V. HAKEEM-HABEEB & ORS (1992) LPELR-325(SC),** the Supreme Court, Per NNAEMEKA-AGU ,J.S.C (P. 58, paras. E-G) held thus:

> ***"To begin with, the literal meaning of status quo ante bellum is the state of affairs before the beginning of hostilities. So, the status quo that ought to be maintained in this case is the state of affairs that existed before the defendants' forcible take over of the management and control of the family properties which constitutes the wrongful act complained of in***

the application. See Thompson v. Park (1944) 1 K.B. 408."

He submitted stating that the 1st Respondent ought to have maintained the status quo which was the state of affairs before the conduct of the Ward congresses which the Claimants/Applicants are challenging by this Suit. That the Respondents were not obliged to take further steps in conducting the Local government and State Congresses during the pendency of this suit. Also that the Ward, Local Government and State Congresses are cumulative and dependent on one another. It is the Ward Congress result that must be used to conduct the Local Government Congress. And the Local Government Congress must be used to conduct the State Congress. This was well captioned in Paragraph 24 of the Statement of Claim which has been reproduced above.

He urged Court to uphold this application and set aside the contemptuous Local and State Congresses which was conducted to destroy the subject matter of this case.

Further more, learned counsel continued that at pages 14 and 15 of the Written address of the 1st Respondent, which counsel also numbered as Paragraphs 3.3, the 1st Respondent contended that the Applicants' Motion on Notice for Interlocutory Injunction was allegedly incompetent, as, according to counsel, the said Motion ought to have been amended and re-filed to remove the name of the earlier 2nd claimant who withdrew from the case and his name was struck out. Reliance was placed on **Order 13 Rule 25 of the Edo State High Court (Civil Procedure) Rules 2018** which learned counsel stated is not in our laws.

He urged court to discountenance the contention of the 1st Respondent as same is predicated on a non-existent Rules of court.

He also stated that even at that, assuming but not conceding that the provision quoted and described by the 1st Defendant/Respondent as Order 13 Rule 25(1) of the Edo State High Court (Civil Procedure) Rules, 2018 exist under any other provision of the Rules, we most humbly submit that the said rules, directly or remotely has nothing to do with the circumstances of this application. He urged the Court to so hold.

On the 19th day of May 2020, learned Counsel to the to the 1st respondent filed a motion on notice praying this Honourable Court for the following;

1. ***An order striking out the Claimants motion dated the 16th day of March, 2020 and filed on the 17th day of March, 2020 wherein they sought an order of this Honourable Court to set aside the Local Government and State Congresses organized by the 1st Defendant on the 7th and 14th day of March, 2020 respectively for want of jurisdiction on the part of this Honourable court to entertain the said motion.***

   IN THE ALTERNATIVE

2. ***An Order directing the determination and delivery of the Ruling on the 1st Defendant's motion argued on 11th day of March,2020 challenging the jurisdiction of this Honourable Court to entertain this suit before the conduct of any further proceedings including the proceedings for the hearing and determination of the Claimants' motion filed on 17th day of March,2020 in this case.***

The grounds for this application are as follows;

i. That the Claimants commenced this suit vide a writ of summons and statement of claim filed on 5th February, 2020 complaining about the conduct of the Ward Congresses of the 1st Defendant held on the 1st day of February, 2020 in Edo State.

ii. That in reaction to the claim, the 1st Defendant filed a Motion on Notice on 13thFebruary2020 challenging the competence of the suit and the jurisdiction of this Honourable Court to entertain same.

iii. That before this Honourable court heard the 1st Defendant's motion challenging jurisdiction on the 11th day of March, 2020, the Claimants orally moved the court to set aside the Local Government congress conducted by the 1st Defendant/Respondent on the 7thday of March, 2020, on the ground that the said congress was held during the pendency of this suit and the motion for interlocutory injunction, and further urged the court that his oral application to set aside the congress should be heard first before the 1st Defendant' motion challenging jurisdiction of this Honourable Court.

iv. That after listening to the parties this Honourable Court declined the Claimants' application and proceeded with the hearing of the 1st Defendant' motion challenging the jurisdiction of this Honourable Court to entertain it.

v. That the Claimants/Applicants did not appeal against the decision of this Honourable Court refusing their oral application to set aside the Local Government congress held on the 7th day of March, 2020 and the decision to proceed with the hearing of the motion on notice challenging the jurisdiction of this Honourable court to entertain it.

vi. That the Claimants' motion filed on the 17th day of March, 2020 in this suit is tantamount to an invitation to this Honourable court to sit on appeal over his previous decisions:

(a) Refusing to set aside the Local Government congress organized by the 1st Defendant/Applicant on the 7thday of March, 2020.

