

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 WEDNESDAY THE
21ST DAY OF JANUARY, 2026.

BETWEEN

SUIT NO: B/24/OS/2025

1. HON. INEDEGBOR KELLY
2. HON THOMAS OTOIBHILI -----**CLAIMANTS**

AND

1. HON PAUL UHOMESILI (Member)
2. HON SHEDRACK ONOGHEMENNOSEN (Member)
3. HON LENNIS MASADE (Member)
4. HON JOHN OKODUWA (Member)
5. HON JOHN AZIBA (Member)
6. HON MICHAEL OBETO (Member)
7. HON LAWRENCE INEGBENOSUN (Member)
8. HON SAMUEL UDAWELE (Member)
(Sued as Councilors of Esan North East Local
Government Legislative Council)
9. THE CHAIRMAN OF ESAN NORTH EAST
LOCAL GOVERNMENT COUNCIL
10. THE VICE CHAIRMAN OF ESAN NORTH
EAST LOCAL GOVERNMENT COUNCIL
11. INSPECTOR GENERAL OF POLICE -----**DEFENDANTS**

JUDGMENT

The Claimants initiated this suit by way of Originating Summons dated the 15th of January, 2025 for the determination of the following questions:

- 1. Whether upon the proper, correct and dispassionate interpretation of the provisions of Section 19(1-2) of the Edo State Local Government Law 2000, (as Amended 2002), the purported removal/impeachment of the Claimants from office of the Chairman and Vice Chairman of Esan North East Local Government Council, Edo State by the 1st to 8th Defendants, purporting to act on behalf of the Esan North East Legislative Council, without Notice of any allegation signed by not less than two thirds of the members of Esan North East Legislative Council of Edo State to the Leader of the Legislative Council, stating that the Claimants are guilty of gross misconduct, or at all, is unconstitutional, illegal, null and void and of no effect whatsoever?*
- 2. Whether upon the proper, correct and dispassionate interpretation of the provisions of Section 19(3-4) of the Edo State Local Government Law 2000, (as Amended 2002), the purported removal/impeachment of the Claimants from the office of Chairman and vice Chairman of Esan North East Local Government Council, Edo State by the 1st – 8th Defendants, purporting to act on behalf of the 9th Defendant, without any motion by the Legislative Council members that the allegation(if at all) be investigated, and without setting up seven man panel composed of people of proven integrity to investigate the allegation if at all, is unconstitutional, illegal, null and void and of no effect whatsoever?*
- 3. Whether upon the proper, correct and dispassionate interpretation of the provisions of Section 19 (2) & (6) of the Edo State Local Government Law 2000, (as Amended 2002), the purported removal/impeachment of the Claimants from the office of Chairman and vice Chairman of Esan North East Local Government Council, Edo State by the 1st to 8th Defendants, purporting to act on behalf of the Esan North East Local Government Council, without causing a Notice of impeachment to be served on the Claimants and on each members of the Esan North East Local Government Council, within Seven (7) days of the Esan North East Local Government Council's receipt of the notice or at all, is unconstitutional, illegal, null and void and of no effect whatsoever?*
- 4. Whether, within the meaning of Section 19 (1-9) of the Edo State Local Government Law 2000 (as Amended 2002), Sections 7 and 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended), the Claimants have been found guilty of any misconduct or whether any allegation of misconduct has been proved against the Claimants to warrant their removal/impeachment from office as the Chairman and Vice Chairman of Esan North East Local Government Council, Edo State by the 1st to 8th*

Defendants purporting to act on behalf of the Esan North East Local Government Council.

- 5. Whether, within the meaning and intendment of the provisions of Section 7 of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended) and Section 19 of the Edo State Local Government Law 2000 (as Amended 2002), the purported announcement/swearing-in of the 1st Defendant as the Acting Chairman of Esan North East Local Government Council, Edo State is not wrongful, unconstitutional, illegal, null and void and of no effect whatsoever.*
- 6. Whether, upon a proper, correct and dispassionate interpretation of sections 1(1), (2) & (3), 4(7), 7(1) & (4) and 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) and section 8(2) of the Supreme Court Act, the purported removal/alleged impeachment of the Claimants who are the democratically elected Chairman and Vice Chairman of Esan North East Local Government Council, Edo State by the 1st to 8th Defendants and/or in concert with the Esan North East Local Government Council, without any Notice of allegation of gross misconduct served on the Claimants and without affording them fair hearing, is not a grave violation/breach of the provisions of Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria, (as altered) and non-compliance with the judgments of the Supreme Court in SC/CV/343/202 between Attorney General of The Federation V. Attorney General of Abia State & 35 Ors delivered on 11th day of July 2024 and Section 19 of the Edo State Local Government Law 2000 as Amended 2002 and thus amount to abuse of power, a gross misconduct on the part of the 1st to 8th Defendants and a violation of the Constitutional rights of the Claimants and unconstitutional, null and void and of no effect whatsoever.*

Should the Court answers to the above questions be resolved in favour of the Claimants, the Claimants are seeking the following reliefs:

