

IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA
IN THE WARRI JUDICIAL DIVISION: HOLDEN AT WARRI
BEFORE THE HONOURABLE JUSTICE P.O. ONAJITE-KUEJUBOLA (MRS.)
ON MONDAY THE 15TH DAY OF JANUARY, 2016

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APR
8/5/2016
1:00pm

BETWEEN:

SUIT NO. W/386/2014

1. MICHAEL E. UKUSARE (ESQ.)
 2. SUNDAY M. DUNKWU (ESQ.)
 3. SALAM O. ADAMU (ESQ.)
- (For themselves and on behalf of the
Members of the Nigerian Bar Association
Warri Branch)

}
----- CLAIMANTS

= A N D =

1. DELTA STATE HOUSE OF ASSEMBLY
2. THE GOVERNOR, DELTA STATE
3. ATTORNEY-GENERAL, DELTA STATE
4. THE COMMISSIONER OF POLICE,
DELTA STATE.

}
----- DEFENDANTS

J U D G M E N T

By an originating summons dated 4th September 2014, filed on 29th September 2014, the claimants herein who are members and representatives of the Nigerian Bar Association, Warri Branch, Delta State have approached this Honourable Court for the determination of the following questions.

- 1) Whether Section 4 subsections 4 and 5 of the Delta State Anti Kidnapping and Anti Terrorism Law, 2013, is not unconstitutional, null and void having regard to the provisions of Sections 1 (3), 36 (1) and 36 (2)(a) of the Constitution of the Federal Republic of Nigeria 1999 as amended.
- 2) Whether Sections 11 (2) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, null and void having regard to the provisions of Sections 1 (3), 35 (1) and 36 (12) of the Constitution of the Federal Republic of Nigeria 1999 as amended.
- 3) Whether Section 16 (3) of Delta State Anti Kidnapping and Anti Terrorism Law 2013, is not unconstitutional, null and void having regard to provisions of Section 1 (3), 6 (6)(a), Section 35 (4) a, b Section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

Upon the determination of the above questions, the claimants seek the following reliefs:

- 1) A declaration that Section 4 (4) and subsection (5) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, is inconsistent with the provisions of Section 36 (1) and 36 (2) (a) of the Constitution of the Federal Republic of Nigeria 1999 as amended and to the extent of such inconsistency unconstitutional, null and void and of no effect whatsoever.
- 2) A declaration that Section 11 (2) of the Delta State Anti Kidnapping and Anti Terrorism Law, 2013, is inconsistent with the provisions of Sections 35 (1) and 36 (12) of the Constitution of the Federal Republic of Nigeria 1999 as amended and to the extent of such inconsistency unconstitutional, null, void and of no effect whatsoever.

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ASST. CHIEF REGISTRAR
HIGH COURT OF JUSTICE, WARRI
8/5/2016

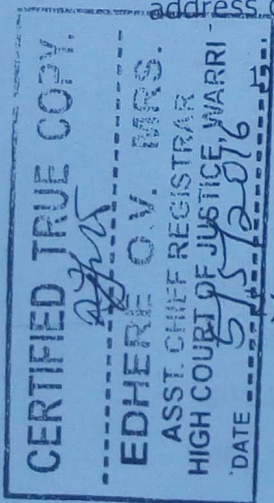
- 3) A declaration that Section 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, is inconsistent with Section 6 (6)(a) and Section 35 (4)(a)(b) and Section 36 (5) of the Constitution of the Federal Republic of Nigeria (1999) as amended to the extent of such inconsistency unconstitutional, null, void and of no effect whatsoever.
- 4) An order of Perpetual Injunction restraining the 2nd, 3rd, 4th Defendants, by themselves, their agents, servants, privies and howsoever called, designated from enforcing and further enforcing and or giving effect to the provisions of Section 4 (4)(5), 11 (2) and 16 (3) of the Delta State Anti Kidnapping and Terrorism Law, 2013.

In support of the originating summons is 26 paragraph affidavit deposed to by the 1st Claimant herein.

There is a counter affidavit filed by 1st Defendant on 17th November 2014, deposed to by a legal practitioner in the legal department of 1st Defendant that is, Delta State House of Assèmbly.

There is also a counter affidavit filed by 2nd and 3rd Defendants herein on 1st April 2015 deposed to by a Principal State Counsel in the Ministry of Justice, Asaba with the consent and authority of the 2nd and 3rd Defendants. The said counter affidavit was via a motion on notice dated 13th April 2015 filed 16th April 2015, granted by the order of court made on 4th June, 2015.

In moving this summons seeking for the aforesaid declarations, Ebiroma, Esq. G.E. Bivbere, G.E. Eyaife appeared as counsel representing the claimants herein. Learned counsel relied on all averments per supporting affidavit while adopting the written address duly settled by Larry Ovwromoh, Esq.



Whether Sections 4 (4)(5) and 11 (2) and 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013 is not unconstitutional, null, void having regard to the provisions of Section 6 (6)(a), Sections 35 (4) (a)(b), 36 (1), 36 (2) (a), 36 (5), 36 (12) of the Constitution of the Federal Republic of Nigeria (1999) as amended if Issue is answered in the affirmative.

