

IN THE COURT OF APPEAL
IN THE PORT HARCOURT JUDICIAL DIVISION
HOLDEN AT ABUJA

ON THURSDAY, THE 4TH DAY OF JULY, 2024
BEFORE THEIR LORDSHIPS:

JIMI OLUKAYODE BADA
HAMMA AKAWU BARKA
BALKISU BELLO ALIYU

JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL

APPEAL NO: CA/PH/198/2024

BETWEEN:

- (1) HON. MARTIN CHIKE AMAEWHULE
- (2) HON. DUMLE MAOL
- (3) HON. MAJOR JACK
- (4) HON. FRANKLIN UCHENNA NWABOCHI
- (5) HON. CHRISTOPHER KAGBANG OFIKS
- (6) HON. AZERU OPARA
- (7) HON. ENEMI ALABO GEORGE
- (8) HON. GRANVILLE TEKENARI WELLINGTON
- (9) HON. NGBAR BERNARD
- (10) HON. JOHN DOMINIC IDRIMA
- (11) HON. QUEEN UWUMA TONY WILLIAMS
- (12) HON. LOOLO ISIAH OPUENDE
- (13) HON. ABBEY PETER
- (14) HON. IGWE-OBEY AFORJI
- (15) HON. JUSTINA EMEJI
- (16) HON. IGNATIUS ONWUKA
- (17) HON. CHIMEZIE NWANKWO
- (18) HON. LEMCHI PRINCE NYECHE
- (19) HON. BARILE NWAKOH
- (20) HON. EMILIA LUCKY AMADI

APPELLANTS

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- (21) HON. NKEMJIKA EZEKWE
- (22) HON. DAVIS ARNOLD OKOBIRIARI
- (23) HON. NWANKWO SYLVANUS
- (24) HON. GERALD OFORJI
- (25) HON. NWAMI SOLOMON

APPELLANTS

AND

- (1) RT. HON. VICTOR OKO JUMBO
(Speaker, Rivers State House of
Assembly)
- (2) HON. SOKARI GOODBOY SOKARI
- (3) HON. ORUBIENIMIGHA ADOLPHUS
TIMOTHY
- (4) THE GOVERNOR OF RIVERS STATE
- (5) THE ATTORNEY-GENERAL OF
RIVERS STATE
- (6) THE HONOURABLE CHIEF JUDGE OF
RIVERS STATE

RESPONDENTS

JUDGMENT

(DELIVERED BY JIMI OLUKAYODE BADA, JCA)

This is an appeal against the Ruling of the Rivers State High Court delivered on 10th day of May, 2024 in Suit No:-PHC/1512/CS/2024

BETWEEN: (1) RT. HON. VICTOR OKO JUMBO (SPEAKER, RIVERS STATE HOUSE OF ASSEMBLY), (2) HON. SOKARI GOODBOY SOKARI, (3) HON. ORUBIENIMIGHA ADOLPHUS TIMOTHY AND HON. MARTIN CHIKE AMAEWHULE & 24

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OTHERS wherein the trial Court granted the Ex-parte Application for injunction against the 1st to 25th Defendants now Appellants.

Briefly the facts of this case are that the 1st to 3rd Respondents commenced this action on 9/5/2024 before the trial Court seeking the following declaratory and injunctive reliefs:-

- "1. A Declaration that the 1st Claimant is the legitimate and substantive Speaker of the 10th Assembly of the Rivers State House of Assembly.**
- 2. A Declaration that with effect from 13th December, 2023, the 1st to 25th Defendants lack the competence to purport to function and/or carry out any legislative duty as members of the Rivers State House of Assembly.**
- 3. A Declaration that all the purported meetings, sittings, proceedings and/or resolutions made by the 1st to 25th Defendants after 13th December, 2023 when their legislative seats were duly declared vacant in accordance with the Constitution of the Federal Republic of Nigeria, 1999, as amended, are null and void and of no effect whatsoever.**
- 4. An Order of this Honourable Court setting aside all the purported meetings, sittings,**

proceedings and/or resolutions made by the 1st to 25th Defendants after 13th December, 2023 when their legislative seats were duly declared vacant in accordance with the Constitution of the Federal Republic of Nigeria, 1999, as amended.