- 1. A DECLARATION OF THIS HONOURABLE COURT that the purported removal/impeachment of the Claimants from the office of Chairman and Vice Chairman of Esan North East Local Government Council, Edo State by the 1st to 8th Defendants without Notice of any allegation signed by not less than two thirds of the members of the Esan North East Legislative Council to the Leader of the Legislative Council, stating that the Claimants are guilty of gross misconduct, or at all, is unconstitutional, illegal, null and void and of no effect whatsoever;*
- 2. A DECLARATION OF THIS HONOURABLE COURT that the purported removal/impeachment of the Claimants from the office of the Chairman*

and vice Chairman of Esan North East Local Government Council, Edo State by the 1st to 8th Defendants, purporting to act on behalf of the Esan North East Legislative Council, without any motion by the Legislative Council that the allegation (if at all) be investigated, and without setting up seven-man panel composed of people of proven integrity to investigate the purported allegation or at all, is unconstitutional, illegal, null and void and of no effect whatsoever;

3. *A DECLARATION OF THIS HONOURABLE COURT that the purported removal of the 1st and 2nd Claimants from the office of the Local Government Chairman and Vice Chairman of Esan North East Local Government Council of Edo State by the 1st to 8th Defendants without causing a copy of the Notice of Impeachment (if any) to be served on the Claimants and on each members of the Esan North East Legislative Council, within Seven (7) days of the Esan North East Local Government Council's receipt of the notice) or at all, amounts to a violent contravention of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and therefore ultra vires, unconstitutional, illegal, null and void and of no effect whatsoever;*
4. *A DECLARATION OF THIS HONOURABLE COURT that within the meaning and or intendment of the provision of Section 7 and Section 36(1) of the Constitution of the Federal Republic of Nigeria (as amended), read together with Section 19 of the Local Government Laws of Edo State 2000 (as amended 2002), the Claimants have not been found guilty or wanting of any gross misconduct for which they can be removed/impeached from the office of the Local Government Chairman and Vice Chairman of Esan North East Local Government Council, Edo State;*
5. *A DECLARATION OF THIS HONOURABLE COURT that, having regards to Section 7 and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and Section 19 of the Local Government Law of Edo State 2000 (as amended 2002), the purported removal of the Claimants from office as the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State by the 1st to 8th Defendants on the 6th day of January, 2024 is unconstitutional, illegal, null and void and of no effect whatsoever;*
6. *A DECLARATION OF THIS HONOURABLE COURT that the purported swearing-in of the 1st Defendant as the occupant of the office of the Local Government Chairman of Esan North East Local Government Council of Edo State is in contravention of Sections 7 and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and Sections 10 and 19(1-9) of the Local Government Law of Edo State 2000 (as*

amended 2002) and therefore illegal, unconstitutional, null and void and of no effect whatsoever;

- 7. A DECLARATION OF THIS HONOURABLE COURT that the Claimants are still the occupants of the office of the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State and that the seats of the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State have not become vacant;**
- 8. A DECLARATION OF THIS HONOURABLE COURT that the refusal and/or failure of the 11th Defendant's Officers to provide security and guarantee the security of the Claimants as occupants of the office of the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State is unlawful, null and void and unconstitutional;**
- 9. AN ORDER OF THIS HONOURABLE COURT restoring or reinstating the Claimants to their offices as the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State, the 9th and 10th Defendants herein, together with the rights, privileges, paraphernalia and perquisites of the said offices;**
- 10. AN ORDER OF THIS HONOURABLE COURT of perpetual injunction, restraining the Defendants either by themselves, their agents, privies, representatives or associates, persons acting for or through them and/or deriving authority from them from preventing the Claimants from performing the functions of the office of the Local Government Chairman and Vice Chairman of Esan North East Local Government Council of Edo State;**
- 11. AN ORDER OF THIS HONOURABLE COURT mandating, directing and/or compelling the 11th Defendant to provide protection to the Claimants for the peaceful resumption and discharge of their duties and functions as bestowed in their offices; and**
- 12. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.**

The Originating Summons is supported by a 9 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.

From the facts contained in the affidavit in support of this Summons, the Claimants' case is that they were democratically elected by the electorates of the Esan North East Local

Government Council of Edo State and sworn into office on 4th day of September 2023 to represent them as Chairman and Vice Chairman of Esan North East Local Government Council of Edo State, for a fixed term of 3 years.

They alleged that since their assumption of office, they have been discharging their duties and exercising their powers diligently and dutifully in substantial compliance with the provisions of the ***Constitution of the Federal Republic of Nigeria, 1999 (as amended)*** and other statutes in a bid to making sure the electorates or constituents enjoy the dividends of democracy.

They maintain that ***Section 7 of the Constitution*** guarantees the independence and autonomy of the Local Government Council as the third tier of government.