Whether in view of the provisions of Section 1 (3) of the Constitution of the Federal Republic of Nigeria (1999) as amended the 2nd and 3rd Defendants, their agents, servants and privies howsoever called or designated can enforce or further enforce and give effect to the provisions of Sections 4 (4)(5) and 11 (2) and 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013.

Learned counsel restated the provisions as in Section 4 (4)(5) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013. This law he submits takes away the right of the owner of the property and permits the Governor of Delta State or his representative to seal up such premises without the owner an opportunity to be heard.

Learned counsel submits further that the Section 4 (4)(5) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, imposes punishment on a person whom the law presumes to be innocent without trial which is in breach of Section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 as amended. Section 11 (2) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, states that "Any community in whose domain hostages are being held, the community executive leaders shall be arrested and upon conviction be sentenced to imprisonment for five years without option of fine. This learned counsel submits is inconsistent with Section 35 (1) (a) – (f) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

Learned counsel described the arrest of taking another in place of the person who committed the offence is itself, hostage taking. He relied on the case of:

The State Vs. Millionaire Ekpe & 6 Ors (19730 M.W.S.J. 172 at 200.

Section 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, he submits is a clear violation of the breach of the right of liberty guaranteed by Section 35 (1) of Constitution of the Federal Republic of Nigeria 1999 as amended.

Learned counsel relied on a host of decided authorities and relevant sections of the Constitution of the Federal Republic of Nigeria 1999 as amended urging the court to resolve Issue 1 in favour of the claimants, and held that Section 4 (4)(5); 11 (2) and 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013 is unconstitutional, null and void having regard to the provisions of Section 6 (6)(a), Section 35 (4) (a)(b), 36 (1), 36 (2)(a), 36 (5), 36 (12) of Constitution of the Federal Republic of Nigeria 1999 as amended.

On the 2nd Issue, learned counsel submitted that the 1999 Constitution of the Federal Republic of Nigeria as amended is the grand-norm of the Supreme Court Law of the country and the provisions therein shall have binding effect and force on all authorities and person throughout the Federal Republic of Nigeria. He cited and relied on the case of:

Adekoya Vs. N.S.P.M. Company Ltd (2009) All F.W.L.R. Part 463, 1263 at 1276 paragraph A, and to the provisions in Section 1 (3) of Constitution of the Federal Republic of Nigeria 1999 as amended.

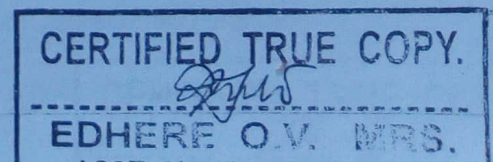
According to learned counsel, under the consistency test, the validity of any law is determined by its consistency with the provisions of the supreme law, the Constitution of the Federal Republic of Nigeria 1999 as amended. Any law or section of any law which is inconsistent with the provisions of Constitution of the Federal Republic of Nigeria 1999 as amended and shall to that extent of the inconsistency be void. He relied on the case of Military Governor of Ondo State Vs. Adewumi (1988) 3 N.W.L.R. Part 82, and Section 1 (3) of Constitution of the Federal Republic of Nigeria 1999 as amended.

The Delta State House of Assembly, 1st Defendant herein, he submits cannot go outside the provisions of the Constitution, Constitution of the Federal Republic of Nigeria or make laws to desecrate the provisions of the Constitution of the Federal Republic of Nigeria.

The 2nd, 3rd and 4th Defendants, their agents, servants and privies, he contended, ought not to enforce or give effect to the Section 4 (4)(5), 11 (2), 16 (3) of Delta State Anti Kidnapping and Anti Terrorism Law 2013. He urged the court to resolve Issue 2 in favour of the claimants and hold that b the provisions of Section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 as amended the 2nd, 3rd Defendants, their agents and privies cannot enforce or give effect to the provisions of Sections 4 (4)(5), 11 (2), 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013. Learned counsel urged court to grant the prayers sought in the originating summons.

Replying, learned counsel representing 1st Defendant herein, Ochuko Akpobasa who filed a preliminary objection and counter affidavit filed in opposition to the originating summons filed on 29th September 2014, and adopted the written address duly settle by counsel himself; wherein four issues were formulated by counsel as issues for determination:

- 1) Whether the deposition in paragraphs (11) – (25) of affidavit in support of the originating summons are not offensive to the provisions of Section 115 of the Evidence Act 2011, and if so, whether the said offensive paragraphs are not liable to be struck out or discountenanced.
- 2) If Issue 1 above is resolved in the affirmative, whether there are still material, relevant facts (evidence) left upon which the reliefs sought can be grant.
- 3) Whether the claimants are not stopped from instituting the instant suit in view of the resolution passed by the claimants sometime in 2012 prohibiting members of the claimants from representing persons charged with kidnapping and other related offences.



