

IN THE HIGH COURT OF JUSTICE  
OF EDO STATE OF NIGERIA  
IN THE UBIAJA JUDICIAL DIVISION  
HOLDEN AT UROMI  
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIRO,  
JUDGE, ON THURSDAY THE  
12<sup>TH</sup> DAY OF NOVEMBER, 2020.

BETWEEN:

SUIT NO: HUB/MISC/IF/2020

HON. VICTOR E. OSERUYI.....APPLICANT/RESPONDENT

AND

1. HON. PETER AGUELE  
2. MR. MACPHERSON ORIASOTIE  
3. MR. DONALD EBHOZE

}.....RESPONDENTS/APPLICANTS

RULING

This is a ruling on a notice of preliminary objection filed by the Respondents/Applicants on the 1<sup>st</sup> of July, 2020, urging this Honourable Court to strike out the Applicant's motion for the enforcement of his fundamental human rights on the ground that this Honourable Court lacks jurisdiction to entertain same.

In the main application for the enforcement of his fundamental human rights, the Applicant is seeking the following reliefs:

- (a) A declaration that the assault, physical molestation, dehumanization, abduction and curtailment of the applicant's liberty by the respondents on the 14<sup>th</sup> day of May 2020 at Ewohimi, are unlawful, unconstitutional and a gross violation of the applicant's constitutional rights guaranteed under ***sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended.***
- (b) A declaration that the confinement and restriction of applicant's movement by the respondents on the 14<sup>th</sup> of May 2020 in the 1<sup>st</sup> respondent's residence at Okaigben Ewohimi and Esan South East Local Government Secretariat, Ubiaja are inhuman, degrading, humiliating, oppressive and a flagrant breach of ***Section 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended.***
- (c) An order of injunction restraining the respondents, their agents and privies from further assaulting, molesting, detaining and dehumanizing the applicant in any manner whatsoever.
- (d) The sum of ₦500, 000,000.00 (Five Hundred Million Naira) being general and exemplary damages for acts of assault, molestation, dehumanization and false imprisonment of the applicant by the respondents without any justifiable cause.

The events which culminated in the filing of the originating application are that the Applicant, a Councillor, was allegedly assaulted, molested, abducted, confined and deprived of his personal liberty by the Respondents on the 14<sup>th</sup> of May, 2020.

The matter was reported to the Police at the Divisional Police Headquarters Ewohimi and Police Area Command, Uromi before this application was filed.

Upon receipt of the motion, the Respondents filed a counter-affidavit to the motion and subsequently filed a Notice of Preliminary Objection to the application.

In the preliminary objection, the Respondents are praying the Court for the following orders:

1. *An order of this Honourable Court striking out this Suit for want of Jurisdiction; and*
2. *For such order(s) as this Honourable Court may deem fit to make in the circumstances of this case.*

*The grounds upon which this Application is made are:*

1. *The substratum of the Applicants/Respondents case bother on Labour, Employment and matters arising from workplace which jurisdiction is exclusively vested in the National Industrial Court by virtue of Section 254 C of the Constitution of Federal Republic of Nigeria 1999 (as amended);*
2. *The jurisdiction to entertain this matter is vested in the National Industrial Court exclusively and other Courts, including this Honourable Court is excluded; and*
3. *The Honourable Court lacks Jurisdiction to entertain this matter dated this 20th day of June, 2020.*

The objection is supported by an affidavit of eight paragraphs and the written address of counsel.

In his written address in support of the preliminary objection, the learned counsel for the Respondents *Bamidele Uche Igbinedion Esq.* formulated a sole issue for determination to wit: *whether this Honourable Court should strike out this suit for want of jurisdiction.*

Arguing the sole issue for determination, the learned counsel for the Applicant submitted that there is no competent application before this Honourable Court as this Court lacks the jurisdiction to entertain this suit and adjudicate over the matter by virtue of Section 254 C (1) of constitution of Federal Republic of Nigeria 1999 (as amended) which states as follows:

*“Notwithstanding the provisions of section 251, 257, 272, and anything contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters-*

*(a) relating to or connected with any labour, employment trade union, industrial relations and matters arising from work place, the conditions of service including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith:*

*(b).....*

*(c).....*

*(d) relating to or connected with any dispute over the interpretation and application of the provision of Chapter IV of this Constitution as it relates to any employment, Labour, Industrial relations, trade unionism, employer’s association or any other matter which the Court has jurisdiction to hear and determine.*

*(e).....*

*(k) relating to or connected with dispute arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee,*

***worker, political or public office, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto.”***

Counsel submitted that a combined reading of the above provisions of the Constitution of Federal Republic of Nigeria 1999 (as amended) will reveal that the jurisdiction to entertain the case of the applicant which borders on complaint over the alleged breach of their Fundamental Rights against the Chairman Chief Executive Officer of Esan South East Local Government who is the 1st Respondent, his Personal Assistant who is the 2nd Respondent and a Supervisory Councilor in Esan South Local Government Council who is the third Respondent has been vested in the National Industrial Court to the exclusion of all other Courts including this Honourable Court.