(b) The decision of this Hon to proceed with the hearing and determination of the 1st Defendant/Applicant motion challenging the jurisdiction of this Honourable Court to entertain the suit at that stage of the proceedings.

vii. That issues were duly joined on the said Motion on Notice of the 1stDefendant, which was duly taken and heard by this Honourable Court on the 11th day of March2020 and ruling reserved to be delivered on 31st day of March2020.

viii. That while the ruling was still being awaited, the Claimants filed a Motion on Notice on 17th March, 2020 complaining about an alleged contempt ex-facie curie by the 1st Defendant and praying for the setting aside of certain steps allegedly taken by the 1st Defendant during the pendency of this suit including the conduct of its Local Government and State Congresses of 7th and 14th March, 2020 respectively.

ix. That the said application of the Claimants is designed and targeted at arresting the delivery of the ruling of this Honourable Court on the fundamental issue of challenge to its jurisdiction which has already been argued and to mislead the Court into assuming jurisdiction to conduct further proceedings without resolving the issue of jurisdiction already taken and heard by the Court.

x. That the issue of contempt ex-facie curie is not among the issues of law which can be taken and determined by the Court without first resolving the issue of challenge to its jurisdiction and the 1st Defendant is constitutionally guaranteed the right to know the outcome of its challenge to the jurisdiction of this Honourable Court before any further proceedings in this case.

xi. That unless the ruling on the issue of challenge to the jurisdiction of this Honourable Court is delivered before the conduct of any further proceedings in this matter, the 1st Defendants right to fair hearing may be prejudiced as the Court will invariably be assuming jurisdiction over the 1st Defendant who has disputed its jurisdiction and without first resolving that issue, contrary to the established position of the law.

The motion is supported by an affidavit of 10 paragraphs and a written address. From the address, learned counsel formulated 2 issues for determination which are;

1. ***Whether this Honourable has the jurisdiction to entertain the Claimants/Applicants' motion dated the 16th day of March, 2020 and filed on the 17th day of March, 2020***.

ALTANATIVELY

2. ***Whether upon a proper consideration of the relevant and applicable principles of the law, the 1st Defendant/Applicant can be entitled to the grant of the relief sought in this application, in all the circumstances of this case?***

Arguing issue one, learned counsel stated that during the proceedings in this suit on the 11th day of March, 2020, the Claimants orally applied to this Honourable Court to set aside the Local Government congress organized and conducted by the 1st Respondent on the 7thday of March, 2020, on the ground that the said congresses were held during the pendency of this suit and motion on notice for interlocutory injunction. That the Applicants further contended that on the said date, that this Honourable Court should hear and determine their application to set aside the said congress before entertaining the 1st respondent's motion challenging the jurisdiction of this Honourable Court to entertain this suit. After hearing argument on the application, this Honourable Court refused it, when it held that it will proceed to hear and determine the 1st Respondent's motion challenging the jurisdiction of this Honourable Court to entertain same. That the applicants did not appeal against the decision of this Court but instead filed an application on 17th of March 2020 to once more seek to set aside the Local Government and State congresses conducted by the 1st Respondent before the delivery of the ruling on the motion challenging the jurisdiction of this Honourable Court to entertain this suit.

Arguing further, he stated that the Applicant's application dated the 16thbut filed on the 17th of March, 2020 is deliberately calculated and designed to re-litigate the relief that the 1st Defendant's Local Government Congresses conducted on the 7th of March, 2020 be set aside on the alleged ground that the said congresses were conducted during the pendency of this suit and the Motion on Notice for interlocutory injunction.

He continued stating that the Applicant's motion filed on the 17th of March 2020 is a challenge to the decision of this Honourable Court to hear and determine the 1st Respondent's motion challenging the jurisdiction of this Honourable Court. This Honourable Court decided to hear and determine the Application challenging its jurisdiction to entertain this suit on the 11th of March 2020 despite the stiff opposition by the Claimants, counsel. On

the said date this Honourable Court also declined the Claimants' Application to set aside the 1st Defendant's Local Government congresses conducted on the 7th of March 2020. This Honourable Court is now *functus officio* as far as these two already settled issues are concerned.