5. *An Order of perpetual injunction restraining the 1st to 25th Defendants from parading and holding out themselves as members of the Rivers State House of Assembly and/or meeting/sitting at the Auditorium of the House of Assembly Quarters located at Off Aba Road, Port Harcourt or at any other place whatsoever to purport to carry out the legislative business of the Rivers State House of Assembly, their legislative seats having been declared vacant.*
6. *An Order of perpetual injunction restraining the 26th to 28th Defendants from dealing with, interfacing, accepting any resolutions, bills and or howsoever interacting with the 1st to 25th Defendants in their purported capacities as members of the Rivers State House of Assembly, their legislative seats having been declared vacant with effect from 13th December, 2023”.*

After Counsel for the 1st to 3rd Respondents has moved the motion Ex-parte for Interim Injunction, the trial Court granted same.

The Appellants who are dissatisfied with the Ruling of the trial Court appealed to this Court.

PRELIMINARY OBJECTION

Before proceeding further in this appeal, it would be appropriate at this juncture to consider the Notices of Preliminary Objection filed on behalf of the 1st, 2nd, 3rd and 4th Respondents.

1ST RESPONDENT'S PRELIMINARY OBJECTION

The 1st Respondent challenged the jurisdiction of this Court on the following grounds:-

- (a) The Appellants on record being dissatisfied with an interim order made Ex-parte by the lower Court without any leave, filed a Notice of Appeal on the 13th day of May 2024.***
- (b) The present appeal is an interlocutory appeal against an interim order made by the lower Court.***
- (c) Section 14(1) of the Court of Appeal Act 2004 provides that there can be no appeal from any order made Ex-parte.***
- (d) This Court lacks the jurisdiction to entertain an appeal from any order made Ex-parte.***
- (e) Appellant's Notice of Appeal contains grounds of mixed law and facts.***

- (f) An Interlocutory Appeal containing grounds of mixed law and facts can only be filed with leave of Court.**
- (g) The Appellants failed to seek leave before filing an interlocutory appeal on grounds of mixed law and facts.**
- (h) The failure to seek leave renders Appellants Appeal incompetent and robs this Court of the Jurisdiction to entertain same.**
- (i) The interim order of the lower Court appealed against by the Appellants was a temporary order made pending the hearing and determination of the hearing of the Motion on Notice for Interlocutory Injunction.**
- (j) The Motion on Notice for Interlocutory Injunction has been heard and granted by the lower Court on the 29th day of May, 2024.**
- (k) The interim order subject matter of this appeal has abated, and the only subsisting order is the order for Interlocutory Injunction granted on the 29th day of May 2024.**
- (l) The interim order which is the subject matter of the present appeal having abated, there is no longer any live issue for this Honourable Court to decide in this appeal.**

(m) The present appeal against the abated interim order is now academic and this Honourable Court lacks the Jurisdiction to entertain academic issues.

(n) Based on the forgoing the present appeal is incompetent and therefore liable to be struck out.

(o) This Honourable Court lacks the Jurisdiction to hear and determine this appeal”.

The Learned Counsel for the 1st Respondent submitted that this appeal is an interlocutory appeal against the interim order made Ex-parte by the lower Court on 10/5/2024 and it is trite law that no appeal shall be from any order made Ex-parte. Therefore, the Appellants appeal has no legal foundation upon which it can stand.

He relied on –

- **METUH VS. FRN (2018) 10 NWLR PART 1628 PAGE 399.**
- **SECTION 14(1) OF THE COURT OF APPEAL ACT 2004.**
- **UNIVERSAL PROPERTIES LTD. VS. PINNACLE COMM. BANK (2022) 12 NWLR PART 1845 PAGE 523.**

It was submitted further that an appeal becomes spent and academic when the issue upon which the appeal is founded ceases to be operational.

Reliance was placed on the following cases:-

- AGBABA VS. INEC (2008) 18 NWLR PART 1119 AT PAGE 489.
- JOHNSON VS. EZE (2021) 2 NWLR PART 1759 PAGE 90.
- SOUTH ATLANTIC PETROLEUM LTD. VS. MINISTER OF PETROLEUM RESOURCES (2023) 7 NWLR PART 1882 AT PAGE 135.
- NAFDAC VS. REAGAN REMEDIES (2019) 17 NWLR PART 1700 PAGES 51 – 52 PARAGRAPHS H – A.

It was contended on behalf of the 1st Respondent that grounds 4, 5 & 6 of the Notice of Appeal are grounds of mixed law and facts.