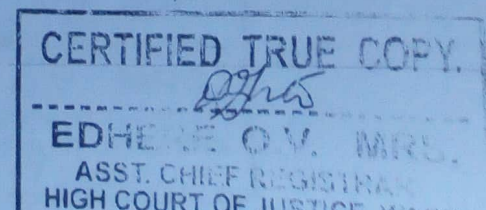
- 4) Whether the provisions of Sections 4 (4)(5) and 11 (2), 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013 are unconstitutional.

In putting up argument in support of the issues raise, learned counsel contended that almost all the paragraphs of the supporting affidavit are of extraneous matters, legal arguments and conclusions which ought to be struck out. He relied on a host of decided authorities in that regard. According to learned counsel, if and when Issue 1 succeeds, what is left of the supporting affidavit are paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 18, 24 and 26 which contains no material evidence. He urged court to resolve Issues 1 and 2 in favour of the 1st Defendant.

On Issues 3 and 4, learned counsel concedes that Section 36 (1)(4) of Constitution of the Federal Republic of Nigeria 1999 as amended, but the resolution taken sometime in 2012 by the claimants herein takes away their right to defend themselves or make representations by legal practitioners of their own choice. The claimants, he submits cannot be heard to say Sections (4), (11) and 16 of the Anti Kidnapping and Anti Terrorism Law of Delta State 2013 are in denial of the claimants' right to fair hearing, and personal liberty and therefore unconstitutional. He submitted that the Sections 4 (4)(5), 11 (2), 16 (3) of the said law of Delta State do not take away the opportunity for any Deltan affected by the provisions to be heard. That like the EFCC Act, the provisions relating to the application for forfeiture of any premises do not say that the application be made ex-parte. He reeled out all that is contained in his written address as his arguments and submissions in support of the 1st Defendant's counter affidavit urging the court to resolve all the four issues in favour of the 1st Defendant herein.

Also replying E.U. Edomwunyi, Deputy Director, representing the 2nd and 3rd Defendants herein relied on the counter affidavit of 11 paragraphs deposed to by a Principal State Counsel in the Ministry of Justice with the consent and authority of 2nd and 3rd Defendants, while adopting the written address duly settled by counsel himself. Learned counsel distilled the following four issues for determination upon which he hinged his arguments and submissions.

- 1) Whether the claimants have the locus standi to institute this action.
- 2) Whether this suit instituted in a representative capacity is competent.
- 3) Whether the claimants are not estopped from instituting the instant suit and seeking the reliefs in the suit in view of the resolution passed in 2012 prohibiting members of claimants' association from representing persons charged with kidnapping and related offences.



- 4) Whether Section 4 (4), Section 11 (2), Section 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013 is in conflict with Sections 1 (3), 6 (6)(A), 35 (4) (a)(b)(c), 36 (1), 36 (2), 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 as amended and to that extent unconstitutional.

Putting up arguments in support of these issues, learned counsel submitted that a perusal of the reliefs claimed by claimants and the entire 26 paragraph affidavit in support of the originating summons shows that the reliefs sought are in the nature of a public right. He referred to a host of decided authorities, contending that claimants must show that they have suffered injury over and above that of the generality of the public. This he submits, claimants have failed to show. That claimants have not shown their locus standi to so invoke the power of the court.

On the 2nd Issue, he submitted that claimants have not satisfied the essential requirements to institute this action in a representative capacity. That the claimants by themselves with regard to the resolution of 2012 denied themselves the right to defend or be defended by legal practitioner of their choice in such matters. He prayed court to resolve Issues 1 – 3 in favour of 2nd and 3rd Defendants. He further argued as in the written address that there is nothing that occasions a conflict in the Delta State Anti Kidnapping and Anti Terrorism Law 2013, with the Section 35 (1), 35 (4), Section 1 (3), 36 (1)(2) (5) of Constitution of the Federal Republic of Nigeria 1999 as amended.

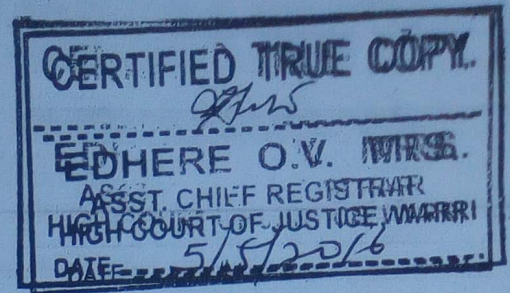
Learned counsel while replying on the relevant provisions of the Federal Republic of Nigeria and that of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, submitted that no conflict arises between these laws and there is nothing in the provisions of the said law that takes away the opportunity for any Deltan affected by the provisions of Section 4 (4)(5) to be heard. All these four Issues he contended be resolved in favour of 2nd and 3rd Defendants.

Reply on point of law, claimants' counsel adopted the reply dated 28th July 2015 therein and did put up spirited argument for all issues raised by both sets of defendants' counsel replying on all authorities cited therein.

This originating summons is taken up by the claimants herein for themselves and on behalf of the members of the Nigerian Bar Association, Warri Branch, against the four named Defendants.