He submitted that the importance of jurisdiction before a Court of Law can proceed to entertain a case can never be over emphasized and he referred the Court to the case of ***Incorporated Trustees of Algon Vs Riok (Nig.) Limited & Others (2018) LPELR-49233 (CA)*** where the Court stated *inter alia* thus:

***“It is no longer debatable that Courts are creatures of the Constitution and the Statutes and the Constitution and Statutes define their areas of Jurisdiction. A Court or tribunal must possess the necessary vires to try or embark on adjudication of any cause or matter.”***

He also relied on the case of ***Hitech Construction Co. Limited V. Ude and others (2016) LPELR 400666 (CA)*** where the Court held *inter alia* as follows:

***“...Jurisdiction is the life wire to any adjudication as held in the case of NATIONAL UNION OF ROAD TRANSPORT WORKERS & 5 ANOR V ROAD TRANSPORT EMPLOYERS ASSOCIATION OF NIGERIA (2012) LPELR- 7840 (SC) where the apex Court reiterated the importance of jurisdiction in the following words: “it is the wire of a case which should be determined at the earliest opportunity. If a court has no jurisdiction to determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided, this is so since a defect in the competence is not only intrinsic to the entire process of adjudication.”***

Furthermore, learned counsel referred the Court to the following decisions on the same point: ***MADULOLU VS NKEMDILIM (1962) 2 SCNLR 341; A.G FEDERATION VS GUARDIAN NEWSPAPERS LTD. (1999) 9 NWLR (PT. 618) 187; and HON. JUDGE, UPPER SHARIA COURT, TUDUN WADA, KADUNA & ORS VS UMAR & ORS (2013) LPELR-22608 (CA).***

He therefore urged the Court to hold that the application for the enforcement of fundamental human rights is incompetent and should be struck out.

Subsequently, the Respondents filed a six paragraphs further and better affidavit in support of the Notice of Preliminary Objection together with a Reply on points of law in further support of the Notice of Preliminary Objection.

In the said reply the learned counsel pointed out that the Applicant contended that the High Court has the exclusive jurisdiction to entertain issues or disputes relating to breaches of fundamental human rights and relied on the provisions of ***Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Order 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009.***

On point of law, he submitted that the above contention of the Applicant is misconceived and does not represent the position of the law. While conceding that ***Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Order 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009*** vested jurisdiction to entertain allegation of breaches of fundamental right on the High Court in that State, he submitted that ***Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as***

*amended*) is subject to other provisions of the Constitution including *Section 254C (1) (d)& (f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)*.

He posited that the *Constitution of the Federal Republic of Nigeria 1999*, was amended in 2010 by the 3<sup>rd</sup> Alteration Act 2010 with a view, among others, to subject *Section 46(1) of he of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to the new Section – Section 245C (1) (d) & (f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)*.

He posited that for clarity of purpose and to avoid any form of ambiguity and to eliminate any supremacy contest between the different sections of the Constitution, *Section 254C (1)* therein was couched as follows:

***“Notwithstanding the provisions of sections 251, 257, and 272 and ANYTHING CONTAINED IN THIS CONSTITUTION and in addition to such other jurisdiction as may be conferred upon it by an act of the National Assembly, THE NATIONAL INDUSTRIAL COURT SHALL HAVE AND EXERCISE JURISDICTION TO THE EXCLUSION OF ANY OTHER COURT IN CIVIL CAUSES AND MATTERS-“ (emphasis, his).***

Learned counsel submitted that from the very nature and tenor of the express provisions of Section 254(1) of the Constitution, ***notwithstanding anything contained in any part of the Constitution***, (including Section 46(1) therein), the National Industrial Court has the jurisdiction ***TO THE EXCLUSION OF ANY OTHER COURT***, to entertain any matter listed in *Section 254C (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)*. According to him, Section 46(1) of the Constitution is subject to the Section 254C (1) of the Constitution and he urged this Court to so hold.

Furthermore, he submitted that while Section 46(1) of the 1999 Constitution is a general provision, Section 254C (1) of the 1999 Constitution is a specific provision. He therefore submitted that it is trite that where there is a general provision and a specific provision, the specific provision prevails over the general provision and it is deemed to be excluded from the application of the general provision. For this view, he referred the Court to the case of *INAKOJU & ORS V. ADELEKE & ORS (2007) LPELR-1510(SC)* wherein the Supreme Court, per *TOBI, J.S.C* (of blessed memory) at page 117, paragraphs C-E, held thus:

***"The law is elementary that where the Constitution or a statute contains a general provision as well as a specific provision, the specific provision will prevail over the general provision. In this wise, it is my view that the specific provision of Section 188(9) will prevail over the general provision of Section 102. Accordingly, the removal of the 3rd respondent is governed by Section 188(9) and not Section 102 of the Constitution." (Emphasis of counsel)***

He also referred to the case of **AG LAGOS STATE V. AG FEDERATION & ORS (2014) LPELR-22701(SC)**, where the Supreme Court, per **MUHAMMAD , J.S.C** at pages 52-54, paragraphs E-A, held thus:

*"The specific jurisdiction vested in the Federal High Court under Section 251(1) (a), (b) and (q) is exercisable "notwithstanding anything to the contrary in the Constitution" including the original jurisdiction conferred on the Supreme Court under the earlier Section 232(1) of the same Constitution. The applicable principle of interpretation in this instance remains what Bairamian, J. (as he then was) in delivering the judgment of the then West African Court of Appeal in Mrs F. Bamgboye v. Administrator General 14 WACA 616 at page 619 stated thus: "It is an accepted canon of construction that where there are two provisions, one special and the other general, covering the same subject matter, a case falling within the words of the special provision must be governed thereby and not by the terms of the general provision. The reason behind this Rule is that the legislature in making the special provisions is considering the particular case and expressing its will in regard to that case; hence the special provision forms an exception importing the negative; in other words, the special case provided for in it is excepted and taken out of the general provision and its ambit: the general provision does not apply...The above Rule of construction applies equally, of course, when the special and the general provision are enacted in the same piece of legislation: see Dryden v The Overseers of Putney (2)." This Court in its decisions too numerous to readily fathom has cited with approval the foregoing dicta and imbibed the principle so adroitly enunciated therein. See The Governor of Kaduna State & Others v. Lawal Kagoma (1982) 6 SC 87 at 107-108; Kraus Thompson Organisation Ltd v. National Institute for Policy and Strategic Studies (2004) LPELR - 1714 (SC); (2004) 9 NWLR (Pt 879) 61 and Schroeder v. Major (1989) 2 NWLR (Pt.101) 1 and Orubu v. NEC (1988) 5 NWLR (Pt.94) 323." (Emphasis of counsel).*

Again, he referred to the case of **MADUMERE & ANOR V. OKWARA & ANOR (2013) LPELR-20752(SC)**.

Flowing from the foregoing decisions of the Supreme Court, he urged the Court to hold that the specific provisions of Section 254C (1) of the 1999 Constitution prevails over the general provision of Section 46(1) of the 1999 Constitution. Thus he submitted that the interpretation and application of Chapter IV of the 1999 Constitution with respect to matters or events relating to or incidental to work place or employment, is within the exclusive jurisdiction of the National Industrial Court.

Responding to the Applicant's/Respondent's contention that none of the parties are employees of the Esan South East Local Government Area, counsel submitted that the

Applicant/Respondent misconstrued the extent of the application and jurisdiction of the National Industrial Court. He submitted that the jurisdiction of the National Industrial Court is not only limited to mere employment issues but extends beyond mere employment. According to him their jurisdiction includes public officers who are elected, political office appointees and all others provided the persons in question are paid wages, salaries, allowances or other remunerations. He maintained that public officers (whether elected or appointed) are deemed to be in the employment of the said institutions.

Learned counsel referred the court to *Section 254C (1) (k) of the Constitution of the Federal Republic of Nigeria 1999* which provides that the jurisdiction of the National Industrial Court include matters:

**“relating to or connected with disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any public servant in any part of the Federation and matters incidental thereto:”**

He therefore urged the Court to discountenance the restricted interpretation of the Applicant/Respondent and hold that the jurisdiction of the National Industrial Court extends to public office holders and Government appointees.

He posited that the Applicant/Respondent also contended that the breach of the fundamental rights is not labour related and thus, it is not within the Jurisdiction of the National Industrial Court. Responding to this, he submitted that it is trite that in determining Jurisdiction of the Court, what is considered is the originating processes of the Applicant and referred to the case of *Zakirai V. Muhammad & Ors (2015) LPELR- 40387 (CA)*. He said that in this case, the originating processes are the Originating Motion, the supporting Affidavit and the Written Address.

He referred to paragraph 2 of the Affidavit of the Applicant in support of the Originating Motion where he stated that he is an elected Councillor in Esan South East Local Government Area of Edo State. He said by that very deposition, he has shown that he was on the pay roll of the Esan South East Local Government Area for his work/function/duties as the elected Councillor in the Esan South Local Government Area. He urged the Court to so hold.

Again he referred to paragraphs 4, 5, and 6 of the supporting Affidavit where the Applicant alleged that he was invited for a meeting through the Secretary to the Local Government, at the residence of the Chairman of the Esan South East Local Government Area, with respect to the alleged directive **“to change the leadership of the Legislative Arm in the Esan South East Local Government Council, Ubiaja”**.

He posited that the Applicant from Paragraphs 8-18 of the supporting Affidavit alleged that his fundamental rights were breached by the Respondents in furtherance of his work/duty/functions as an elected Councilor in Esan South East Local Government Area.

He submitted that the alleged grievances of the Applicant/Respondent in this case all relate to the alleged breaches of his fundamental rights at work places or matters incidental to or arising from his workplace. He maintained that the grievances involve matters, **“relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations,**

**trade unionism, employer's association or any other matter which the Court has Jurisdiction to hear and determine."**

He therefore submitted that by **Section 254C (1)(d) of the Constitution of the Federal Republic of Nigeria 1999**, the allegation of the breaches of his Applicant's Fundamental right is within the exclusive jurisdiction of the National Industrial Court, to the exclusion of the any other Court and urged the Court to strike out this case.

Again, he submitted that the Counter Affidavit deposed by Charles Odia is incurably defective, hearsay and liable to be struck out for being in breach of the mandatory provision of **Section 115 of the Evidence Act 2011**.