He relied on –

- SECTIONS 241 & 242 OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA and the cases of = ABUBAKAR VS. WAZIRI (2008) 14 NWLR PART 1108 PAGE 508.
- NNPC VS. FAMFA OIL LTD. (2012) 17 NWLR PART 1328 PAGE 148.
- NWACHUKWU VS. OWERRI MUNICIPAL COUNCIL (2022) 6 NWLR PART 1827 PAGE 463 PARAGRAPHS C – D.

It was submitted on behalf of the 1st Respondent that this appeal is incompetent as it was filed without the prerequisite leave as provided for by **SECTION 241 and 242 OF THE (1999) CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED).**

He urged that the this appeal be struck out.

2ND & 3RD RESPONDENTS' PRELIMINARY OBJECTION

The 2nd & 3rd Respondents contended that this Honourable Court lacks the Jurisdiction to hear and determine this appeal on the ground that the Record of Appeal was compiled and signed by a person whose name is not in the roll of Legal Practitioners as required by **SECTION 2(1) and 24 OF THE LEGAL PRACTITIONERS ACT CAP L11 LAWS OF THE FEDERATION OF NIGERIA 2004.**

The Learned Counsel for the 2nd & 3rd Respondents submitted that where the Record of Appeal is compiled and transmitted by the Appellants Legal Practitioner, it must be shown that the name of the said Legal Practitioner is on the roll of Legal Practitioners in Nigeria in accordance with **SECTION 2(1) and 24 OF THE LEGAL PRACTITIONERS ACT.**

He relied on the following cases:

- **FBN PLC VS. MAIWADA (2013) 5 NWLR PART 1252 PAGE 317 AT 331 – 332.**

- **HIS GRACE INTEGRATED DYNAMIC SYSTEM LTD. VS. OGIEMWONYI (2021) LPELR – 54566 (CA).**
- **INSPECTOR GENERAL OF POLICE & OTHERS VS. CHINONSO NWAFOR (2022) LPELR – 58925 (CA).**
- **SLB CONSORTIUM LTD. VS. NNPC (2011) 9 NWLR PART 1252 PAGE 317 AT 331 – 333.**
- **HON. YAHAYA ADAMU VS. ALL PROGRESSIVES CONGRESS (APC) & OTHERS (2023) LPELR – 60443 (CA).**

Learned Counsel for the 2nd & 3rd Respondents urged this Court to uphold the Preliminary Objection, strike out the Record of Appeal and the entire appeal.

4TH RESPONDENT'S PRELIMINARY OBJECTION

The Preliminary Objection filed on behalf of the 4th Respondent is to the effect that this Court lacks the jurisdiction to entertain this appeal.

It was contended that the Appellants did not fulfill the condition precedent to instituting this appeal.

The Learned Counsel for the 4th Respondent stated that it is not in dispute that the order appealed against was made Ex-parte and therefore that in line with **SECTION 14(1) OF THE COURT OF**

APPEAL ACT, this Court lacks jurisdiction to entertain the appeal. Reliance was placed on the following cases:

- **CHIEF METUH VS. FRN (2018) LPELR – 43706 SC.**
- **SPDC VS. REGISTRAR OF BUSINESS PREMISES, ABIA STATE (2015) 3 CAR 433 AT 451.**

Apart from the view above, it was also argued that leave of the lower Court or this Court ought to have been first sought and obtained by the Appellants before this appeal was instituted.

It was submitted that the Appellants' failure to fulfill the condition precedent robbed this Honourable Court of the jurisdiction to entertain the appeal. Furthermore that where an Appellant intends to appeal on issues of mixed law and facts, leave of the lower Court or this Court will be required before the appeal can be instituted. And failure to commence an appeal by due process goes to the root of the appeal and robs the Court of its jurisdiction. Counsel referred to the following cases:-

- **EKEMEZIE VS. IFENACHO & 2 OTHERS (2019) LPELR – 46518 (SC).**
- **JIMOH VS. AKANDE (2009) 10 NWLR PART 1135 PAGE 549.**

- **METAL CONSTRUCTION (WEST AFRICA) LTD. VS. MIGILORE & OTHERS (1990) LPELR – 1869 (SC).**
- **STATE VS. OMOYELE (2016) LPELR – 40842 (SC).**
- **REGISTERED TRUSTEES OF DEEPER CHRISTIAN LIFE MINISTRY VS. EBHODAGHE (2022) LPELR – 58481 (SC).**
- **ABUBAKAR VS. WAZIRI & OTHERS (2008) LPELR 54 (SC).**
- **OGBECHÉ VS. ONOCHIE (1986) 2 NWLR PART 23.**

It was also submitted on behalf of the 4th Respondent that the appeal has become academic. Reference was made to – **ORDER 3 RULE 3(3) OF THE HIGH COURT OF RIVERS STATE (CIVIL PROCEDURE) RULES 2023**, which provides that an order of injunction made upon an application ex-parte shall abate after 7 days.