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[Signature]
 EDHERE O.V. MRS.
 ASST. CHIEF REGISTRAR
 HIGH COURT OF JUSTICE, WARRI
 DATE 5/5/2016

- 1) Delta State House of Assembly.
- 2) The Governor, Delta State.
- 3) Attorney-General, Delta State.
- 4) The Commissioner of Police, Delta State of Nigeria.



The issues for determination in the originating summons are set out therein, upon which the claimants are seeking the four reliefs set out therein. Before I go into the question, and ultimately, the reliefs sought it is pertinent to note that other burning issues have arisen and activated by the respective counsel representing 1st Defendant, on one hand and that representing 2nd and 3rd Defendants on the other side. However all those issues boil down to:

- 1) Whether the claimants have the locus standi to institute this action.
- 2) Whether the suit instituted in a representative capacity is competent.
- 3) Whether the claimants are not stopped from instituting this suit or seeking the relief in view of the resolution passed by claimants sometime in 2012 prohibiting members of the claimants' association from representing persons charged with kidnapping and related offences.
- 4) Whether Sections 4 (4)(5), 11 (2), 16 (3) of the Delta State Kidnapping and Anti Terrorism Law 2013, is in conflict with Sections 1 (3), 6 (6)(A), 35 (1), 35 (4) (A-C), 36 (1)(2)(5) of Constitution of the Federal Republic of Nigeria 1999 as amended and to that extent unconstitutional.

All these questions/issues raised by counsel in this cause of their arguments and submissions must be dealt with before delving into the main question and reliefs of the originating summons on Issue One.

The concept of locus standi has become very fundamental and as a threshold to adjudication; it is a condition precedent to the exercise of judicial power by the court which will have no jurisdiction or competence to hear or determine the suit at the instance of a complainant who has no locus standi.

The importance and fundamental nature of locus standi which is akin to, analogous and similar to the issue of jurisdiction such that once it is raised, it takes priority for consideration and determination. See the case of:

Adefulu Vs. Oyesile (1989) 5 N.W.L.R. Part 122 at 377.

Esuruos Vs. Ogidi (2002) F.W.L.R. Part 112 at 85 to mention but a few.

A close perusal of the depositions as contained in the affidavit in support of the originating summons must be scrutinized in order to ascertain the standing of the claimants herein. It is from the facts contained therein that the court will know whether

claimants have vested in them the enforceable right to sue and maintain this matter before court. What then can be deduced from claimants' depositions?

Paragraphs 12 to 19 in particular are revealing and illuminating in this regard.

Paragraph 12: "I know as a fact that as a Deltan, my humble self, the 2nd and 3rd Claimants as well as all members of the Nigerian Bar Association, Warri Branch who reside in Delta State are entitled to fair hearing in the determination of our civil rights and obligations including any question or determination of or against any government or authority."

Paragraph 13: "My humble self the 2nd and 3rd Claimants as well as all members of the Nigerian Bar Association, Warri Branch live in premises within Delta State. We also own premises within Delta State where persons not under our control live/reside as tenants/or co-tenants."

Paragraph 15: "I know as a fact that Section 4 of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, makes no provision for an opportunity for any person whose rights and obligations are to be affected by the exercise of the powers donated therein to make representations to the administering authority before that authority makes any decision affecting that person or his property."

Paragraph 17 & 18:

"Further state the names of some members of the Warri Branch of N.B.A. who hold positions of authority in their community, such as legal advisers, and leaders in Uvwie Clan, Ekiugbo Community and Udu Clan respectively."

The depositions of the claimants herein as in the supporting affidavit of originating summons reveal and disclose their justiciable right and interest which is said to have been violated or about to be violated. Owodunmi Vs. Registered Trustees of CCC (2000) F.W.L.R. Part 19 at 1453, also reported (2000) 6 S.C. Pat 111 at 60.

In this vein, Section 6 (6) of the Constitution of the Federal Republic of Nigeria (1999) as amended, and Section 46 (1) of the Constitution of the Federal Republic of Nigeria (1999) as amended come readily at hand.

Section 46 (1)
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HIGH COURT OF JUSTICE, WARRI
DATE *5/5/2016*

Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress. Section 6 (6) of the Constitution of the Federal Republic of Nigeria (1999) also provides a platform for claimants in a similar vein "The judicial powers vested in accordance with the foregoing provisions of this section."

A thorough examination of the facts deposed to in supporting affidavit shows that claimants who are members of the Nigerian Bar Association, Warri Branch have shown that their interest will be affected by the action of the defendants as it relates to the

Section 4 (4) & (5), Section 1 (2), Section 16 (3) of Delta State Anti Kidnapping and Anti Terrorism Law, 2013. That their interest will be affected by these sections of the aforementioned Delta State Law 2013 cannot be ignored.

The claimants' depositions in supporting affidavit to the originating summons certainly constituted facts revealing that they have a locus standi, and a reasonable cause of action to institute this action. See the case of:

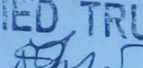
Uwazuruonye Vs. Gov. of Imo State (2012 11 S.C.N.J. 46.