They informed the Court that the Supreme Court reaffirmed the independence and autonomy of Local Government Councils in Nigeria in the recent case of ***SUIT NO: SC/CV/343/2024: ATTORNEY GENERAL OF THE FEDERATION v. ATTORNEY GENERAL OF ABIA STATE & 35 ORS.*** delivered on 11th day of July 2024. A certified true copy of the said judgment was attached to their supporting affidavit and marked Exhibit “ENEL.1.

They alleged that in line with the aforesaid judgment of the Supreme Court, the 1st Claimant, together with other democratically elected heads of Local Government Councils in Edo State challenged the decision of the State Government to insist on the operation of Joint State Account and the validity of ***Section 10(1) of the Local Government Law of Edo State, 2000*** in ***Suit No: B/257/OS/2024: HON. NEWMAN OGHOMWEN UGIAGBE & 17 ORS v. THE EXECUTIVE GOVERNOR OF EDO STATE & 3 ORS.*** They said that in the judgment delivered on 11th of November, 2024 in the said suit, the Chief Judge of Edo State reaffirmed the position of the Supreme Court on the independence of democratically elected local government council in Edo State that fiscal allocation was to be made to Local Government Councils directly from the Federation Government as held by the Supreme Court. They attached a certified true copy of the said judgment as Exhibit “ENEL.2”.

They stated that the 1st Claimant and other democratically elected heads of Local Government, as law abiding citizens also applied to the Edo State High Court to determine among other things; the question of whether the State Governor has power(s) under the law to compel democratically elected executives of the third tier of government, Local Government Councils in Edo State to present or submit their account statements to him and whether the state government can *suo motu* determine the tenures of office of democratically elected council chairmen in Edo State.

According to them, in ***Suit No: B/CD/307/OS/2024 between Orhionmwon Local Government Council & 18 Ors v. The Edo State Government & 5 Ors***, vide its ruling on an interim application delivered on 16th day of December 2024, the Edo State High Court

restrained the State Government from removing or suspending the Claimants in that suit (including the Claimants herein) pending the hearing and determination of the substantive suit before it. A certified true copy of the enrolled Order of the ruling was attached to their supporting affidavit as Exhibit “ENEL3.”

They alleged that sequel to the above ruling, the Claimants have since been discharging the functions of their offices in substantial compliance with the provisions of the Constitution and the *Edo State Government Law, 2000* (as amended) and have never been found wanting.

They alleged that on December, 18th, 2024 the Edo State House of Assembly purportedly suspended the 18 Local Government Areas/Councils Chairmen in the State and the Court upon application of the Local Government Councils Chairmen’s’ granted an injunction against the alleged suspension on the 20th of December, 2024 and all Parties involved were Ordered by the Edo State High Court to maintain Status Quo till the hearing of the case on 17th February, 2025.

However, they alleged that on the 6th of January, 2024, some armed men from Government House came to forcefully take over the Office of the 9th to 10th Defendants and they carried out a purported impeachment without giving the Claimants any prior notice or making the Claimants to face any investigation panel as prescribed by Law.

They alleged that they learnt of their purported impeachment from office vide an announcement circulated through the various news media and social media handles. They attached a copy of the publication as Exhibit “ENEL4”.

They alleged that some of the legitimate councilors of the Esan North East Local Government Council immediately released a press statement and held a press briefing to the public to denounce the purported impeachment. The said Press Statement was attached to their supporting affidavit as Exhibit “ENEL4”.

The Claimants maintain that their purported impeachment/removal from their offices as the Chairman and vice Chairman of Esan North East Local Government Council of Edo State is inconsistent with the provisions of the *Constitution of the Federal Republic of Nigeria, 1999 (as amended)* and the *Local Government Law of Edo State 2000 (as amended)*.

They are requesting the Court to set aside the actions of the 1st to 9th Defendants and to restore them to their respective positions.

In opposition to this Originating Summons, the 1st to 10th Defendants filed a Notice of Preliminary Objection and a Counter Affidavit of 21 (Twenty-One) paragraphs deposed to by the 3rd Defendant with exhibits attached.

The Defendants/Objectors Preliminary Objection are on the following grounds:

1. *That Subsection 10 of Section 19 of the Edo State Local Government Law 2000 as amended in 2002 expressly prohibits this Honourable Court from hearing and/or determining matters related to the impeachment of local government Chairmen and Vice Chairmen in Edo State;*
2. *That a pre-action notice was not issued and served on the responsible officers of the Esan North East Local Government Council, at least one month prior to instituting any suit against a local government council;*
3. *That by Order 3 Rule 2 of the Edo State High Court Civil Procedure Rules, the Claimants should have commenced the action by a Writ of Summons and not by Originating Summons; and*
4. *The deponent to the Claimants Affidavits being a “Litigation Manager”, is not competent to give direct evidence in support of the Originating Summons.*

The Preliminary Objection was supported by an affidavit of seven paragraphs deposed to by the 3rd Defendant and a written address of the learned counsel for the Defendants/Objectors.

Arguing the Preliminary Objection, the learned counsel for the Defendants, *Evans Ogbeifun Esq.* argued all the grounds together and submitted that the suit is incurably defective.