He referred to **Section 115 of the Evidence Act 2011** which provides thus:

1. ***"Every affidavit used in the Court shall contain only a Statement of facts and circumstances to which the witness deposes, either of his personal knowledge or from information which he believes to be true.***
2. ***An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.***
3. ***When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.***
4. ***When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information***

He observed that the deponent of the Counter Affidavit is not a party to this case and the facts deposed are not within his knowledge and he never specified any particulars of the informant. He never stated the particulars of any person who informed him of the facts deposed to in paragraphs 1-7 of the Counter Affidavit. He said that with respect to paragraphs 8-10 of the Counter Affidavit, the deponent never stated the place, time, location and all other reasonable particulars of the informant.

He submitted that in compliance with Section 115 of the Evidence Act, the entire Counter Affidavit is liable to be struck out for non-compliance to Section 115 of the Evidence Act 2011. He relied on following decisions on the point: **John Obi V. Udochukwu Ojukwu & Anor (2009) LPELR-8511(CA)**; and **SULEJA V. ABUBAKAR & ORS(2019) LPELR 47899(CA)**.

He therefore urged the Court to strike out the Counter Affidavit of Charles Odia, who is not a party to this suit and uphold the preliminary objection.

In his address the learned counsel **Dr. P.E.Ayewoh Odiase** formulated the following issues for the Court's determination:-

1. ***Whether this Honourable Court has exclusive jurisdiction to entertain and determine issues bordering on enforcement of fundamental human rights contained in chapter IV of the 1999 constitution?***

2. ***Whether from the Applicant/Respondent's motion and affidavit evidence, labour related issues have been introduced to activate the jurisdiction of the National Industrial Court over the subject matter of this suit?***

Thereafter, the learned counsel argued the two issues seriatim.

#### **ISSUE ONE:**

On issue one, he submitted that the applicant's reliefs fall under chapter IV of the 1999 Constitution as amended. That ***Sections 33 to 45 of the 1999 Constitution*** enumerates the fundamental rights of Nigerian citizens which range from right to life, right to the dignity of the human person, right to personal liberty, right to fair hearing among others. He said that ***Section 46(1) of the 1999 Constitution*** highlights the procedure for the enforcement of the fundamental rights contained in ***Chapter IV of the Constitution***. That by the clear and unambiguous provisions of ***Section 46(1) and (2) of the 1999 Constitution***, the High Court in a state has exclusive jurisdiction to entertain matters bordering on breach of fundamental rights. He said that in the case of ***Federal Republic of Nigeria V Ifegwu (2003) 6 NWLR part 842 page 113 at pages 119 – 200 paras. E – B***, the Supreme Court held that the High Court is conferred with special jurisdiction under Chapter IV of the 1999 Constitution to entertain matters bordering on enforcement of fundamental rights. That in the case of ***University of Calabar V Ugochukwu (2007) 17 NWLR part 1063 page 225 at 224 – 225 paras. B – E***, the Court of Appeal held that the special provision in ***Section 46(1)*** can be invoked only if the right sought to be enforced can be found in ***Sections 33 – 46 of the 1999 Constitution***.

He submitted that a calm perusal of paragraphs ***8, 9, 10, 11, 12, 13, 14 and 15*** of the applicant/respondent's supporting affidavit reveals that the respondents/applicants molested, assaulted, abducted and falsely imprisoned the applicant which acts contravene ***chapter IV of the 1999 constitution***.

He submitted that the phrase ***"a High Court in that state"***, as contained in ***Section 46(1) of the 1999 Constitution as amended***, refers to either a State High Court or a Federal High Court to the exclusion of any other Court. He referred to the case of ***Uwa V Akpan (2010) 47 WRN page 85 at (P. 92) lines 15 – 20***, where the Court of Appeal held as follows:

***"Both the State High Court as well as the Federal High Court have Concurrent Jurisdiction in handling issues of fundamental rights. If a State High Court refuses to make an order entitling an applicant to enforce his fundamental right, this will not preclude the Federal High Court from entertaining the same application because such proceedings are akin to applications for bail"***.

He submitted that the original jurisdiction of the High Court to entertain applications for the enforcement of the fundamental rights of the Nigerian Citizens, remains sacrosanct and inviolable. He relied on the case of ***Ushae V Commissioner of Police, Cross River State Command, (2006) 1 FWLR part 287, page 267 at (P. 284, paras. C – G***, where the Court of Appeal held as follows:

***"By virtue of Section 46(2) of the 1999 Constitution, a High Court is given original jurisdiction to hear and determine any application made to it in pursuance of the provisions of the said section. It also has very wide powers to make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement, within the state, of any rights to which the person who makes the application may be entitled under the Fundamental Rights Chapter of the Constitution"***.



Counsel submitted that the exclusive jurisdiction of the High Court in a state to entertain applications for the enforcement of fundamental rights, is also replicated in the *Fundamental Rights (Enforcement Procedure) Rules 2009* which defines ‘Court’ under *Order I* as follows:

***“Court means the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja”.***

He submitted that where in a provision of a Constitution as in the instant case, any other thing not mentioned therein, is excluded on the principle of *expressio unius est exclusio alterius*. He relied on the case of *Okoroafor V Emeka (2015) 34 WRN, page 45 at (P. 129) lines 30 – 40*, where the Court of Appeal held thus:

***“It is judicially settled across jurisdictions that where a provision of the Constitution or a statute mentions subjects, items or things to which it applies, it clearly intends that the subject, item or thing not mentioned is excluded from its application. This interpretative approach is often expressed in the latin maxim, expressio unius est exclusio alterius (to express or include one thing implies the exclusion of the other or of the alternative)”. So the violations or threatened violations is vested in a person by Section 46(1) of the 1999 Constitution and Order II Rule I of the Fundamental Rights (Enforcement Procedure) Rules, invokes the special jurisdiction of the High Court to entertain and determine fundamental rights application”.***

In the light of the aforementioned, he urged this Court to resolve issue one in the affirmative.