The law is settled that any person can challenge any law that is invalid and or violates the provisions of the Constitution of the Federal Republic of Nigeria (1999) as amended. See Section 46 (1) of the Constitution of the Federal Republic of Nigeria (1999) as amended. See the case also referred to by claimants' counsel:

Abraham Adesanya Vs. President of Federal Republic of Nigeria (1981) 2 N.C.L.R. 338 at 380. I only need to state that every citizen of Nigeria owes it as a duty which is sacrosanct to reflect the spirit and interest of the Constitution which is the grand-norm of Nigeria. For this reasoning and that of the foregoing, I hold that the claimants herein have the locus standi to institute the action. That Issue 1 is resolved in favour of the claimants.

On the 2nd and 3rd Issues which I shall consider together, that this case was instituted by claimants in a representative capacity is not in doubt. The three named claimants, filed same for themselves and all members of the Nigerian Bar Association, Warri Branch. Authorities abound that a person or persons suing in a representative capacity does not for his benefit alone, but for the benefit of the entire community he represents. The argument put up by the counsel representing 2nd and 3rd Defendants that the claimants do not have common interest and grievance to institute this action will not stand. All the claimants have been shown to be owners of the premises they reside in, or co-tenants therein of such premises in Delta State.

The argument of defendants' counsel that Section 4 (4)(5) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, will not apply to the claimants is not acceptable. This is so because the Section 4 (4) and (5) of the Anti Kidnapping and Anti Terrorism Law 2013, about sealing up of the premises used to harbour persons held or kidnapped. The defendants have not denied the averments made by claimants per supporting affidavit that the claimants do not reside in Delta State or own premises in and around Delta State. It does not lie in the mouth of the defendants to say that the

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claimants do not have common interest to institute this action in a representative capacity. It is only a dissenting member who apply and say that the named claimants have no right to represent him or that he does not want them to represent him. He will then apply to be made a party to protect his own interest, and such dissenting member is usually made a defendant. See the case of:

Atanda Vs. Olarewaju (1988) 4 N.W.L.R. page 89 at 394 S.C.

It is interesting to note as it is the position of the law that an action commenced in a representative such as this present action of claimants herein, what is mandatory is not leave to sue in a representative capacity but that the representatives should be expressed on the writ or originating summons, as could be seen in this instance. See the case of:

U. B. A. Plc. Vs. Ntuk (20030 N.W.L.R. Part (843) ratios 5 & 6.

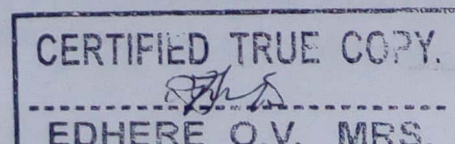
There is no doubt that the action taken out by claimants herein in their representative capacity shows common interest, common grievance and reliefs claimed to be beneficial to all. See the case of:

Ofia Vs. Ejeni (2006) All F.W.L.R. Part 324 page 1816 at 1825 – 1826.

Now whether the claimants are stopped from instituting this suit in view of a resolution earlier passed on its members prohibiting of Nigerian Bar Association, Warri Branch from representing persons charged with kidnapping.

The hub on which this action is premised by the claimants is that the provisions of Section 4 (4)(5), Section 11 (2), Section 16 (3) of the Delta State Anti Kidnapping and Anti, Terrorism Law 2013, is likely to take away from the claimants and citizens' right to fair hearing and personal liberty. Defendants' counsel's argument is that claimants cannot approbate and reprobate. I must point out that nothing should stand on the way of fundamental rights of a person or citizen of Nigeria, in the enforcement of his or her fundamental rights. If I may pose the question; the fact that a resolution was passed by Nigerian Bar Association, Warri Branch sometime in 2012, does not debar the same Nigerian Bar Association, Warri – claimants herein from exercising their constitutional right to seek redress as provided for in Section 46 (1) of the Constitution of the Federal Republic of Nigeria (1999) as amended?

Section 46 (1): Constitution of the Federal Republic of Nigeria (1999) as amended provides "Any person who alleges that any of the provisions of this chapter has been, is



being or likely to be contravened in any State in relation to him, may apply to the High Court in that State to seek redress."

The Chapter 4, in which Section 46 (1) is contained, touches on the fundamental right of every citizen of Nigeria.

Nothing stands above and against the fundamental rights of any person or citizen or Nigeria; let alone for the claimants to be denied their right to seek redress on the arguments of defendants' counsel that a resolution was passed in 2012 by Nigerian Bar Association prohibiting her members from representing accused persons alleged to be involved in kidnapping and related offences. Any resolution reached by Nigeria Bar Association Warri cannot be elevated to a statute so as to override the provisions of the Constitution of the Federal Republic of Nigeria to estop the claimants from seeking redress in court in matters of fundamental rights as they seek to do via this action. It is in this reasoning that I resolve Issues 2 and 3 in favour of the claimants.