Opening his arguments, the learned counsel submitted that the Claimants made a fundamental error when they instituted the suit by Originating Summons contrary to ***Order 3 Rule 1(2) of the Rules*** of this Honourable Court which stipulates that contentious matters and claims for declaration should be commenced by Writ of Summons. He referred the Court to the cases of *Madukolum v. Nkemdilim (1962) All NLR (Part 2) 581 at 589* and *Obaro v. Hassan (2013) 8 NWLR (Part 1375) at page 425* on the jurisdiction of courts.

He maintained that the issues involved in this suit are contentious and cannot be determined by way of Originating Summons.

Furthermore, he posited that the facts deposed to by the Claimants’ “Litigation Manager amounts to inadmissible hearsay and he relied on the case of *Mairami & Anor v. Gonidinari (2025) LPELR 80093 (CA)*.

He submitted that the Court cannot rely on the Claimants’ Affidavits in support of the Originating Summons and he urged the Court to so hold.

Again, learned counsel submitted that in the instant case the Originating Summons was filed without giving pre-action notice to the Esan North East Local Government Council, in accordance with ***Section 152 of the Edo State Local Government Law 2000 as amended***. He said that this is a fundamental error which will deprive the Court of the jurisdiction to entertain the suit and he relied on the case of ***Utoro Vs. Lawal (2018) ALL FWLR (PT. 938) 1823 @ PARA D***.

Finally, counsel submitted that by virtue of the provisions of ***Section 19(10) of Edo State Local Government Law*** the courts are prohibited from looking into the acts of the 1st to 8th Defendants and he urged the Court to so hold.

He therefore urged the Court to strike out the suit and award substantial damages in favour of the Defendants.

In further opposition to this suit, the Defendants relied on their Counter-Affidavit of twenty one paragraphs.

In their counter affidavit, the Defendants stated that Esan North East Local Government Area Council is a constitutional creation which enabling law permits the Edo State House of Assembly to make laws for its good governance and operations.

According to them, in line with its constitutional authority and powers, the Edo State House of Assembly enacted the Edo State Local Government Law 2000 as amended in 2002.

They stated that the supervisory role played by the Edo State House of Assembly in the removal of a Local Government Council Chairman in Edo State is constitutional and legal.

They alleged that the Claimants were under investigation and sanctioned by the Esan North East Legislative Council for failure to present a budget and an account of the Council's expenses since they were sworn into office.

According to them, the 1st to 8th Defendants who are part of the legislative arm of Esan North East Local Government Council have the authority and mandate to investigate and impeach the Claimants as Chairman and Vice Chairman of the council if found guilty of gross misconduct which authority and mandate they duly exercised in line with the relevant provisions of the Edo State Local Government Law 2000 as amended in 2002.

They maintained that the Esan North East Legislative Council, exercised the authority and mandate to impeach the Claimants in the prescribed manner and process and that it was the Claimants who refused to cooperate or attend the various forums where they could contest and defend the allegations against them.

They enumerated the procedure which they followed to remove the Claimants from office.

The Defendants' counsel filed a written address in support of his counter affidavit. The contents of the written address are substantially the same as the written address in support of the Preliminary Objection.

Upon receipt of the Defendants' Affidavit in support of their Preliminary Objection, Counter-Affidavit in opposition to the Originating Summons and written addresses, the Claimants filed a Counter Affidavit to the Preliminary Objection and a Further Affidavit in response to the Defendants' counter affidavit. Their counsel also filed written addresses which they adopted.

During the adoption of final written addresses, the learned counsel for the Claimants, ***Monday Mawah Esq.*** leading ***S.C. Eziefule Esq.*** adopted the written address in support of the Originating Summons and in opposition to the Preliminary Objection. The addresses were signed by one ***Anderson Asemota Esq.***

In their written address in opposition to the Preliminary Objection, the learned counsel posited that generally, impeachment disputes are instituted by way of Originating Summons and he referred the Court to the case of ***INAKOJU & ORS V. ADELEKE & ORS (2007) LPELR-1510(SC) (Pp. 28-30 paras. D).***

He maintained that Originating Summons procedure is adopted where the facts are not in dispute and for issues like the determination of questions of construction. See: ***Din v. Attorney General of the Federation (1986) 1 NWLR (Pt.17) 471; Obasanya v. Babafemi (2000) 15 NWLR (Pt. 689) 1; Nigerian Breweries Plc v. Lagos State Internal Revenue Board (2002) 5 NWLR (Pt. 759) 1; Alhaji Alubankudi v. Attorney General of the Federation (2002) 17 NWLR (Pt. 796) 338; Keyamo v. House of Assembly, Lagos State (2002) 18 NWLR (Pt. 799) 605. In Famfa Oil Limited v. Attorney General of the Federation (2003) 18 NWLR (Pt. 852) 453.***

On the objection that the deponent to the Claimants affidavit ought not to depose to the affidavit since he never participated in the briefing, counsel submitted that the litigation manager participated in all the conference meetings of their firm and took note of all the briefs during the conference meeting leading to the institution of this suit. He therefore urged the Court to discountenance that objection.