## **ISSUE TWO:**

On the two, learned counsel submitted that the applicant’s reliefs are not anchored on labour dispute. That a careful perusal of the applicant’s motion shows that it has nothing to do with any labour related issue. That by the clear provisions of *Section 244C of the Constitution of Federal Republic of Nigeria (third Alteration) Act 2010*, all issues relating to or connected with any labour, employment and matters arising from workplace as in the instant case, fall within the jurisdiction of the National Industrial Court.

He referred to *Section 254C (1) of the Nigerian Constitution* which provides as follows:

***“Notwithstanding the provisions of section 251, 257, 282 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters –***

- (a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;***
- (b) relating to, connected with or arising from Factories Act, Trade Dispute Act, Trade Unions Act, Labour Act, Employees’ Compensation Act or any other Act or Law relating to Labour, employment, Industrial relations, workplace or any other enactment replacing the Acts or Laws;***
- (c) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement***

*of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the federation and matters incidental thereto.*

- (d) *relating to or connected with any dispute over the interpretation and application of the provisions of chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;"*

He submitted that the applicant's reliefs are clearly outside the ambit of Section 254C-(1) of the 1999 Constitution as amended.

He submitted that at this stage, it is important to decipher the meaning of '*trade dispute*' in order to know whether the provisions of **Section 254C (1) (d)** of the Constitution applies to the facts of this case.

He referred to the case of *Oshiomhole V Federal Government of Nigeria (2007) 21 WRN, pge 100 at P. 120 lines*, where the Court of Appeal held as follows:

*"For a dispute to be declared a trade dispute within the meaning of section 47 of the Trade Dispute Act Cap. 432, Laws of the Federation of Nigeria 1990, the following ingredients must be present:*

- (a) *There must be dispute;*
- (b) *The dispute must involve a trade;*
- (c) *The dispute must be between:*
  - (i) *employers and workers; or*
  - (ii) *workers and workers;*
- (d) *the dispute must be connected with:*
  - (i) *the employment or non-employment, or*
  - (ii) *the terms of employment, or*
  - (iii) *physical conditions of work of any person".*

He submitted that from the above authority, the bone of contention between the parties in this suit which led to the abridgment of the applicant/respondent's fundamental rights, revolves around political disagreement. See paragraphs 2, 3, 4, 5, 6 and 7 of the applicant/respondent's supporting affidavit. He further submitted that from the said paragraphs of the applicant's supporting affidavit, the 1<sup>st</sup> respondent, a Local Government Chairman, coerced the applicant, an elected Councillor and his colleagues to effect the change of leadership of Esan South East Local Government Legislative Arm. He submitted that such change of leadership contemplated by the 1<sup>st</sup> respondent/applicant amounts to impeachment and not a labour dispute. He further submitted that the relationship between the applicant, an elected Councillor representing Ward 10 and the 1<sup>st</sup> respondent, an elected Local Government Chairman, cannot be that of an employer and an employee under **Section 47 of the Trade Dispute Act**. On the role of Local Government, he cited **Section 7(1) of the 1999 Constitution as amended** and the case of *Akpan V Umah (2002) FWLR part 110, page 1820 at Pp. 18 – 37 1838 paras H – A*.

Counsel submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents being political appointees of the 1<sup>st</sup> respondent who is the head of the executive arm of Esan South East Local Government Council, are not employees of the applicant/respondent. On whether the issue of impeachment amounts to labour dispute, he cited the case of *Adeleke V Oyo State House of Assembly (2006) 4 FWLR part 340, page 6094 at Pp. 67 72, 6773, paras. G – A*. He therefore submitted that since there is nothing to suggest that the jurisdiction of this Honourable Court has been

vitiated by reason of trade dispute and/or intra union dispute between the parties in this suit, this Honourable Court is clothed with exclusive jurisdiction to entertain and determine the applicant/respondent's reliefs under chapter IV of the 1999 Constitution as amended.