He contended that a court is said to be *functus officio* in respect of a matter if the court has fulfilled or accomplished its function in respect of that matter and it lacks potency to review, reopen or revisit the matter. Once a court delivers its judgment or ruling on a matter it cannot revisit or review the said judgment or ruling except under certain conditions. More importantly, a court lacks jurisdiction to determine an issue where it is *functus officio* in respect of the issue or where the proceedings relating to the issue is an abuse of court process. He referred Court to the case of **DINGYADI VS. INEC (2011) 18 NWLR (PT. 1224) 154** as follows:

> ***"The principle of functus officio connotes that a court having given its decision in a matter before it ceases to have the power to re-open the same matter all over again in the same proceedings. Where a court has duly performed its duty by handing down its decision or ruling, it has exhausted all its powers with regard to that matter. And so, the court becomes functus officio and incapable of giving any decision or making any competent orders with regard to the same matter it has previously decided for want of the jurisdiction to do so. Any defect in regard to the court's jurisdiction to deal with the matter will render the proceedings nullity, the court having become functus officio."***

He also stated that this Honourable court having given its ruling on the 11th day of March, 2020 in respect of this same matter as it appears on the motion of the Claimants/Applicants dated the 16th day of March, 2020 and filed on the 17th day of March, 2020, this Honourable Court no longer has the jurisdiction to entertain the Claimants' offensive motion. Any attempt to do so will be tantamount to this Honourable court sitting on appeal over

the issues that were orally raised by the Claimants' counsel on the 11th day of March, 2020 but refused by the Court.

He submitted that the only remedy available to the aggrieved Applicants who were dissatisfied with the refusal of this Honourable Court to set aside the 1st Respondent's Local Government Congresses held on the 7th of March, 2020 was to appeal to the Court of Appeal. He relied on the case of **AMAH &ORS. V. NWANKWO [2007] 12 NWLR (PT. 1049) 558 C.A** where the Court held thus;

> ***"Once a court of competent jurisdiction or the Court of Appeal gives a judgment, ruling or order it becomes functus officio. Consequently, a panel of the Court of Appeal under whatever guise cannot alter the order, ruling or judgment of another panel except to correct clerical mistakes or some error arising from any accidental slip or omission. The only remedy available to an aggrieved party is to appeal to a higher court or the Supreme Court respectively. In the instant case, the Court of appeal granted leave to the appellants to amend their grounds of appeal. Consequently, the Court of Appeal was functus officio in respect of the competency of the grounds of appeal."***

He urged Court to dismiss the Applicant's motion of 17th March 2020 for want of jurisdiction to entertain it because this Honourable has become *functus officio* in respect of the issues arising for determination.

Arguing issue two, the learned (SAN) stated that jurisdiction is the life wire of adjudication and where the jurisdiction of the court to entertain any suit or application is challenged, it must be resolved first and the court is not entitled to conduct any other proceedings or make any orders other than

to resolve the issue of jurisdiction. He referred Court to the following cases;

i. **AJAYI Vs. ADEBIYI (2012) 11 NWLR (Pt.1310) 137 at 202 paragraphs E – F** where the apex court per Peter Odili JSC stated the law thus:

> ***"As to the time when an issue of jurisdiction can be raised at any time and at any stage of the proceedings even at this level on appeal. This point has to be reiterated that once it is raised, everything else has to stop to give the prime position of hearing on the jurisdictional issue".***

ii. **MV ARABELLA Vs. N.A.I.C (2008) 11 NWLR (Pt.1097) 182 at page 209 paragraph H and 212 paragraph A – C** where the apex court per Ogbuagu JSC held that:

> "...***the issue of jurisdiction which can be raised at any stage by either the parties, or the court, is decided when the point is taken. See the case of Adani v. Igwe (1957) 1 FSC 87 at 88, (1957) SCNLR 396. This is also why, it is settled that whenever an issue of jurisdiction is raised, a court should deal with it first or promptly or expeditiously, as it has jurisdiction, to decide whether or not it has jurisdiction. See Nalsa and Team Associates v. NNPC (1996) 3 NWLR (Pt.439) 621 at 637."***

iii. **NWANKWO vs. Y'ADUA (2010) 12 NWLR (Pt. 1209) 512 at 562**where the Supreme Court made it clear and held that:

> ***"...where issue of a court's jurisdiction is raised in any proceedings and at any stage, it must be taken first, immediately, promptly, or expeditiously."***

iv. **SUN INSURANCE NIGERIA Vs. UMEZ ENGINEERING CONSTRUCTION COMPANY LTD, Appeal NO. SC. 316/2010** dated 5th June, 2015 where the apex court (Per MAHMUD MOHAMMED, CJN) held that:-

> ***"The Law is also well settled that the question of jurisdiction is so fundamental that the adjudicating court should determine the issue first before embarking on any proceedings for hearing on the merit". (underlining supplied)***

v. **SOLUDO VS OSHIGBO (2009) 18 NWLR (Pt. 1173) 290 at 295 – 296 C – D**where the Supreme Court held that:-

> ***"A Court without jurisdiction cannot make valid orders……"***

vi. **ASOGWA vs. CHUKWU (2003) 4 NWLR (Pt. 811) 540 at 578 – 579 D and D – F**where the Court of Appeal (per Pats – Acholonu JCA as he then was) held that:-

> ***"No amount of urgency should compel a Court in the context of Nigerian jurisprudence to make an Order when it has no competence or its power to adjudicate on the matter is called into question and it is yet to be argued and resolved…… the Court can only make a valid order after it has assumed jurisdiction"***

vii. **NDIC vs. C.B.N (2002) 7 NWLR (Pt. 766) Pg. 272 at 292 Para H**, where the Supreme Court (per Uwaifo JSC) held that:-

> ***"the Court must not give an Order in the suit affecting the Defendants until the issue of jurisdiction is settled when it has been raised".***

Arguing further, he stated that the records of this Honourable Court will show that the 1st Respondent filed a Motion on Notice on the 13th February,

2020 challenging the competence of this suit and the jurisdiction of this Honourable Court to entertain same. That application was duly taken and heard on the 11th day of March 2020 and ruling was reserved to be delivered on the 31st of March 2020. While the ruling was still pending to be delivered, the Applicants filed a motion on notice complaining about prejudicial steps allegedly taken by the 1st Respondent during the pendency of the suit and praying for the setting aside of "purported" Congresses of the 1st Defendant. He continued stating that this Honourable Court has no competence or jurisdiction to entertain the Applicant's application without first resolving the issue of challenge to its jurisdiction raised by the 1st Respondent which has already been heard and adjourned for ruling.

He contended that in so far as the 1st Respondent's application challenging jurisdiction has been duly taken and heard and ruling reserved, the Applicants' application under review is nothing short of a veiled attempt to arrest the delivery of the said ruling, which is not permissible under the law. He referred to the case of **OJONYE VS. ONU & ORS., (2018) LPELR-44212(CA) PAGES 28 TO 34 PARAGRAPHS E – A** where the Court of Appeal per SANKEY,J.C.A held as follows:

> ***"It is evident that although the motion purports to set aside the order for Judgment by the lower Court, to all intents and purposes it was aimed at "arresting" the Judgment slated for delivery on the said date. The law is since settled that any application aimed at effectively stalling and/or arresting the delivery of the Judgment of a Court after a matter has been duly heard is unknown and/or alien to our laws. There is no provision for the arrest of a Judgment in our Rules of Court as firmly stated by the apex Court in Newswatch Communications Ltd V Attah (2006) 12 NWLR (Pt. 993) 144 at 179, paras F-G. In effect, such an application is at all times incompetent."***

Contending further, he stated that by filing and arguing the application challenging the competence of this suit and the jurisdiction of this Court to entertain same, the 1st Respondent has not submitted to the jurisdiction of this court and is therefore entitled as of right to know the outcome of that application before any further proceedings can be conducted. That as a corollary to the said right of the 1st Respondent, this Honourable Court is duty bound to determine or pronounce a decision, one way or another, on the motion challenging jurisdiction to enable the 1st Respondent know its fate before any further proceedings are conducted. He referred Court to the case of **UZUDA Vs. EBIGAH LPELR(2009) SC 348/2002 at page 22** where the Supreme court per MOHAMMED, JSC (as he then was) held that:

> "…***where a Court fails to give full consideration and determination of the case of a party, it is a situation touching on the violation of the party's right to fair hearing. It is trite that where there is a breach of a party's constitutional right to fair hearing, then the proceedings are vitiated thereby requiring the intervention of an appellate Court on a complaint of the affected party. See Amadi v. Thomas Aphin& Co. Ltd. (1972) 1 All NLR (Pt. 1) 409, Adigun v. Attoney-General Oyo State (1987) 1 NWLR (Pt. 53) 678 and Nwokoro v. Osuma (1990) 3 NWLR (Pt. 136) 22 at 32 - 33"***

He urged this Honourable Court to hold and come to the conclusion that the Applicant's application cannot be taken or heard in priority over the pending challenge to the jurisdiction of this Honourable Court and this Court lacks the competence and jurisdiction to entertain the application without first resolving the issue of challenge to its jurisdiction.

On the 20th day of May, 2020, learned counsel to the applicants filed a counter affidavit of 11 paragraphs and a written address wherein he formulated 3 issues for determination which are;

a. "Whether the 1st defendant/respondent's failure to meet the condition precedent before filing this application does not render incompetent(sic)."
b. "Whether the 1st defendant/applicant's motion on notice dated the 14th day of May, 2020 is not an abuse of Court Process."
c. "Assuming but not conceding that the Supporting affidavit of Chief Dan Orbih is valid, whether paragraphs 7 (i)-(xiv) of the said affidavit does not contain legal arguments, objections, prayers, conclusions and opinions and thus liable to be struck out in obedience to Section 115(1) and (2) of the Evidence Act, 2011."

Arguing issue one, learned counsel stated that this suit was adjourned for hearing of the applicant's application but the 1st respondent filed their application on the 14th day of May 2020 in a bid to truncate the hearing of the applicants' application without first complying with the provisions of Order 30 Rule 8 of the Edo State High Court (Civil Procedure) Rules, 2018 which provides thus;

> ***"when a cause is called up for hearing, further hearing, defence or continuation of defence and either party files a motion or an application which by this rules is not ripe for hearing, the party filing the motion or application shall at the same time of filing pay to the court a file(sic) of N20,000 only."***

He referred Court to the case of **ABIA STATE TRANSPORT CORPORATION & ORS .V. QUORUN CONSORTIUM LTD (2009) VOL. 172 LRCN PG 134 AT 137 RATIO 2** where the Court held thus;

> ***"The settled law is that rules of court of each court are not made for fun, BUT TO BE OBEYED. ONCE SUCH RULES ARE IN PLACE***

THEY MUST BE ADHERED TO AND NOT CONTRAVENED OR IGNORED."

He submitted that the conditions precedent to the filing of the said 1st respondent's motion dated the 14th day of May, 2020 has not been fulfilled. He referred Court to the case of **INAKOJU & ORS .V. ADELEKE & ORS (2007) VOL. 143 LRCN AT PG 82, PARA F – K** where the Supreme Court held thus;

> ***"it is good law that where the constitution or a statute provides for a pre – condition to the attainment of a particular situation, the pre – condition must be fulfilled or satisfied before the particular situation will be said to have been attained or reached."***

He urged Court to hold that failure of the 1st respondent to pay the said penalty makes the motion defective and ought to be struck out.

On issue 2, learned counsel stated that the 1st respondent's application dated the 14th day of May, 2020 is a clear abuse of the process of this Court and liable to be dismissed. He referred Court to Order 40 Rules 2(2) of the Edo State High Court Civil Procedure Rules, 2018 which provides thus;

> ***"where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, may file a counter affidavit and shall accompany it with his written address."***

He also stated that by the rules of this Court, the 1st Respondent can only respond to the applicants' motion by filing a counter affidavit and written address which they did but still went ahead to file the said motion which is basically an opposition to the motion filed by the applicants. He referred Court to the case of **DOWELL SCHLUMBERGER (NIG.) .V. ANIEKAN & ANOR (2018) LPELR – 44DII (CA)** where the Court held thus;

