IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,

ON MONDAY THE
10TH DAY OF MARCH, 2025.

BETWEEN ***SUIT NO: B/58OS/2024***

1. ***PA. OLAYEMI JOHNSON NANA***

OLARA AJA/ ODIONWERE OF AJAMIMOGHA COMMUNITY,

IKPOBA OKHA LOCAL GOVERNMENT AREA OF EDO STATE

2. ***ROBINSON OTIKPERE*** ***---------- CLAIMANTS***

[For themselves and on behalf of members of Ajamimogha

Community of Ikpoba Okha Local Government Area of Edo State,

Except those who decides not to support the named claimants]

AND

1. ***EDO STATE HOUSE OF ASSEMBLY***
2. ***CLERK OF EDO STATE HOUSE OF ASSEMBLY ----------DEFENDANTS***
3. ***SPEAKER OF EDO STATE HOUSE OF ASSEMBLY***

JUDGMENT

The Claimant filed an Originating Summons dated on the 15th of March, 2024 for the determination of the legal questions set out in the Claimant's originating summons as follows:

1. ***Whether in view of the clear provisions of section 103 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other relevant laws, a committee of the 1st Defendant can issue or make a resolution on behalf of the 1st Defendant?***
2. ***Whether the 3rd Defendant was right in approving the resolution issued or made by the house Standing Committee on Mining (Oil & Gas), notwithstanding the clear provisions of sections 103(3) of the 1999 Constitution which prevents the 1st Defendant from delegating power to issue resolutions to a committee?***
3. ***Whether in view of the provisions of section 7 (1) (2) (ii) of the Constitution of the Federal Republic of Nigeria 1999 and Fourth Schedule to the Constitution of the Federal Republic of Nigeria 1999 and any other extant law, the Defendants can validly and constitutionally constitute management executives for communities or families in any local government of the state?***

Should the Court answer the above questions in favour of the Claimants, the Claimants are claiming jointly and severally, against the Defendants as follows:

1) ***A DECLARATION that in light of the clear provisions of Section 103 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other relevant laws, a Committee appointed by the 1st Defendant cannot issue or make a 'RESOLUTION' on behalf of the 1st Defendant;***
2) ***A DECLARATION that the 3rd Defendant was wrong in single-handedly approving the resolution of the House Standing Committee on Mining (Oil & Gas), which is against the Claimants as against the clear provisions of Sections 103(3) of the Constitution of 1999;***

3) ***A DECLARATION that in view of the provisions of Sections 7 (1) (2) (II) & 40 of the Constitution of the Federal Republic of Nigeria 1999, Fourth Schedule to the Constitution of the Federal Republic of Nigeria 1999 and any other extant law, the Defendants cannot validly and constitutionally constitute management executives for communities or families in any local government of the State including the Claimants herein;***
4) ***AN ORDER that the resolution of the Committee of the 1st Defendant dated 6th March 2024 to the effect that the Claimants' executive is substituted by interim officers is ultra vires, unconstitutional, illegal and therefore null and void;***
5) ***AN ORDER DIRECTING the Respondents to forward the petition received to Ikpoba Okha Local Government Council for consideration, being the appropriate unit of government vested with powers to determine issues on community groups and organizing;***
6) ***AN ORDER of this Court setting aside the said Resolution issued by the Committee of the 1st Defendant which was approved by the 3rd Defendant and any action taken by the Defendants or any other person in furtherance of or as a result of the resolution or approval of the same by the 3rd Defendant;***
7) ***AN ORDER OF PERPETUAL INJUNCTION, restraining the Defendants, their officers, servants, employees and privies or any other person acting for and or on the strength of the approval of the said resolution by the 3rd Defendant, from acting on or further acting on the said resolution or approval of the same; and also restraining Defendants from further disturbing, harassing, intimidating and disrupting the Claimants and the business of the Claimants in any way whatsoever.***

This Originating Summons is supported by a 19 paragraphs affidavit in which the facts supporting the application are enumerated. Attached to the supporting affidavit are some relevant documents.