In respect of the objection based on ***section 19 (10) of the Local Government Law 2000***, he submitted that the Court can assume jurisdiction when it is shown that the House breached the laid down law in carrying impeachment proceedings and he cited the case of ***INAKOJU & ORS V. ADELEKE & ORS*** supra.

He therefore urged the Court to dismiss the Notice of Preliminary Objection with substantial costs.

In their written address in support of the Originating Summons, the Claimants' counsel formulated three issues for determination as follows:

- a. *Whether the purported impeachment of the Claimants from office as the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State by the 1st – 9th defendants on the 6th day of January, 2025 was in accordance with the provisions of section 19 of the Local Government Laws of Edo State, 2000 as amended 2002.*
- b. *Whether the 1st to 9th Defendants can exercise the power to remove/impeach the Claimants who were democratically elected and had secured a tenure of three (3) years from the 4th day of September, 2023 when they were sworn into office, in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) to 4th September, 2026 without fair hearing accorded to the Claimants.*
- c. *Whether the 1st Defendant Swearing-in as the Acting Chairman of Esan North East Local Government Council of Edo State is not unlawful having regard to Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, (as amended) and the fact that the offices have not become vacant.*

Thereafter, the learned counsel argued the three issues together.

Opening his arguments, the learned counsel referred the Court to the decision of the Supreme Court in the case of *I.S.I.E.C. v. Ehirim (2013) 3 NWLR (Pt. 1340) 169 at pages 172 to 174* where they held *inter alia* that the court in interpreting statutes should give the provisions their plain meaning by restricting itself to the intendment of the legislator.

Learned counsel submitted that the law that regulates the removal/impeachment of the Claimants who were duly elected and sworn into Office as the Chairman and vice Chairman of Esan North East Local Government Council of Edo State is clear and has not been followed in the circumstances of this case.

Counsel referred the Court to the case of *Ekekeugbo v. Fiberesima (1994) 3 NWLR (Pt. 335) 707 at pages 713-714* where the Court of Appeal enumerated the procedure for the removal of a Local Government Chairman.

He posited that in the aforesaid case, the Court held that the power to remove a council chairman is not exclusively vested in the council. That in contrast to the power vested in the House of Assembly, the jurisdiction of the courts to interfere in the impeachment of a council chairman is not ousted.

Learned counsel submitted that the Local Government Chairman and the Vice Chairman are not under the whims and caprices of any organ of government or individual being a duly elected Officer of the Local Government by the Voters of that Local Government therefore they cannot be removed by any arbitrary method save the method stipulated by Law.

Counsel relied heavily on the decision of the Court of Appeal in the old case of ***Orhionmwon Local Govt. v. Ogieva (1993) 4 NWLR (Pt. 288) 469 at pages 473-474*** and urged the Court to hold that the 1st to 8th Defendants did not follow the method allowed by Law when they purportedly removed/impeached the Claimants from office who are the duly elected Local Government Chairman and Vice Chairman of Esan North East Local Government Council of Edo State and the Chief executives of the Council elected by the people of the Council to serve them for a term of three (3) years yet to expire.

Counsel submitted that the Claimants were not afforded fair hearing before the 1st to 8th Defendants purportedly passed a resolution removing them from their offices. He submitted that the failure of the 1st – 8th Defendants to serve the Claimants with the impeachment notices and invite them to be heard before the decision/resolution to remove/impeach them from office was passed, amounts to a denial of their rights to fair hearing.

He submitted that the right to fair hearing is enshrined in ***Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered)***. He relied on the case of ***DESTRA INVESTMENT LTD v. FRN & ANOR (2020) LPELR-52293(CA)***.

Finally, he urged the Court to grant the reliefs sought as contained in the Originating Summons.

I have carefully examined all the processes filed in this suit, particularly the affidavits, counter-affidavits and the written addresses of the learned counsel of the parties.

In this suit, the Claimants approached the Court by way of Originating Summons, seeking some declaratory and injunctive reliefs against the Defendants.

In defence of this suit, the Defendants filed a Notice of Preliminary Injunction wherein they challenged the competence of the suit.

It is settled law that where a preliminary objection has been raised challenging the competence of a suit, same must be determined before going into the merit of the substantive matter if need be. The essence of a preliminary objection is to stop the hearing of the substantive matter which has been adjudged incompetent. If it succeeds the matter ends there. See ***OLAGBENRO ORS VS. OLAYIWOLA & ORS (2014) LPELR - 22597 (CA) P. 59, Paragraphs B-C; FBN PLC VS. T.S.A. INDUSTRIES LTD (2010) LPELR***

- (1283) (SC) P. 13, Paragraphs B-E; **ALL STATES TRUST BANK LTD VS. KING DAVIDSON ENTERPRISES (NIG.) LTD (2000) (CA) P. 5, Paragraphs B-C, OKOROCHA VS. UBA BANK & ORS (2018) (SC) P.13, Paragraphs E-F and DARAMOLA VS. NIGERIAN POLICE (CID), IDIMU POLICE DIVISION & ORS (2019) (CA) PP. 12 - 13, Paragraphs E-A.**

Flowing from the foregoing, I would therefore first consider the merits of the Preliminary Objection raised by the Defendants.