"...THE LAW GENERALLY IS THAT A PARTY CANNOT BE ALLOWED TO RAISE A PRELIMINARY OBJECTION IN THIS COURT TO THE HEARING OF A MOTION, AS THERE IS NO PROVISION IN OUR RULES FOR THAT...A PARTY IS EXPECTED TO FILE A COUNTER AFFIDAVIT, TO OPPOSE A GIVEN MOTION OR OPPOSE SAME ON POINT OF LAWS WHEN ARGUED...SEEKING TO TERMINATE A NOTICE OF MOTION BY WAY OF A PRELIMINARY OBJECTION IS UNKNOWN TO OUR RULES OF COURT...AND I THINK, IT SHOULD BE SO, AS IT SIMPLY DOES NOT SOUND REASONABLE OR PROPER FOR A PARTY, AS IN THIS CASE, TO JUST RISE UP TO FRUSTRATE THE HEARING OF A MOTION HE THINKS IS INCOMPETENT, RELYING ON GROUNDS THAT CAN ONLY BE CONSIDERED AT THE HEARING OF THE MAIN MOTION! The Objector is such a situation, should rather be patient; allow the motion to be heard, while opposing the same, using the same particulars he would want to use to frustrate the hearing of the motion... THIS PRELIMINARY OBJECTION, THEREFORE SUFFERS THE SAME LEGITIMACY PROBLEMS AND IS CONDEMNED TO THE SAME DISABILITY OF INCOMPETENCE."

He contended that it is trite that once the court comes to a conclusion that a process is an abuse of court process, then, the Court had a duty and power to dismiss same. He referred Court to the case of **AFRICAN REINSURANCE CORP. V. JDP CONSTRUCTION (NIG) LTD (2003) LPELR – 215 (SC)** where the Court held thus;

> ***"where the Court comes to the conclusion that its process is abused, the proper order is that of dismissal of the process…"***

He submitted that this Court has the powers and indeed the duty to dismiss the motion on notice and urged Court to do so accordingly.

On issue 3, learned counsel argued that affidavits must contain only facts without more. He relied on Section 115(1) of the Evidence Act, 2011 which provides thus;

> ***"Every affidavit used in the court shall contain only a statement of fact and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true."***

He also referred Court to Section 115 (1) of the Evidence Act, 2011 which provides thus;

> ***"An affidavit shall not contain extraneous matter by way of objection, prayer or legal argument or conclusion."***

Arguing further, he stated that paragraphs 7(i)-(iii) of the affidavit of Chief Dan Orbih only points to the fact that the entire paragraph is incurably offensive to Section 115 of the Evidence Act (Supra) and thus, liable to be struck out. He urged Court to act accordingly and strike out the said paragraph 7.

Learned counsel in the said written address formulated an additional issue for determination which is;

> "**whether the motion on notice by the 1st defendant/applicant dated and filed on the 14th day of May 2020 is totally lacking in merits and liable to be dismissed."**

Arguing the issue, learned counsel stated that the application of the 1st respondent lacks merit and is liable to be dismissed by this Honourable Court because this Honourable Court has the requisite jurisdiction to hear and determine the applicants' application, the court is bound to determine the motion to set aside any step or action with a view of prejudicing the subject matter of the case and the court has the inherent jurisdiction to defer its ruling.

He submitted that the court having exercised its discretion to defer its ruling by adjourning same, the 1st respondent's motion filed for hearing amounts to an abuse of court process and he urged this court to dismiss the application of the 1st respondent.

I have just succinctly summarised all the processes before this Court and I would like to commend the industry of learned counsel on both sides of the divide for the industry that was put into all the processes. Their brilliant effort made my job easier.

Now, I would begin with the motion of the 1st respondent filed on the 19th day of May, 2020. If I may reiterate, the motion is praying this Honourable Court for the following,

1. ***An order striking out the Claimants motion dated the 16th day of March, 2020 and filed on the 17th day of March, 2020 wherein they sought an order of this Honourable Court to set aside the Local Government and State Congresses organized by the 1st Defendant on the 7th and 14th day of March, 2020 respectively for want of jurisdiction on the part of this Honourable court to entertain the said motion.***

   IN THE ALTERNATIVE

2. ***An Order directing the determination and delivery of the Ruling on the 1st Defendant's motion argued on 11th day of March,2020 challenging the jurisdiction of this Honourable Court to entertain this suit before the conduct of any***

further proceedings including the proceedings for the hearing and determination of the Claimants' motion filed on 17th day of March,2020 in this case.

By the very nature of this motion, it is glaring that it is in opposition of the Applicants' motion filed on the 17th day of March, 2020. It is an answer to the said motion.