In consonance with the rules of this Court, the learned counsel for the Claimants filed a written address which he adopted as his arguments in support of the Originating Summons.

In his written address, the learned counsel for the Claimants, ***President Aigbokhan Esq.***, identified three issues for determination as follows:

1. ***Whether in view of the clear provisions of section 103 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other relevant laws, a committee of the 1st Defendant can issue or make a resolution on behalf of the 1st Defendant?***

2. ***Whether the 3rd Defendant was right in approving the resolution issued or made by the house Standing Committee on Mining (Oil & Gas), notwithstanding the clear provisions of sections 103(3) of the 1999 Constitution which prevents the 1st Defendant from delegating power to issue resolutions to a committee? and***

3. ***Whether in view of the provisions of section 7 (1) (2) (ii) of the Constitution of the Federal Republic of Nigeria 1999 and Fourth Schedule to the Constitution of the Federal Republic of Nigeria 1999 and any other extant law, the Defendants can validly and constitutionally constitute management executives for communities or families in any local government of the state?***

In his written address, the learned counsel argued the two issues together. Opening his arguments, the learned counsel referred the Court to ***Section 103 of the 1999 Constitution*** which provides as follows:

> ***"103 (1) A House of Assembly may appoint a Committee of its members for any special or general purpose as in its opinion would be better regulated and managed by means of such a committee, and may by resolution, regulation or otherwise as it thinks fit delegate any functions exercisable by it to any such committee.***
>
> ***(2)The number of members of a committee appointed under this section, their term of office and quorum shall be fixed by the House of Assembly.***
>
> ***(3)Nothing in this section shall be construed as authorising a House of Assembly to delegate to a committee the power to decide whether a bill shall be passed into Law or to determine any matter which it is empowered to determine by resolution under the provisions of this Constitution, but***

such a committee of the House may be authorised to make recommendations to the House on any such matter".

He submitted that by ***Section 103 of the Constitution*** quoted above, the 1st Defendant can appoint a committee but such committee cannot make resolutions. He said that the committee can only make recommendations.

He defined a Resolution as a firm decision or an official decision while s Recommendation is a suggestion or encouragement as an appropriate choice. He maintained that Resolutions are binding while Recommendations are merely persuasive.

He said that in the instant case, it is clear that the Committee made resolutions and not recommendations. He referred the Court to **Exhibits "A" and "B**".

Learned Counsel submitted that since the Constitution of 1999 forbids a committee from making resolutions, the resolution made by the committee is null and void and of no effect in law and he relied on the case of ***KNIGHT FRANK RUTLEY (NIG) v. A.G., KANO STATE (1998) 7 NWLR (Pt. 556) 1 at 19, paras. F – H.***

He posited that each Committee is allowed as in this case to investigate matters referred to it by the 1st Defendant and the Committee is expected to make and forwards its recommendations to the 1st Defendant who in turn considers it as a Committee of the whole and makes a resolution or findings.

He said that in this case, the Committee made its recommendations and resolution without the endorsement of the Committee of the whole of the 1st Defendant in addition to the fact that the resolution/recommendations on its merit is outside the jurisdiction of the 1st Defendant.

Furthermore, he submitted that an act which is null and void such as the resolution in the instant case cannot be said to be properly or lawfully approved as one cannot put something on nothing and expect it to stand.

He urged the Court to so hold and to set aside the resolution and the approval of the same. He said that assuming but not conceding that this Court holds that a committee can make a resolution, he submitted that the 3rd Defendant cannot unilaterally approve such resolution without the members of whole house voting

on same and he relied on the case of ***ADELEKE v. O.S.H.A. (2006) 16 NWLR (Pt. 1006) 608 (CA).*** He submitted that the approval of the resolution by the 3rd Defendant without recourse to the whole house was wrong and unconstitutional and he urged the Court to so hold.

ISSUE THREE:

Whether in view of the provisions of section 7 (1) (2) (ii) of the Constitution of the Federal Republic of Nigeria 1999 and Fourth Schedule to the Constitution of the Federal Republic of Nigeria 1999 and any other extant law, the Defendants can validly and constitutionally constitute management executives for communities or families in any local government of the state?