Thus, by the 14th day of June 2024 when this appeal was deemed to be entered, the referenced order had lapsed, thus rendering the instant appeal academic.

The following cases were relied upon:

- **DREXEL ENERGY & NATURAL RESOURCES LTD. & OTHERS VS. INTERNATIONAL BANK LTD. & OTHERS (2008) LPELR 962 (SC).**

- **ZENITH PLASTIC INDUSTRIES LTD. VS. SAMOTECH LTD. (2007) 16 NWLR PART 1060 PAGE 315.**
- **SALIK VS. IDRIS & OTHERS (2014) LPELR – 22909 (SC).**

On the whole, Learned Counsel for the 4th Respondent urged the Court to decline jurisdiction and strike out this appeal.

APPELLANTS RESPONSE TO 1ST RESPONDENT'S

PRELIMINARY OBJECTION

Learned Senior Counsel for the Appellants in his response to 1st Respondent's Preliminary Objection referred to the Appellant's reply brief filed on 20/6/2024. He adopted and relied on the said reply brief as his argument in urging that the objection be dismissed.

Contrary to the submissions of Learned Senior Counsel for the 1st Respondent, the Learned Senior Counsel for the Appellants submitted that by virtue of the Provisions of **SECTION 241(1)(B), (D) AND (F)(II) OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)**, the Appellants are conferred with right to appeal as of right in matters itemized in the subsections of the Constitution. He relied on the following cases:-

- **OJEMIEN VS. MOMODU (1983) 1 SCNLR PAGE 188 AT 203.**
- **SARAKI VS. KOTOYE (1992) 9 NWLR PART 264 AT 150 PARTICULARLY AT 187.**

It was also submitted that the Appellants did not require either the leave of the trial Court or Court of Appeal before appealing to this Court in this matter.

Counsel relied on the following cases:-

- **LOVLEEN TOYS IND. LTD. VS. KOMOLAFE (2013) 14 NWLR PART 1375 PAGE 542 AT 554 – 555.**

APPELLANTS RESPONSE TO 2ND & 3RD RESPONDENT'S PRELIMINARY OBJECTION

The Learned Senior Counsel for the Appellants referred to the reply brief of argument to the 2nd & 3rd Respondent's brief filed on 20/6/2024.

He adopted and relied on the said reply brief as his argument in urging that the preliminary objection be dismissed.

The Learned Senior Counsel for the Appellants submitted that the Records of Appeal in this appeal is competent.

He referred to the application made to this Court on 15/5/2024 praying for various orders including an order granting leave to the Appellants to compile and transmit the Record of Appeal.

The application was later granted. It was submitted that once the Court granted the application, the Court became *functus officio* from reviewing or varying such order.

Learned Counsel went further in his submission that the objection of 2nd & 3rd is a subterranean move to make this Court sit on appeal on its decision of 14/6/2024. He referred to the following cases:

- **CITEC INT'L ESTATE LTD. VS. FRANCIS (2014) 8 NWLR PART 1408 PAGE 139 AT 167.**
- **MOHAMMED VS. HOUSSEINI (1998) 14 NWLR PART 584 PAGE 108 AT 138 - 139.**

It was also submitted that the issue of affixing a stamp and seal by a Legal Practitioner on the record of Appeal was not raised by 2nd & 3rd Respondents in opposition to the Motion filed by the Appellants on 15/5/2024. The 2nd & 3rd Respondents are therefore deemed to have waived any right to object or challenge the competence of the Record of Appeal.

He relied on the following cases:-

- **ANI VS. EFFIOK (2023) 8 NWLR PART 1887 AT 463 AT 500.**
- **WILLIAMS VS. ADOLD/STAMM INT'L NIG. LTD. (2017) 6 NWLR PART 1560 PAGE 1 AT 19 – 20.**

**APPELLANTS RESPONSE TO 4TH RESPONDENT'S
PRELIMINARY OBJECTION**

The Learned Senior Counsel for the Appellants referred to the Appellants' Reply brief, filed on 20/6/24 in response to the 4th Respondent's brief of argument.