Order 40 Rule 2(2) of the Edo State High Court Civil Procedure Rules, 2018 provides thus;

> ***"where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his written address and may accompany it with a counter affidavit."***

Surprisingly, learned counsel to the 1st respondent filed a counter affidavit as well as a written address in opposition to the applicants' motion which made me wonder why he filed a motion to oppose the applicants' motion. Was he trying to err on the side of surplusage? Unfortunately, this Court has no answer to that. The other question that weighed heavily on my mind is can the 1st respondent file a preliminary objection against the applicants' motion? Learned Counsel to the applicants refereed court to a case which I found very useful and which I hereunder reproduce for clarity and better understanding **DOWELL SCHLUMBERGER (NIG.) .V. ANIEKAN & ANOR (2018) LPELR – 44DII (CA)** where the Court held thus;

> ***"...the law generally is that a party cannot be allowed to raise a preliminary objection in this court to the hearing of a motion, as there is no provision in our rules for that...a party is expected to file a counter affidavit, to oppose a given motion or oppose same on point of laws when argued...seeking to terminate a notice of motion by way of a preliminary***

objection is unknown to our rules of court…and I think, it should be so, as it simply does not sound reasonable or proper for a party, as in this case, to just rise up to frustrate the hearing of a motion he thinks is incompetent, relying on grounds that can only be considered at the hearing of the main motion! The Objector is such a situation, should rather be patient; allow the motion to be heard, while opposing the same, using the same particulars he would want to use to frustrate the hearing of the motion… this preliminary objection, therefore suffers the same legitimacy problems and is condemned to the same disability of incompetence."

In the case of **ONYEGIRIGWAM & ORS .V. UZOKWE & ORS (2019) LPELR – 46608 (CA) PP 8 – 14 PARAS C – C** the Court held thus;

"…suffice it to say that the propriety of filing a P. O. to a motion filed by an applicant either pursuant to the rules of the court and/or under its inherent jurisdiction, was given extensive consideration by this Court in its decision (unreported) delivered on 28/5/2018 in APPEAL NO: CA/OW/116/2013 – NIGERIA BOTTLING COMPANY LIMITED .V. VACU – NAK BEVERAGES (NIGERIA) LIMITED…it was stated amongst others to the effect that the filing of a notice of p.o to a motion has no foundation in the rules of this court and that doing so under the inherent jurisdiction of this court equally cannot validate such a notice against the backdrop of the concept of 'inherent jurisdiction of this

court'...in any event the court discountenanced the p.o filed in the NBC Case (supra), specifically relying on the case of EGWU .V. MAINSTREET BANK LTD (2017) LPELR – 43395 (CA) wherein Onyemenam JCA stated thus :- Order 10 of the Court of Appeal Rules provides for preliminary objection in an appeal...there is no place for preliminary objection in notice of motions in the Court of Appeal Rules....accordingly, a preliminary objection is to be filed only when there is a fundamental defect in the appellant's process in an appeal as its purpose is to terminate an appeal principally on ground of incompetence...seeking to terminate a notice of motion by way of preliminary objection is unknown to our rules of court...it is therefore my view that the preliminary objection raised by the respondent in challenge of the applicant's notice of motion is not proper in law and as such incompetent. The same is hereby discountenanced..."

In the same vein, filing a preliminary objection or motion on notice in response to applicant's motion on notice is unknown to our rules of court. The combine reading of the authorities cited above and Order 40 also cited above goes to show that once an application is filed, what is expected of the opposing party is to file a written address and a counter affidavit in opposition and not a motion.

In the case of **MAKO .V. UMOH (2010) LPELR – 4463 (CA) P. 30 PARAS A – F,** the Court held thus,

"It is now firmly settled that rules of Court are not mere rules, but they partake of the nature of subsidiary legislations by virtue of Section 18(1) of the Interpretation Act and

therefore have the force of law…that is why rules of court must be obeyed…this is because it is also settled that when there is non-compliance with the rules of court, the court should not remain passive or helpless. There must be sanction; otherwise, the purpose of enacting the rules will be defeated…in other words, rules of court are not only meant to be obeyed, they are also binding on all the parties before the court."

Without wasting further time, the said motion filed on the 19th day of May, 2020 by learned counsel to the 1st respondent is hereby struck out. It follows therefore that the counter affidavit filed by the learned counsel to the applicants is also struck out.