Arguing this issue, learned counsel submitted that the Defendants cannot validly and constitutionally constitute management executives for communities or families in any local government of the State including the Claimants herein.

He posited that the 4th Schedule to the 1999 Constitution highlights the main functions of Local Government Councils in Nigeria. He said that the system of local government exercises authority over traditional associations in the community**.** He referred the Court to ***Section 7 (2) (II) of the Constitution of 1999.***

He posited that the legislative arm of a Local Government is composed of the leader of the council and other councilors. He said that the legislative arm is involved in policy-making, promulgation or enactment of bye laws and making of rules and regulation governing the running of the affairs of the local government. He said that the executive arm of the local government in Nigeria is made up of the Local Government Chairman who is the head of the LG Council and other executive officials such as Secretary to the LG, Vice Chairman, and Supervisory Councilors.

He said that these officials are responsible for the administration and implementation of policies at the local government level and he referred to ***Section 7 (1) of the 1999 Nigerian Constitution.***

He posited that in this case, a single member of the 1st Defendant's Committee on Mining took a resolution and dissolved an elected executive and extended the

tenure of the outgone executives without consultation with the Claimants. He referred the Court to the RESOULUTION which stated thus:

"That Ajamimorha, the Exco be allowed to serve out their second tenure which is expected to come to an end by February 2027 thereafter an election will be conducted "

Counsel referred to ***Article 6 (b) of the Constitution of Ajamimogha Community*** which states as follows:

"The tenure of office of the elected officers in the Trust and Youth body shall be for 4 years….." He questioned whether the 1st Defendant has the jurisdiction to act as an electoral body or to elongate the statutory limit?

He referred the Court to ***Order 57 Rule K1 & 2 of the Rules of the Edo State House of Assembly of 2023*** which provides thus:

"Standing Committee on Mining, Oil and Gas shall be made up of five members appointed …….. the Committee jurisdiction shall cover:

a) ***Matters relating to minerals exploration such as mining and the utilization of funds for mineral producing areas;***

b) ***Gas and allied matters generally …… exploited within the state …….;***

c) ***Fostering of community and mining and petroleum exploring companies relations".***

He submitted that fostering of community and mining and petroleum exploring companies' relations does not permit the commission of illegality. He said that the courts have the jurisdiction to ensure that the Legislature operates within their powers. He said that the jurisdiction of the Standing Committee on Mining is clear and the exercise of its powers to substitute the leadership is clearly beyond its powers and he urged the Court to so hold.

He submitted that a resolution of the 1st Defendant can only be valid if it passes through the laid down procedure of legislative proceedings and he relied on the cases of ***LAWAN v. FRN (2022) 7 NWLR (PT. 1829) 279 CA @ 322 paras. F-G*** and ***Inakoju v. Adeleke (2007) 4 NWLR (pt. 1025) 423***.

Finally, he urged the Court to grant the Claimants' reliefs.

In opposition to this suit, the Defendants filed a 7 paragraphs Counter-Affidavit and a written address of their counsel.

In his written address, the learned counsel for the Defendants, ***N.U. Ibrahim Esq.*** formulated a sole issue for determination as follows:

"Whether the Claimants are entitled to the reliefs sought bearing in mind the circumstances of this case."

Arguing the sole issue, the learned counsel submitted that it is trite law that clerical errors, unless affecting the substantive rights of the parties do not vitiate a decision and he cited the case of ***Oluwole Olatunbosun v. Surfco Nigeria Ltd(2009)5NWLR (pt1135) 577.***

He submitted that in the instant case, the use of the word "resolution" instead of "recommendation" was a clerical error.

He said that looking at Exhibit "A" of the Claimants affidavit, it is clear from the content of the document that the word RECOMMENDATION was used and the committee clearly outlined those recommendations.