He submitted that in determining whether a Court is validly constituted, *Ngwuta JSC* in the case of *Nsirim V Amadi (2016) Vol. 253, page 115*, held as follows:

***“Jurisdiction in its strict sense is the limits which is imposed upon the power of a validly constituted Court to hear and determine issues properly brought before it by due process by reference to:***

- (1) The subject matter in issue***
- (2) The persons between whom the issue is joined, and***
- (3) The kind of relief sought”.***

He further submitted that where a statute has conferred exclusive jurisdiction on a particular court to entertain a particular cause, no other court can assume jurisdiction to entertain any dispute relating to such cause. He referred to the case of *Ibrahim V Fulani (2009) 18 WRN Page 40 at P. 108 lines 35 – 45*, the Court of Appeal held thus:

***“It is a basic principle of law that jurisdiction of a court is very fundamental to the adjudication of the matter before it. It is so radical that it forms the foundation of adjudication. If a court lacks jurisdiction, it lacks the necessary competence to entertain the claim before it. That is why the issue of jurisdiction, where raised, whether by the parties or by the Court itself, suo motu, must be determined in limine. Whether an objection is raised to jurisdiction of the trial Court to try an action, the Court at that stage, has to enquire into whether in fact it possesses the requisite jurisdiction to so proceed”.***

Similarly he referred to the case of *Ohakim V Agbaso (2010) Vol. 189 LRCN, page 73*, where the Supreme Court of Nigeria, held as follows:

***“It is settled that jurisdiction is the life blood of any adjudication without which no proceeding, however brilliantly conducted by the Court or Tribunal can be valid. It is really a threshold matter or sometimes referred to as a periphery matter to be dealt with once raised or challenged in any proceeding. Without jurisdiction, the whole trial or proceeding of the Court is a nullity however well conducted, that is why jurisdiction is very vital and fundamental to administration of justice in any judicial system”.***

Counsel submitted that jurisdiction of a Court to entertain any suit is determined by the claim of the plaintiff as in the instant case and relied on the case of *Santory Company Ltd. V Bank of the North Lt. (2005) 8 NWLR part 925, page 594 at P. 610, para H.*

He submitted that the National Industrial Court has jurisdiction to entertain only labour related issues or inter or intra union dispute not contemplated under *Chapter IV of the 1999 Constitution as amended*. He referred the Court to the case of *Gbagede V National Union of Road Transport Workers, Taraba State (2006) 2 FWLR, part 316, page 3134 at Pp 3149 – 3150, Paras G – A*, where the Supreme Court held as follows:

***“Action relating to inter or intra union dispute cannot be commenced in any Court of Law. Only the National Industrial Court can adjudicate on such type of dispute to the exclusion of any Court of Law. The jurisdiction of the High Court has been ousted by the provision of Trade Dispute Act: I(A)(l) has conferred jurisdiction on the National Industrial Court to adjudicate to the exclusion of any Court of law in:***

- (a) an action, the subject matter of a Trade Union as defined under Section 47 of the Trade Dispute Act, or***
- (b) an action, the subject matter of any inter or intra union dispute”.***

He submitted that the jurisdiction of the National Industrial Court does not include making declarations and injunctive orders in respect of Chapter IV of the 1999 Constitution as amended, which only the State High Court has jurisdiction. See the case of *Attorney-General Oyo State V Nigeria Labour Congress (2003) 8 NWLR part 821, page 1 at P. 28 Paras. A – B*.

He submitted that since the applicant or the respondents cannot be described as employer, employee or worker under *Section 254C(I) of the Constitution of the Federal Republic of Nigeria 1999 as amended* for the purpose of activating the jurisdiction of the National Industrial Court, the objection by the respondents/applicants should be discountenanced. He finally cited the case of *Apena V National Union of Printing Publishing and Paper Products (2003) 8 NWLR, part 822, page 426 at P. 443, paras. G – F*.

At the hearing of this objection, the learned counsel for the Applicant *Dr. Ayewoh Odiase* made some further oral submissions. He referred to the case of *NATIONAL UNION OF ELECTRICITY EMPLOYEES AND BUREAU OF PUBLIC ENTERPRISES (2010) 7 NWLR (Pt. 1194) 538 at 565 – 566 par H – E* and submitted that there is a distinction between civil servants and public servants. He maintained that all civil servants are public servants but not all public servants are civil servants. That in the instant case, the Applicant and the Respondents are public servants and not civil servants. That the National Industrial Court only has jurisdiction over public servants who are also civil servants. For this view he cited the case of *SANI V FEDERAL CAPITAL DEVELOPMENT AUTHORITY (2007) 46 WRN 8 at 108 lines 10 – 25*.

He submitted that the intendment of section 254(c)(1)(d) of the 1999 constitution is to activate the jurisdiction of the National Industrial Court over the provisions of Chapter 4 of the constitution only if such issues are labour related. He said that looking at the affidavits before the Court it is apparent that the features of a trade dispute are not there. He referred the Court to the following authorities in support *ATTORNEY GENERAL OF OYO STATE V NLC OYO STATE CHAPTER (2003) 8 NWLR (Pt.821) 1 at 28 par D – H; APENA V NATIONAL UNION OF PRINTING PUBLISHING AND PAPER PRODUCTS (2003) 8 NWLR (Pt.822) 426 at 448 – 449 par. G – B; GAFAR V GOV. KWARA STATE (2007) 20 WRN 170 at 304 lines 25 – 30*.

Furthermore, counsel submitted that the Notice of Preliminary Objection is incompetent because *Order VIII Rule 2 of the High Court Civil Procedure Rules 2018* enjoins the Respondent to file the Notice alongside the Counter - Affidavit. Furthermore that the Respondents' Further and Better Affidavit in support of the Preliminary Objection dated and filed on 16/7/2020 is incompetent as it was filed 10 days after the time allowed by Order 2 Rule 6. He therefore urged the Court to discountenance the Further and Better Affidavit as well as the arguments based on it.