The first challenge is on the institution of this suit by way of Originating Summons. The Defendants have seriously contended that this procedure is not appropriate because there are conflicts of facts.

From the plethora of authorities cited by both parties, I observed that both parties are *ad idem* that Originating Summons should only be appropriate in circumstances where there is no dispute on question of facts or the likelihood of such dispute. See the following cases: **OSSAI V. WAKWAH (2006) 2 SC (PT.1) 28; EZEIGWE & 2 ORS. V. NWAWULU & 2 ORS (2010) 4 NWLR (PT.1183) 159; NATIONAL BANK OF NIGERIA LTD. V. ALAKIJA (1979) 9 - 10 SC 59.**

In the instant case upon a careful examination of the facts disclosed from the affidavits and counter-affidavits of the parties, I am of the firm view that although there exists a dispute between the Claimants and the Defendants on some facts contained in their respective Affidavits, the relevant and material facts in the Affidavits of the Claimants which are to be used for the determination of the questions raised in the summons are actually not disputed.

In these premises, I hold that the originating summons procedure employed in commencing this suit is not only proper, but appropriate as it essentially seeks for the correct interpretation and application of the provisions of the Constitution *vis a vis* the provisions of the **Local Government Law, 2000 of Edo State as amended** in relation to the removal of a Chairman and Vice Chairman of a Local Government Council. See the following cases on the point: **University of Lagos v. Aigoro (1991) 3 NWLR (pt. 179) 376, Attorney-General, Adamawa State v. Attorney-General, Federation (2005) 12 SC (pt. II) 132; Eze v. A.P.G.A (2020) 3 NWLR (pt. 1712) 413 (SC); PDP v. Degi- Eremienyo (2021) 9 NWLR (pt. 1781) 274; and AG OF THE FEDERATION v. AG OF ABIA STATE & ORS (2024) LPELR-62576(SC) (Pp. 89-90 paras. C-C).**

Another point of objection was that the Claimants did not issue and serve any pre-action notice on the Esan North East Local Government Council, at least one month before instituting a suit against a Local Government Council as required by the provisions of **Section 152 of the Edo State Local Government Law, 2000.**

However, upon a careful perusal of the records, I discovered that this Court, presided over by my learned brother, **my Lord J.O. Okeaya-Inneh**, on the 25th of March 2025, gave a ruling striking out the names of the Esan North East Local Government Legislative Council and the Esan North East Local Government Council as the 9th and 10th Defendants respectively, in this suit. I am of the view that since the Esan North East Local Government Council is no longer a party to this suit, the alleged non-service of the Pre-Action Notice on them is inconsequential and has been overtaken by events. The said objection is therefore overruled.

Another objection taken by the Defendants is that by virtue of **Section 19 (10) of the Edo State Local Government Law 2000 as amended** the Court is prohibited from hearing and/or determining matters related to the impeachment of Local Government Chairmen and Vice Chairmen in Edo State.

My brief response to this objection is that as the apex Court decided in the case of **INAKOJU & ORS v. ADELEKE & ORS (2007) LPELR-1510(SC) (Pp. 179-181 paras. A)**, where the Court is invited to examine the procedure adopted in impeachment proceedings, such as in the instant suit, the jurisdiction of the Court cannot be ousted by any statute. In the event, this objection is also overruled.

Finally, the Defendants, raised the objection that the depositions of the Claimants were made by the Litigation Manager of the Claimants' counsel and that this amounts to hearsay.

For the avoidance of doubt, **Section 115 (1) of the Evidence Act, 2011**, enjoins the deponent as a witness, to depose to facts in an affidavit that either of his own personal knowledge or from information which he believes to be true. Thus, for every assertion in a specific averment the deponent consistent with **Section 115 (1), (3) and (4) of the Evidence Act 2011**, must disclose with particulars his source of information and belief.

Upon a careful examination of the Claimants' supporting affidavits, I observed that the deponent who identified himself as the Litigation Manager, stated that the facts which he deposed to were within his personal knowledge and from the information supplied to him by the 1st Claimant.

I am of the view that the deposition substantially complied with the requirements of stating reasonable particulars of the informant as well as the circumstances of the information. It is only when a deponent withholds the sources of his information that such an affidavit can be termed to be hearsay and inadmissible as being contrary to **Section 115(1) of the Evidence Act**. See the cases of **F.G.N. & ANOR V A.I.C. LTD (2005) LPELR 6152 (CA)** and **CHIEF ISRAEL O. ONI (JP) v. MRS. GRACE NNAJI & ORS (2021) LPELR-54694(CA)**.

In the event, this objection is also overruled.

Having overruled all the grounds raised in the Preliminary Objection, I will proceed to examine the suit on the merits.