He maintained that the intention of the committee was erroneously captured at the heading as a resolution instead of recommendations. He said that such a mistake cannot alter the true intent of the committee and the house in general.

He conceded that no recommendation can emanate out of the house as a resolution without the committee of the whole House approving it.

He said that if the resolutions by the house were in the Claimants' favour, the Claimants would not have faulted the processes by claiming for declaratory reliefs.

He said that it is trite that the Legislative Assemblies have oversight functions such as supervisory roles and acting on petitions and he cited the case of ***Dapianlong v. Dariye (2007) 8 NWLR (pt.1036) 239***

He posited that in the case of ***A.G Bendel State v. A. G Federation (1981) 10 SC 1*** the Court emphasized the principle of separation of powers but recognized the legislature's role in oversight, including receiving and addressing petitions. He said

that the 1st Defendants is empowered to entertain the petitions brought before it by the Claimant and that in exercise such oversight function of the House the constitutional provisions must be complied with and he cited the case of ***A.G Ondo State v. A. G Federation (2002) 9 NWLR (Pt.772) 222.***

He said that the constitutional provision referred to here is the principle of fair hearing and constitutional rights of individuals and he referred the Court to the cases of ***Ikenna Emeuwa v. House of Assembly, Imo State (2013) LPELR-21274 (CA)*** and ***Hon. Abdulrahman Shugaba v. Minister of Internal Affairs (1981) 2 NCLR 459.***

Learned counsel posited that the constitution did not in any way prevent the House of Assembly from exercising its oversight function by entertaining a petition brought before it and also investigating same.

He said that the Claimants are dissatisfied because the resolutions of the house did not favour them.

Counsel submitted that the Defendants acted according to law and followed due process and he urged the Court to dismiss the Claimant's case for lack of merit.

In further opposition to this suit, the Defendants counsel also filed a motion on notice wherein he raised some Preliminary Objections to the Originating Summons and he urged the Court to strike out the suit on the following grounds:

(a) Lack of issuance of Pre-action Notice;
(b) The originating summons is premature;
(c) The originating summons raises academic questions;
(d) The originating summons is predicated on hostile proceedings based on conflicting questions of fact and law.

The motion was supported by an affidavit and a written address of the learned counsel for the Defendants.

In his written address, the learned counsel posited *inter alia* that it is a trite law that a person who has a cause of action against a legislative house shall serve a three months written Notice to the office of the clerk of the legislative house disclosing the cause of action and relief sought and he cited ***Section 21 of the Legislative Power and Privileges Act, 2017.***

Counsel submitted that when a statute expressly requires a pre-action notice to be served, failure to do so renders the case incompetent. He said that this requirement is mandatory and not merely procedural and the court cannot waive it. He referred the Court to the case of ***Amadi v. NNPC (2000) 10 NWLR (Pt. 674) 76*** where the Supreme Court held that

"…compliance with a pre-action notice is a condition precedent to instituting a suit where the law requires it. Failure to comply renders the suit incompetent, and the court lacks jurisdiction to entertain it."

He also referred the Court to the cases of ***Mobil Producing Nigeria Unlimited v. Lagos State Environmental Protection Agency (2002) 18 NWLR (Pt. 798)1;*** and ***NNPC v. Tijani (2006) 17 NWLR (Pt. 1007) 40*** and ***Obeta v. Okpe (1996) 9 NWLR (Pt. 473) 401***.

Counsel posited that in the case of ***Eze v. Okechukwu (2002) 18 NWLR (Pt. 799) 348,*** the court struck out a suit due to the absence of a pre-action notice required under the relevant statute.

He therefore urged the Court to strike out the Claimants' suit for non-compliance with the statutory provisions of the law.

In response to the Defendants' counsel submissions, the Claimants' counsel filed a Counter-Affidavit to the affidavit in support of the Preliminary Objection. In the Counter-Affidavit, the Deponent stated that the cause of action is not only against the Legislative House, the 1st Defendant but also against the Clerk (2nd Defendant) and the Speaker (3rd Defendant).