Dealing with Issue 4, as to whether Sections 4 (4)(5), 11 (2), 16 (3) of Delta State Anti Kidnapping and Anti Terrorism Law 2013 is in conflict with Sections 1 (3), 6 (6)(A), 35 (1), 35 (4)(A)(B), Sections 36 (1)(2)(A) (5) of the Constitution of the Federal Republic of Nigeria (1999) as amended and to that extent unconstitutional.

It would be better appreciated if I reproduce the exact wording of these relevant sections of the law. Section 4 (4)(5) of Delta State Anti Kidnapping and Anti Terrorism Law 2013, provides as follows:

- 4) The governor or is authorized representatives shall have power to sign an order authorizing the sealing up of premises that he reasonably finds to harbour person held against his or her will, kidnapped persons or hostages held with or without the demand for ransom.
- 5) The sealing of the premises under subsection (4) of this section shall remain in force pending the final determination of application for forfeiture or revocation Order by a competent court.

Meanwhile Section 1 (1) and (3) of the Constitution of the Federal Republic of Nigeria (1999) as amended provides:

"This Constitution is supreme and the provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

- 3) If any law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of its inconsistency be void."

Meanwhile Section 36 (1) of the Constitution of the Federal Republic of Nigeria, provides for fair hearing of all persons, irrespective of clans so as to show the independence and

... of the court. Section 36 (1)(2)(a) provides that as therein stated:

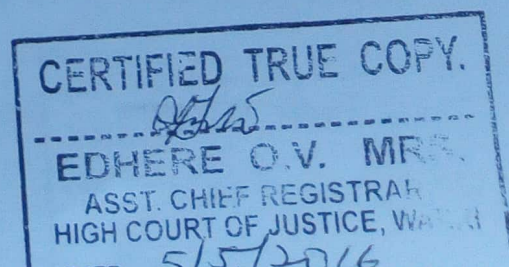
Section 36 (1): In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

- (2) Without prejudice to the foregoing provisions of this of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the determination of a law that affects or may affect the civil rights and obligations o any person if such law
- (a) provides for an opportunity for a person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the designated affecting that person, and
- (b) contains no provision making the determination of the administering authority final and conclusive."

The argument of claimants' counsel in support therefore is that the law as in Sections 4 (4)(5), 11 (2), 16 (3) of Delta State Anti Kidnapping and Anti Terrorism Law 2013 gives a blânket and unqualified power to any authority to arrest the owners of premises or community leaders, who include claimants herein, but not exhaustive to the commission of crime they may have no knowledge about. This claimants' counsel is contending is in violation of the right of fair hearing as provided for by the Constitution of the Federal Republic of Nigeria (1999) as amended. Section 35 (1).

I am on the same page with claimants' counsel that the provisions of Sections 4 (4)(5), 11 (2), 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013 is in violation, conflict with Section 35 (1) of the Constitution of the Federal Republic of Nigeria (1999) as amended, Section 36 (12), Section 36 (2) of same. There is no opportunity given by the Delta State Law on Anti Kidnapping and Anti Terrorism for the owner of the premises where the person was held hostage to be heard in respect of sealing of such a property. This is a violent breach of Section 36 (1) of Constitution of the Federal Republic of Nigeria 1999 as amended.

The Constitution of the Federal Republic of Nigeria remains the organic and fundamental law, the ground-norm of Nigeria. If any other law is inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, the Constitution shall prevail and that other law shall, to the extent of the inconsistency be void. Section 1 (3) of Constitution of the Federal Republic of Nigeria 1999 as amended.



Section 1 (1) - The Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

It follows therefore that any law such as the Sections 4 (4)(5), 11 (2), 16 (3) of the Delta State Anti Kidnapping, Anti Terrorism Law which is in conflict with any provision of the Constitution as in Sections 35 (1), 36 (5), Section 1 (3)(6)(a), to that extent of its inconsistency be void.

The law does not give room for sentiments; neither does it give room for ignorance. In so much as the Delta State House of Assembly, have power to made laws for good governance of the people of Delta State as was done by the Anti Kidnapping, Anti Terrorism Law 2013, such laws must not be in conflict with an of the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended.

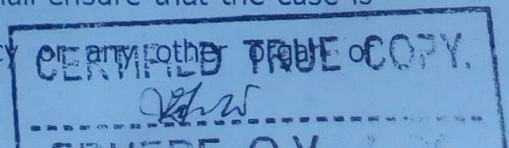
The defendants here are all subject to the Constitution which is above all. Section 1 (1) of the Constitution of the Federal Republic of Nigeria (1999) as amended, I must state that in the determination of those issues raised by learned counsel in his arguments and submissions which I have just considered, they have also provided formidable answers to the questions for determination as in the originating summons: 1 -3 therein.

The Constitution of the Federal Republic of Nigeria 1999 as amended is supreme over and above all other laws, even that of Delta State of Nigeria. The Section 4 (4) of Delta State Anti Kidnapping, Anti Terrorism Law 2013 authorizing the governor to sign a sealing order authorizing the sealing up of premises were a person has been harboured, that is, a kidnapped victim which certainly negates the fundamental right provisions of the Constitution of the Federal Republic of Nigeria, which prescribes fair hearing to all citizens of Nigeria as in Section 36 (1) of the Constitution of the Federal Republic of Nigeria (1999) as amended.