Also at the hearing, the learned counsel who appeared for the Respondents, *I.O.Ukpai Esq.* submitted that *Order 2 Rules 6 & 7* canvassed by Learned Counsel is inapplicable to the Preliminary Objection. That it only applies to the substantive application. On the complaint that the Preliminary Objection was not filed along with our counter-affidavit, he submitted as follows:

- (i) That the issue of jurisdiction can be raised at any time, anyhow and the Court must hear it;

- (ii) That the issue raised is procedural not substantive and by their failure to object that it was filed out of time, they are deemed to have waived it. See the case **DAPAH & ANOR V ODEY (2018) 1 LPELR 46151 CA.**

I have carefully considered all the processes filed in this application, together with the arguments of the learned counsel for the parties. I am of the view that the sole issue for determination in this application is as follows:

***Whether this Court has Jurisdiction to entertain this Suit?***

Before I resolve the sole issue for determine, I wish to first rule on the objection raised by the Applicant's counsel that the Notice of Preliminary Objection is incompetent because Order VIII Rule 2 of the High Court Civil Procedure Rules 2018 enjoins the Respondent to file the Notice alongside the Counter - Affidavit. Furthermore that the Respondents' Further and Better Affidavit in support of the Preliminary Objection dated and filed on 16/7/2020 is incompetent because it was filed 10 days after the time allowed by Order 2 Rule 6.

My simple response to the aforesaid objections is that the issue of jurisdiction is so fundamental that it can be raised and challenged at any stage of the proceedings in the lower Court, in the Court of Appeal or even for the first time in the Supreme Court. The issue of Jurisdiction is so pivotal that it can be raised suo motu by the Court, so long as the parties are accorded the opportunity to react to the issue. See the case of **MIABET NIGERIA LIMITED & ANOR v. ACCESS BANK PLC MIABET NIGERIA LIMITED & ANOR v. ACCESS (2018) LPELR-44174(CA).**

In the instant case, in so far as the Applicant was given the opportunity to react to the objection, the alleged failure to file his processes within time is not fatal to the preliminary objection.

I will now proceed to resolve the sole issue for determination.

Essentially, this issue is concerned with whether it is the **High Court** or the **National Industrial Court** that has the jurisdiction to determine the main application which is for the enforcement of the Applicant's fundamental human rights.

The issue of jurisdiction is fundamental and pivotal to any proceedings. It has been described as the life blood of any adjudication. It is the fiat, the stamp of authority to adjudicate. See: **Katto vs. C.B.N (1991) 11-12 S.C 176.**

A Court can claim to have jurisdiction in respect of a matter if:

- (1) ***It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another;***
- (2) ***The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the Court from exercising its jurisdiction; and***
- 3) ***The case comes up before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of the jurisdiction.***

In support of the foregoing, see the following decisions on the point:

***Madukolu vs. Nkemdilim (1962) 1 All NLR 587; Dangana & Anor vs. Usman & 4 Ors (2012) 2 S.C. (Pt.111) 103; and WESTERN STEEL WORKS LTD vs. IRON STEEL WORKERS UNION (1986) 3 NWLR Part 30d Pg. 617 D-H, 628.***

It is an elementary principle of law that the issue of jurisdiction can be raised at any stage of the proceedings. It can even be raised by the Court *suo motu*. See: *SLB Consortium Ltd. vs. NNPC (2011) 9 NWLR (Pt.1252) 317 at 335*.

In determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorochoa vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740*.

Furthermore, it is settled law that it is the statute creating the Court that determines the jurisdiction of that court. See: *Chief Daniel Awodele Oloba vs. Isaac Olubodu Akereja (1998) 7 S.C. (Pt.1) 1 at 21*.

In the instant case the learned counsel for the Respondents/Objector, relying heavily on the provisions of the relevant statutes creating the National Industrial Court, has contended that the said Court has exclusive jurisdiction over this matter.

As earlier stated, in determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorochoa vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740*.

The learned counsel for the Respondent/Objector has submitted that the claims as presently constituted falls within the provisions of Section 254 C (1), so this Court lacks jurisdiction as same has been expressly taken away by the aforesaid section.

Specifically the jurisdiction of the National Industrial Court is as enshrined in *Section 254 C (1) (a)-(m) of the 1999 Nigerian Constitution (Third Alteration) Act, 2010 No. 3* which provides as follows:

**254. (1)Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-**

- a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;**
- b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;**
- c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters Connected therewith or related thereto;**
- d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;**

- e) *relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;*
- f) *relating to or connected with unfair labour practice or international best practices in labour employment and industrial relation matters;*
- g) *relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;*
- h) *relating to, connected with or pertaining to the application or interpretation of international labour standards;*
- i) *connected with or related to child labour, child abuse, human trafficking or any, matter connected therewith or related thereto;*
- j) *relating to the determination of any question as to the interpretation and application of any- (i) collective agreement; (ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute; (iii) award or judgment of the Court; (iv) term of settlement of any trade dispute; (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement; (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place; (vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;*
- k) *relating to or connected with disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;*
- l) *relating to- (i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith; (ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and (iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;*
- m) *relating to or connected with the registration of collective agreements.*