He maintained that there is no law that provides for the service of a Pre-Action Notice before a suit can be instituted against the 2nd and 3rd Defendants.

The learned counsel for the Claimants also filed a Reply on Points of Law in opposition to the Preliminary Objection.

In his Reply on Points of Law, the learned counsel referred the Court to the case of ***W.R & PC LTD. VS. ONWO (1999) 12 NWLR (PT. 630) 312*** where the Court of Appeal held that the suit was not incompetent because the Claimants failed to serve a Pre-Action Notice on the Nigerian National Petroleum Company.

He posited that assuming without conceding the 1st Defendant must be served with a Pre-Action Notice, the failure to serve one will only result in the 1st Defendant being struck out from the suit for misjoinder. He therefore urged the Court to strike out the name of the 1st Defendant if it holds that the Pre-Action Notice ought to have been served on them.

I have carefully examined all the processes filed by the parties in this suit together with the submissions of the learned counsel to the parties.

Before, I consider the merits of the Claimants case; I think it is expedient for me to determine the validity of the Preliminary Objection of the Defendants challenging the competence of the suit on the ground of the failure of the Claimants to serve the Defendants with a Pre-Action Notice.

It is settled law that where in a suit, a preliminary objection is raised, the Court's duty is to hear and determine the preliminary objection immediately before delving into the main suit and where a determination of the preliminary objection decides the suit completely, then the need to determine the main suit becomes obviated. See: ***ALLANAH Vs. KPOLOKWU (2016) LPELR- 40724 (SC) Pg. 10-11, Paras. D – A:*** and ***MUSA & ANOR Vs. IBRAHIM (2017) LPELR-43101 (CA) Pg.5, Paras. A – D.***

In their motion on notice the Defendants are contending inter-alia that this suit is incompetent by reason of the failure of the Claimants to serve the Defendants with any pre-action notice as required by the provisions of ***Section 21 of the Legislative Power and Privileges Act, 2017.***

For the avoidance of doubt, ***Section 21 of the Legislative Power and Privileges Act, 2017*** provides as follows:

"Section 21 A person who has cause of action against a Legislative House shall serve a three months written notice to the office of the Clerk of the Legislative House, disclosing the cause of action and relief sought."

From the above provision, it is apparent that the aforesaid legislation actually stipulates that a written pre-action notice of three months must be served on the Clerk of the House of Assembly before any action is instituted against a Legislative House like the Edo State House of Assembly.

The law and practice of pre-action notice in Nigeria has been a long standing practice. Public corporations, statutory bodies, institutions and other government agencies surreptitiously enshrine in their laws a provision on pre-action notice with the aim of settling disputes without recourse to the arduous process of litigation in court.

Pre-action notice is a statutory provision which requires notice of intended action to be first served on certain would-be defendant by an aggrieved party before such aggrieved party may seek judicial redress. Such notice of action is usually required to disclose the cause of action, relief or reliefs sought and the name and place of business or abode of the aggrieved party.

Pre-action notice, where it is required, constitutes a condition precedent for institution of action; any action brought without the notice would be premature and incompetent. It is a condition which must be fulfilled in appropriate cases before seeking the intervention of the Court. A 'condition' is a "provision which makes the existence of a right dependent on the happening of an event, as opposed to an absolute right.

Furthermore, in the present suit, both parties are ***ad idem*** that the Claimants did not serve any pre-action notice on any of the Defendants before filing this suit in Court.

What then is the effect of non-service of pre-action notice where it is statutorily required? In the case of ***Nnonye Vs Anyichie (2005) 1 SC (Pt.II) 96 @ 103 and 104,*** it was held that non-service of a pre-action notice puts the jurisdiction of the Court on hold pending compliance with the pre-condition. See also the following cases: ***Barclays Bank Ltd. Vs Central Bank of Nigeria (1976) 6 SC 175; Okotie-Eboh Vs Okotie-Eboh (1986) 1 NWLR (16) 264; Ijebu-Ode Local Govt. Vs Adedeji Balogun (supra) and Eze Vs Ikechukwu (2002) 18 NWLR (799) 348; City Engineering (Nig.) Ltd. Vs N.A.A. (supra) at 52 - 53 lines 37 – 12;*** and ***ONDO STATE DEV. & PROPERTY CORPORATION V. JIMZEST HOTEL DEV. CO. LTD (2011) LPELR-4782(CA) (PP. 22 PARAS. A.***

The main contention of the Defendants in their Preliminary Objection is that the failure of the Claimants to serve a pre action notice on the Defendants has robbed this Court of the jurisdiction to entertain the entire suit.