I now come to the motion filed on the 17th day of May, 2020 praying this Honourable Court for the following;

1. An Order of this Honourable Court setting aside the purported local government and state congresses organized and conducted by the defendants/respondents on the 7th and 14th of March, 2020 respectively.
2. And for such further order or orders(s) as this Honourable Court may deem fit to make in the circumstances of this case.

Of all the arguments of learned counsel to the 1st defendant, what caught this Court's attention is the issue of amendment. According to him, the applicants, counsel ought to have amended his processes to reflect the present parties before court. On the other hand, learned counsel to the applicants stated that an amendment would have been necessary only when there is a restructuring of the parties and not when a party is struck out. Unfortunately, I beg to differ. This suit was instituted with three claimants and along the line, one of the claimants withdrew leaving the other two who are the current applicants in this application. This motion filed by the applicants has two applicants, to wit:-

1. **ERUAGA GALLANT C.**
2. **JIDE OBALOWOSHE ESQ**

On the face of the originating process before this court which is the writ of summons, the claimants are;

1. **ERUANGA GALLANT C.**
2. **VICTOR IDIAKHEOA ESQ.,**
3. **JIDE OBALOWOSHE ESQ.,**

An originating process means any court process by which a suit is initiated. See Order 1 Rule 2 (3) of the Edo State High Court Civil Procedure Rules, 2018. Like I stated earlier, during the course of proceedings, the said **VICTOR IDIAKHEOA ESQ.** withdrew from this suit. The question that weighed heavily on my mind is this, does **VICTOR IDIAKHEOA ESQ.** withdrawal mean that the subsequent processes filed in this court would reflect the new parties without leave of court to amend? The answer is definitely in the negative. The fact that the originating processes still has the old parties is quite fatal to this extant application. Also, the fact that the applicants' counsel suo motu amended without leave of court is also fatal to this extant application.

Pleadings properly filed are only amended when leave to do so is duly applied for and expressly granted by the court. It is not a matter for free for all or a process by which a party with fine tricks on his side would overreach the other. See **ALFRED YAHAYA .V. FELIX CHUKWURA (2001) LPELR – 6966 (CA) P. 19 PARAS A – B.**

In the case of **AYEBAKURO .V. TARIAH & ORS (2014) LPELR – 22675 (CA) P. 5 PARAS C – G,** the Court held thus;

> ***"...a party cannot unilaterally amend the process before the court without leave of court. As stated by Ogundare, JSC in ENIGBOKAN .V. AMERICAN INT'L INSURANCE CO (NIG) LTD (1994) 6 NWLR (PT 348) 1, an amendment speaks from the original date the process was filed. And because the law on the principle of audi alteram partem, emphasizes***

that parties must always know forehand the case they are to meet, there must be certainty of every process before the court. No party, for purpose of certainty, is therefore allowed to unilaterally amend his process without leave of court. In granting amendment upon application, the court must satisfy itself why the indulgence should be granted…"

There will be no need to waste the further judicial time of this Honourable Court. No party has the right to amend court processes without first seeking and obtaining the leave of court. A Judge must at all times be in control of the proceedings of his court. It will be abdicating in his responsibility to allow counsel on one side to take over the court, bestride the court like a colossus and dictate the pace. See **ALHAJI AYINDE AWURE & ANOR .V. ALHAJI ADISA ILEDU (YUSUF ADASA) (2007) LPELR – 3719 (CA) P. 67 PARAS F –G.**

To my mind, the unilateral amendment done by learned counsel to the applicants is tantamount to taking over this court which I vehemently frown at and would not condone. The consequence of the applicants' counsel conduct is that this extant application is not properly before this court.

The only reason which made this court proceed to hear this application and deliver this ruling is because it has long been settled in a line of judicial authorities that all pending motions no matter how frivolous they may appear must be heard and a ruling delivered no matter how short. **SEE PRINCE EMEKA .V. LADY OKADIGBO (2012) LPELR – 9338 (SC).**

However, before I finally draw the curtains on this application, I would like to implore members of political parties to try to resolve their differences amicably without the necessity of involving the court at all times.

Conclusively, this application is hereby struck out for the reasons adduced above.

_____

HON. JUSTICE J. O. OKEAYA – INNEH
JUDGE
28th May, 2020

COUNSEL:
Dele Uche Igbinedion with I. O Ukpai for the Applicants.

Chief F. O. Orbih SAN, FCIArb with A. S. Adesheila for the 1st respondent.

No counsel in court for the 2nd respondent.