In order to determine whether the reliefs fall within the provisions of Section 254 C (1), we need to examine them closely. For the avoidance of doubt, in the main application for the enforcement of his fundamental human rights, the Applicant is seeking the following reliefs:

- (a) *A declaration that the assault, physical molestation, dehumanization, abduction and curtailment of the applicant's liberty by the respondent on the 14<sup>th</sup> day of May 2020 at Ewohimi, are unlawful, unconstitutional and a gross violation of the applicant's constitutional rights guaranteed under sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended.*
- (b) *A declaration that the confinement and restriction of applicant's movement by the respondents on the 14<sup>th</sup> of May 2020 in the 1<sup>st</sup> respondent's residence at Okaigben Ewohimi and Esan South East Local Government Secretariat, Ubiaja are inhuman, degrading, humiliating, oppressive and a flagrant breach of Section 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended.*

- (c) *An order of injunction restraining the respondents, their agents and privies from further assaulting, molesting, detaining and dehumanizing the applicant in any manner whatsoever.*
- (d) *The sum of ₦500, 000,000.00 (Five Hundred Million Naira) being general and exemplary damages for acts of assault, molestation, dehumanization and false imprisonment of the applicant by the respondents without any justifiable cause.*

A careful examination of the above reliefs will reveal that they are in respect of the enforcement of the Applicant's fundamental human rights.

The salient part of the Constitution on the jurisdiction of the National Industrial Court on the enforcement of fundamental human rights appears to be *Section 254 C (1) (d) of the 1999 Constitution (Third Alteration) Act, 2010 No. 3* which provides thus:

*“254. (1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-  
d)relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine.”*(Underlining, mine)

Upon a careful examination of the above *Section 254 C (1) (d)*, it is evident that it clearly provides for matters on the enforcement of fundamental rights relating to *any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine.*

In the course of his submissions, the very learned counsel for the Respondents/Objectors ingeniously submitted that by his depositions, the Applicant has shown that he was on the pay roll of the Esan South East Local Government Area as an elected Councillor and his fundamental rights were allegedly breached by the Respondents in furtherance of his work as a Councilor. He therefore contended that the alleged breaches were matters incidental to or arising from his workplace within the purview of *Section 254C (1) (d) of the Constitution of the Federal Republic of Nigeria 1999.*

From the available facts, it is clear that even though the alleged violation of the Applicant's fundamental right to his personal liberty and human dignity occurred during his employment with the council, the alleged violations did not arise from any dispute relating to *any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine.*

In the case of *SCC (NIGERIA) LIMITED & ANOR v. MR. FIDELIS JOSEPH & ANOR (2020) LPELR-49764(CA)* the *Court of Appeal, Abuja Division* held that the disputes concerning application of Chapter IV of the 1999 Constitution over which the National Industrial Court has exclusive jurisdiction is limited to those connected with a matter which the Court has jurisdiction to hear and determine by virtue of S.254 C-(1) (d) of the 1999 Constitution.

Again, in the case of *FERDINAND DAPAAH & ANOR v. STELLA AYAM ODEY (2018) LPELR-46151(CA)*, the trial court was the National Industrial Court. At the trial court, the principal claim was for wrongful termination of appointment while the ancillary relief was



for breach of fundamental human rights. While holding that the matter was within the exclusive jurisdiction of the trial court, the Court of Appeal expounded thus:

***“It is crystal clear that Chapter IV provides for right to human dignity and freedom from discrimination which are both human rights amongst other human rights. The trial Court therefore can within a claim arising from employment or a claim related to where those rights are intricately connected and to which workplace related issues arise have jurisdiction.***

***It is settled that once the alleged breach of human rights is not the principal claim, the Court with complete or fuller jurisdiction usually hears the claim, and therefore, the trial Court can hear a claim for wrongful termination where a breach of human right is alleged as an ancillary issue”*** (Underlining, mine).

In the instant case, the Applicant’s reliefs are solely on the enforcement of fundamental human rights. There are no ancillary claims on labour related issues. More importantly, the alleged violations of human rights did not arise from any dispute relating to any employment, labour, industrial relations, trade unionism, employer’s association or any other matter within the exclusive jurisdiction of the National Industrial Court as enshrined in the Constitution.

Furthermore, the contention of the learned Respondents’ counsel’s that ***Section 254C (1) (k) of the Constitution*** extends the jurisdiction of the National Industrial Court to include disputes ***relating to the payment of salaries and entitlement of political or public office holders*** is quite irrelevant because in the main application, there is no such dispute. So ***Section 254C (1) (k) of the Constitution*** is clearly inapplicable. The arguments on the dichotomy between civil servants and public servants are not too relevant. I agree entirely with the submissions of the learned counsel for the Applicant that the intendment of ***section 254(c)(1)(d) of the 1999 Constitution*** is to activate the jurisdiction of the National Industrial Court over the provisions of Chapter 4 of the Constitution only if such issues are labour related. It is evident that the features of a labour dispute are not present in the instant case.

***In the event, I am of the view that the matter is within the jurisdiction of this Court and the preliminary objection is therefore overruled with costs assessed at N20, 000.00 (twenty thousand naira) in favour of the Applicant.***

P.A.AKHIHIERO  
JUDGE  
12/11/2020

COUNSEL:

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