The rationale behind the jurisprudence of a pre-action notice is to enable the defendant know in advance the anticipated action and if possible, to seek an amicable settlement of the matter between the parties, without recourse to adjudication by the Court. The purpose of giving notice to a party is that it is not also taken by surprise but so that it should have adequate time to prepare to deal with the claim in its defence. See ***NTIERO VS NIGERIAN PORTS AUTHORITY (2008) 10 NWLR (PT.1094) 129***.

In the instant case, very learned counsel for the Claimants has ingeniously contended that by the provisions of ***Section 21 of the Legislative Power and Privileges Act, 2017,*** the pre-action notice ought to be served on only the Edo State House of Assembly (1st Defendant) and not on the Clerk and the Speaker who are the 2nd and 3rd Defendants in the suit.

According to the learned counsel, flowing from the foregoing, the failure to serve the notice on the 1st Defendant amounts to a misjoinder of the 1st Defendant in this suit and the proper order for the Court to make is strike out the name of the 1st Defendant from this suit and determine the suit against the 2nd and the 3rd Defendants.

On the face value, the contention of the learned counsel for the Claimant appears tenable and unassailable. However, upon a careful examination of the questions to be determined in this Originating Summons, juxtaposed with the reliefs which the Claimants are seeking, it is apparent that the 2nd and 3rd Defendants are merely agents of the 1st Defendant. All their acts were carried out on behalf of the 1st Defendant. The acts of the 2nd and 3rd Defendants are so inseparably linked to the 1st Defendant that it is practically impossible to simply strike out the name of the 1st Defendant and proceed against the 2nd and 3rd Defendants.

In the law of agency, the 1st Defendant was the Principal while the 2nd and 3rd Defendants were simply the Agents of the 1st Defendant. The principle of agency is expressed in the Latin maxim: ***"Qui facit, per alium facit per se"*** (he who acts through another is deemed to act himself). Thus, the acts of the 2nd and 3rd Defendants are deemed to be the acts of the 1st Defendant who was not served with the requisite pre-action notice as stipulated under the relevant statute.

Furthermore, upon the authorities earlier cited in this judgment, the failure to serve the pre-action notice on the 1st Defendant is a fundamental vice that vitiates the jurisdiction of the Court to entertain the entire suit. If the jurisdiction is lacking, the Court automatically lacks the power to strike out the 1st Defendant and proceed against the other Defendants.

Any defect in competence of a Court to adjudicate on a matter is fatal, for the proceedings are a nullity however well conducted and decided. See ***MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587.***

In the circumstances therefore, this suit is incompetent and the only order that the Court can make at this stage is to strike out the entire suit. See the following cases: ***OBETA VS OKPE (1996) 9 NWLR (PT.473) 401; A.G. FEDERATION VS GUARDIAN NEWSPAPERS LTD (1999) 9 NWLR (PT.618) 187; NNPC VS TIJANI (2006) 17 NWLR (PT.1007) 29.***

Sequel to the foregoing, I am of the view that this Court lacks the jurisdiction to determine this suit on its merits. The Preliminary Objection of the Defendants is upheld and the suit is struck out with costs assessed at N100, 000.00 (One Hundred Thousand Naira) in favour of the Defendants.

Hon. Justice P.A. Akhihiero
Judge
10/03/25

<u>COUNSEL</u>:

PRESIDENT AIGBOKHAN ESQ.----------CLAIMANTS

N.U. IBRAHIM ESQ----------DEFENDANTS