Essentially, the Claimants instituted this suit to challenge their removal from office as the Chairman and Vice Chairman of Esan North East Local Government Council.

I am of the view that the sole issue for determination in this suit is whether the Claimants are entitled to the reliefs which they seek in this suit?

Section 7(1) of the 1999 Constitution of Nigeria guarantees a system of democratic local government councils, ensuring their existence under law, including their structure, composition, finance, and functions.

The Supreme Court of Nigeria in several decisions has affirmed that State Governors cannot dissolve or remove elected local government officials unilaterally. Removal of elected local government officials must comply with the relevant legal provisions. See the cases of ***HON. CHIGOZIE EZE & ORS v. GOVERNOR OF ABIA STATE & ORS (2014) LPELR-23276 (SC)*** and ***ETIM A. AKPAN & ORS v. HON PETER JOHN UMAH & ORS (2002) LPELR-7099 (CA)***.

In Edo State, the removal of a Local Government Chairman or Vice Chairman is the exclusive prerogative of the Council's Legislative House (i.e., the elected councillors of the LGA) acting in conjunction with the State House of Assembly.

The procedure for their removal is clearly enumerated in the ***Edo State Local Government Law 2000 as amended in 2002***.

Section 19 of the Edo State Local Government Law 2000 as amended in 2002 provides that the Local Government Chairman or Vice can be removed from office in accordance with the provisions of the said section if they have committed a misconduct in the performance of their functions, detailed particulars of which shall be specified.

The section further provides that even in the commission of such misconduct, a notice of the allegations in writing signed by not less than two thirds of the members of the legislative council must be presented to the leader of the legislative council stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his or her office, detailed particulars of which shall be specified.

Furthermore, within 14 days of the presentation of the notice to the leader of the legislative council, the legislative council shall resolve by motion without any debate whether the allegations should be investigated.

A motion of the legislative council that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two thirds majority of all the members of the legislative council.

Within seven days of the passing of a motion under the foregoing provisions of the section, the legislative council shall set up a 7 man panel which shall be composed of people of proven integrity from outside the council and not being members of any public service, legislative council or political party to investigate the allegations as provided in the section.

The holder of the office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented before the panel by a legal practitioner of his own choice and the panel report to the legislative council shall come in after four weeks.

When the report of the panel is that the allegation against the holder of the office has been proved, then within seven days of the receipt, the legislative council shall consider the report.

If by resolution supported by not less than two thirds of all members of the legislative council the report of the panel is adopted, such resolution shall be forwarded to the State House of Assembly that may re-examine the findings of the panel and assess the merits of the resolutions of the legislative council.

The House of Assembly shall within four weeks return same to such legislative council with approval or disapproval by a resolution supported by not less than two thirds majority of all the members of the House.

Furthermore, the section stipulates that the holder of the office under investigation shall not be suspended from office within the period of investigation.

The above procedures must be followed strictly by the Legislative Council of a Local Government in order to validate the removal of a Local Government Chairman or Vice Chairman.

Any act relating to the removal or suspension of a Local Government Chairman or Vice Chairman contrary to the above provisions of the law is null and void. See the cases of ***HON. CHIGOZIE EZE & ORS v. GOVERNOR OF ABIA STATE & ORS (2014) LPELR-23276 (SC)*** and ***ETIM A. AKPAN & ORS v. HON PETER JOHN UMAH & ORS (2002) LPELR-7099 (CA)***.

In their counter-affidavit, in defence of this suit, the Defendants enumerated the steps which they took in the process of the alleged impeachment of the Claimants.

From their account, there is nothing to show that within seven days of the passing of the alleged motion to investigate the Claimants that the Legislative Council set up a **7 man panel which was composed of people of proven integrity from outside the council and not being members of any public service, legislative council or political party to investigate the allegations as provided** (underlining, mine) as stipulated in *section 19(5) of the Law*.

As a matter of fact, all the invitations purportedly sent to the Claimants were to invite them to appear not before the 7 man special panel as prescribed by the law but to appear before the members of the Legislative Council. In other words, the members of the Council assumed the roles of investigators, accusers and adjudicators all at the same time. This was clearly in breach of the procedure stipulated under *section 19 of the Law*.

Furthermore, *section 19 (7) & (8) of the Law* stipulates that when the report of the panel is that the allegations against the holder of the office has been proved, then within seven days of the receipt, the legislative council shall consider the report.

The Law stipulates that if by resolution supported by not less than two thirds of all members of the Legislative Council, the report of the panel is adopted, such resolution shall be forwarded to the State House of Assembly that may re-examine the findings of the panel and assess the merits of the resolutions of the legislative council.

Furthermore, that upon receipt of the report, the House of Assembly shall within four weeks return same to the Legislative Council with approval or disapproval by a resolution supported by not less than two thirds majority of all the members of the House.

From the showing of the Defendants, the alleged report of the Claimants' purported acts of gross misconduct was never referred to the House of Assembly before the Defendants carried out the alleged removal of the Claimants from office.