The Constitution provides that an accused person is innocent until the contrary is proved, implying that every accused is entitled to fair hearing.

What does Section 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law say?

"Notwithstanding the provisions of any law, any person who contravenes the provisions of this law shall not be entitled to bail, however the Judge shall ensure that the case is disposed of timeously. The law is settled that no agency or any other party of



government apart from the court can determine whether a person has contravened the law.

See the case of:

Oni Vs. Fayemi (2013) 224 L.R.C.N. Part 2 at 89.

For a court to decide whether an accused person has contravened the law he must be entitled to fair hearing before such decision is reached. Any law which deprives a party or a person from fair hearing contrary to the provisions of the Constitution to that extent is void.

See the case of Nwongo Vs. Aku & Ors. (1983 11 S.C. at 129, 153.

It is denial of fair hearing as implied by Sections 4 (4), 11 (2), 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013, when it states as follows:

"..... shall not be entitled to bail."

Section 11 (2) – the community executive leader shall be arrested and upon conviction be sentenced to imprisonment for five years without an option of fine."

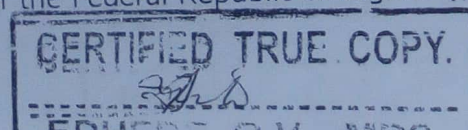
How, do you arrest a community leader without giving him a right to be heard? How will a law specify express as in Section 16 (3) of Anti Kidnapping, Anti Terrorism Law of Delta State 2013, "that any person who contravenes the provisions of the law shall not be entitled to bail."

A host of authorities about and the principles enunciated as to the grant or refusal of bail which is held to be solely at the court's discretion exercised judicially and judiciously.

- 1) Bamaiyi Vs. State (2006) Vol. 5 1 LRCN 338.
- 2) State Vs. Okpara (2002) Vol. 3 LRCN 324.
- 3) Dokubo Asari Vs. F.R.N. (2008) Vol. 6 LRCN at 1.

The Constitution provides for separation of powers, that is, the executive arm of government, legislative arm and the Judiciary as in Section (5), (6) and (7) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

The law makers and the executive arm are not expected to interfere with the duties placed at the domain of the Judiciary (courts) as separation of powers is accorded due regard. A court cannot come to a conclusion without giving an accused fair hearing, in other words, a party to be heard who however presumed innocent until contrary is proved. See Section 36 (5) of the Constitution of the Federal Republic of Nigeria (1999) as amended.



See *Njoku Vs. State* (2013) Vol. 222 at Part 2, 219.

The Section 16 (3) of the Anti Kidnapping and Anti Terrorism law 2013 is therefore a violation of the fundamental right or an accused person as recognized in the Constitution of the Federal Republic of Nigeria and Human Rights Charter, and usurpation of the judicial powers given to the courts. The power to grant or refuse bail has never been known to be decided by the executive or legislative arm of government. Where any law or action is in conflict with the letter of the Constitution of the Federal republic of Nigeria 1999, as amended, which is the fundamental law of the land, then to the extent of such conflict or inconsistency, that law is unconstitutional, void and unenforceable. See the case of:

New Patriotic Party Vs. I. G. P. (2000) 2 H.R.L.R.A. 1.

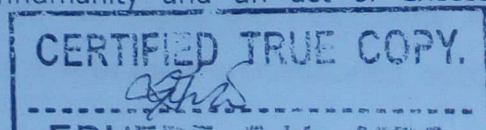
It is not my duty to give an interpretation which seeks to tamper in any way with the fundamental human right, but rather to see that they are respected and enforced. The Section 4 (4) of Anti Kidnapping and Anti Terrorism which gives absolute power to the Governor of the State to seal up the premises where the kidnapped victim has been kept hostage, without giving the said owner the opportunity to be heard before the government takes such an action is a suppression of the fundamental right of fair hearing of the said owner of premises.

It is the duty of the courts to interpret the provisions of the law in such a way that they are respected and enforced; respected by the three arms of government and its agencies; and in the long run enforceable by the courts, Section 1 (1) of Constitution of the Federal Republic of Nigeria 1999 as amended. That fundamental rights are basic; they are entrenched in a particular chapter of the Constitution, Chapter 4.

I must not fail to add that the provision of Sections 4 (4), 11 (2) of the Anti Kidnapping, Anti Terrorism Law which seeks to arrest a person and punish same for the offence allegedly committed by another which may not be to his knowledge, is a gross violation and most violent infraction of human rights which are fundamental.

The freedom of a person cannot be traded for that of another person as is the intentment of Sections 4 (4)(5), 11 (2) of the Anti Kidnapping, Anti Terrorism Law 2013 of Delta State.