From the foregoing, it is evident that the Defendants did not follow the procedure as stipulated under the *Edo State Local Government Law* before they effected the purported removal of the Claimants from office.

Sequel to the foregoing, I hold that the sole issue for determination is resolved in favour of the Claimants.

Having resolved the sole issue in favour of the Claimants, I hold that the six questions for determination in the Originating Summons are resolved in favour of the Claimants, and they are granted the following reliefs:

1. ***A DECLARATION OF THIS HONOURABLE COURT that the purported removal/impeachment of the Claimants from the office of Chairman and Vice Chairman of Esan North East Local Government Council, Edo State by the 1st to 8th Defendants without Notice of any allegation signed by not less than two thirds of the members of the Esan North East Legislative Council to the Leader of the Legislative Council, stating that the Claimants are guilty of gross misconduct, or at all, is unconstitutional, illegal, null and void and of no effect whatsoever;***
2. ***A DECLARATION OF THIS HONOURABLE COURT that the purported removal/impeachment of the Claimants from the office of the Chairman and Vice Chairman of Esan North East Local Government Council, Edo State by the 1st to 8th Defendants, purporting to act on behalf of the Esan North East Legislative Council, without any motion by the Legislative Council that the allegation (if at all) be investigated, and without setting up seven-man panel composed of people of proven integrity to investigate the purported allegation or at all, is unconstitutional, illegal, null and void and of no effect whatsoever;***
3. ***A DECLARATION OF THIS HONOURABLE COURT that the purported removal of the 1st and 2nd Claimants from the office of the Local Government Chairman and Vice Chairman of Esan North East Local Government Council of Edo State by the 1st to 8th Defendants without causing a copy of the Notice of Impeachment (if any) to be served on the Claimants and on each members of the Esan North East Legislative Council, within Seven (7) days of the Esan North East Local Government Council's receipt of the notice) or at all, amounts to a violent contravention of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and therefore ultra vires, unconstitutional, illegal, null and void and of no effect whatsoever;***
4. ***A DECLARATION OF THIS HONOURABLE COURT that within the meaning and or intendment of the provision of Section 7 and Section 36(1) of the Constitution of the Federal Republic of Nigeria (as amended), read together with Section 19 of the Local Government Laws of Edo State 2000 (as amended 2002), the Claimants have not been found guilty or wanting of any gross misconduct for which they can be removed/impeached from the office of the Local Government Chairman and Vice Chairman of Esan North East Local Government Council, Edo State;***
5. ***A DECLARATION OF THIS HONOURABLE COURT that, having regards to Section 7 and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and Section 19 of the Local Government***

Law of Edo State 2000 (as amended 2002), the purported removal of the Claimants from office as the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State by the 1st to 8th Defendants on the 6th day of January, 2024 is unconstitutional, illegal, null and void and of no effect whatsoever;

- 6. A DECLARATION OF THIS HONOURABLE COURT that the purported swearing-in of the 1st Defendant as the occupant of the office of the Local Government Chairman of Esan North East Local Government Council of Edo State is in contravention of Sections 7 and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and Sections 10 and 19(1-9) of the Local Government Law of Edo State 2000 (as amended 2002) and therefore illegal, unconstitutional, null and void and of no effect whatsoever;*
- 7. A DECLARATION OF THIS HONOURABLE COURT that the Claimants are still the occupants of the office of the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State and that the seats of the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State have not become vacant;*
- 8. A DECLARATION OF THIS HONOURABLE COURT that the refusal and/or failure of the 11th Defendant's Officers to provide security and guarantee the security of the Claimants as occupants of the office of the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State is unlawful, null and void and unconstitutional;*
- 9. AN ORDER OF THIS HONOURABLE COURT restoring or reinstating the Claimants to their offices as the Chairman and Vice Chairman of Esan North East Local Government Council of Edo State, the 9th and 10th Defendants herein, together with the rights, privileges, paraphernalia and perquisites of the said offices;*
- 10. AN ORDER OF THIS HONOURABLE COURT of perpetual injunction, restraining the Defendants either by themselves, their agents, privies, representatives or associates, persons acting for or through them and/or deriving authority from them from preventing the Claimants from performing the functions of the office of the Local Government Chairman and Vice Chairman of Esan North East Local Government Council of Edo State; and*
- 11. AN ORDER OF THIS HONOURABLE COURT mandating, directing and/or compelling the 11th Defendant to provide protection to the Claimants for the peaceful resumption and discharge of their duties and functions as bestowed in their offices.*

The Defendants shall pay the sum of N1,000,000,00 (One Million Naira) as costs for this suit.

*Hon. Justice P.A. Akhiehiero
Judge
21/01/26*

COUNSEL:

MONDAY MAWAH ESQ. leading S.C. EZIEFULE ESQ.

& ANDERSON ASEMOTA ESQ.-----CLAIMANTS

EVANS OGBEIFUN ESQ, leading

L.O. OKHIONKPAMWONYI ESQ.-----1ST – 10TH DEFENDANTS

UNREPRESENTED-----11TH DEFENDANT