To enforce such a law as stated in Sections 4 (4)(5), 11 (2) of the Anti Kidnapping, Anti Terrorism Law 2013, will amount to serious inhumanity and an act of excessive lawlessness.



see the case of:

Ezeaka Vs. Nwankwo (2000) 2 HRLRA 175 CA.

Terrorism and Kidnapping, no doubt have become a cancer and the greatest menace that now threatens our society and our existence so rampant it has been, that warranted the Delta State Government, that is, all respondents herein to put in place, checks and stringent measures to curtail this menace. This brought into birth the Delta State Anti Kidnapping and Anti Terrorism Bill subsequently passed into law on the 17th day April 2013.

It is a good law as intended by the Delta State House of Assembly save and except the provisions of Section 4 (4)(5), 11 (2), 16 (3) which appear to take away the inherent right of our citizens, that is, right of fair hearing, and presumptive right of innocence until the contrary is proved. See Section 36 (1)(5) of the Constitution of the Federal Republic of Nigeria 1999 as amended, thereby to that extent creating a conflict with the Constitution of the Federal Republic of Nigeria 1999 as amended.

Section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended spells out clearly, for emphasis I reproduce:

"In the determination of his civil right and obligation, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

Section 36 (2)(a)

"..... may afflict the civil right and obligation of any person.

Section 36 (2)(b)

"Contains no provision making the determination and administering authority, final and conclusive."

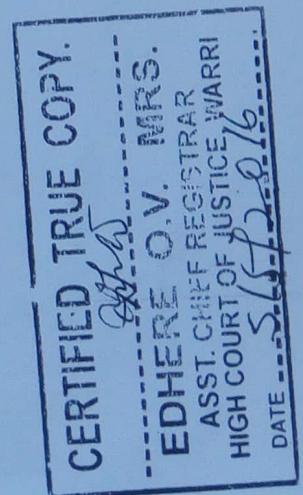
Section 36 (4):

"Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn be entitled to a fair hearing in public within a reasonable time by a court or tribunal."

Section 36 (5)

"Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty." See Section 36 (12)

The clear understanding of Section 4 (4)(5), Section 16 (3) of the Delta State Anti Kidnapping, Anti Terrorism Law 2013 certainly conflicts with the aforementioned section



of the Constitution of the Federal Republic of Nigeria 1999, which also provides in Section 1 (1).

This Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

Section 1 (3).

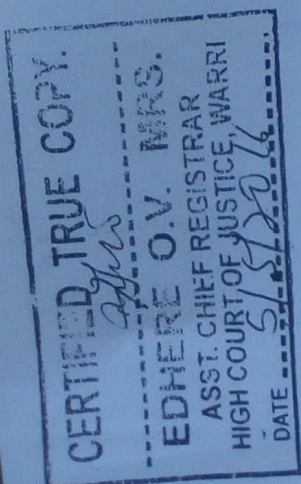
"If any law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that law shall, to the extent of the inconsistency be void."

I have no doubt taking a very anxious examination of all issues raised, arguments put forward by all respective learned counsel vis-à-vis the questions calling for determination in the originating summons under consideration.

In determining the question therein, I shall only arrive at a decision, doing justice and justice only to this matter before me. This is so because my decision must not only be seen as justice done, but must also convey certainty of the justness.

After all the overriding objective of legal system is to do justice. It is in this reasoning that I therefore determine the three questions, stated in the originating summons and resolve them all in favour of the claimants herein and make the following orders:

- 1) A declaration is hereby made that Section 4 (4) and (5) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013 is inconsistent with the provisions of Sections 36 (1), 36 (2)(a) of the Constitution of the Federal Republic of Nigeria 1999 as amended and to the extent of such inconsistency, unconstitutional, null and of no effect whatsoever.
- 2) A declaratory order is hereby made that Section 11 (2) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013 is inconsistent with the provisions of Sections 35 (1), 36 (12) of the Federal Republic of Nigeria 1999 as amended to the extent of such inconsistency, unconstitutional, null, void and of no effect whatsoever.
- 3) A declaration is hereby made that Section 16 (3) of the Anti Kidnapping and Anti Terrorism Law 2013, is inconsistent with Section 6 (6)(a), 35 (4) (a)(b), 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 as amended, and to the extent of such inconsistency, unconstitutional, null, void and of no effect whatsoever.
- 4) Consequently therefore, I hereby make an order of perpetual injunction restraining the 2nd, 3rd, and 4th Defendants by themselves, their agents, servants, privies and howsoever called/designated from enforcing or further enforcing and/or giving effect to the provisions of Section 4 (4)(5), Sections 11 (2) and 16 (3) of the Delta State Anti Kidnapping and Anti Terrorism Law 2013.



This is the Judgment of this Honourable Court made today 15th January 2016 and so be it.

HON. JUSTICE P.O. ONAJITE-KUEJIBOLA (MRS.)
(Judge)

15th Jan. 2016

COUNSEL:

KUNLE EDUN, ESQ. for the Claimant.

E.E. OSAZUWA, ESQ. For the 1st Defendant.

E.U. EDOMWUNYI, Deputy Director for the
2nd & 3rd Defendants.

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