He adopted and relied on the said brief as his argument in urging that the 4th Respondent's Preliminary Objection be dismissed.

The Learned Senior Counsel for the Appellants submitted that by virtue of the Provisions of **SECTION 241(1)(B), (D), (F), (II) OF THE 1999 CONSTITUTION (AS AMENDED)**, the Appellants are conferred with the right to appeal as of right in matters itemized in the said Sub-sections of the Constitution.

He relied on the following cases:-

- **AQUA LTD. VS. ONDO STATE SPORTS COUNCIL (1988)**
7 NWLR PART 91 PAGE 622.
- **OJEMEN VS. MOMODU (1983) 1 SCNLR PAGE 188 AT**
203.
- **SARAKI VS. KOTOYE (1992) 9 NWLR PART 264 AT 156**
AT 187 PARAGRAPHS G – H.
- **EDISION AUTOMOTNE IND. VS. NERFUND (2022) 14**
NWLR PART 1821 PAGE 419 AT 440 – 441 PARAGRAPHS
F – H.

It was also submitted that by virtue of **SECTION 240 OF THE 1999 CONSTITUTION (AS AMENDED)**, the Appellants have the

right to appeal and the Court of Appeal has the jurisdiction to entertain the Appeal against the decision of the Rivers State High Court. Reliance was placed on the following cases:-

- **KUBOR VS. DICKSON (2013) 4 NWLR PART 1345 PAGE 534 AT 582 & 592.**
- **GARBA VS. OMOKHODION (2011) 15 NWLR PART 1269 PAGE 145 AT 186 – 187.**
- **IHESIE VS. ARINZE (2007) 5 NWLR PART 1027 PAGE 241 AT 251.**
- **LOVLEEN TOYS IND. LTD. VS. KOMOLAFE (2013) 14 NWLR PART 1375 PAGE 542 AT 554 – 555.**
- **THE VESSEL M. V. SIRIUS-B VS. MIS & SCI. LTD. (2017) 10 NWLR PART 1572 PAGE 135 AT 164.**

It was finally submitted that the appeal by the Appellants cannot be said to be academic. This is because the appeal has great utilitarian value as one of the reliefs sought by the Appellants is an order striking out the suit filed by the 1st, 2nd and 3rd Respondents for lack of jurisdiction by the trial Court to hear and entertain same.

Learned Senior Counsel for the Appellants urged this Court to dismiss the Preliminary Objections.

RESOLUTION OF THE PRELIMINARY OBJECTIONS

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BY 1ST, 2ND & 3RD AND 4TH RESPONDENTS

AGAINST THE APPEAL

The 1st, 2nd & 3rd and 4th Respondents filed their Notices of Preliminary Objection challenging the jurisdiction of this Court to entertain this appeal based upon various grounds evaluated upon in their respective briefs of argument. The Appellants have also responded to the issues raised.

In order to avoid being repetitive I will resolve the issues raised by the parties in a comprehensive manner.

The competence of the Record of Appeal in this appeal was challenged on the ground that the signature on the Record of Appeal is an illegible contraption, none of the names of the Legal Practitioners listed on the Record of Appeal was ticked to show which of them signed it and the signature does not consist of the name of the person that signed.

In an earlier application filed on behalf of the Appellants they prayed for various reliefs including an order granting the Appellants leave to compile and transmit the Record of Appeal in this Appeal and an order deeming the Record of Appeal compiled and transmitted as being properly filed.

In a well-considered Ruling, this Court granted the prayers among others. The Preliminary Objection of the Respondents is a subterranean move to make this Court sit on appeal over its decision.

However, it is the law that where as in the instant appeal, it is clear that the person who signed the Court process is a Legal Practitioner and it is obvious to the Court that the Counsel indeed signed the Court process, the failure to tick his or her name as person who signed the Court process does not invalidate the Court process.

In the case of **ANI VS. EFFIOK (2023) 8 NWLR PART 1887 PAGE 463 OF 485 – 486 PARAGRAPHS F – B,** the Supreme Court held among others thus:-

"It is clear that the signature is that of Mrs. Nella Andem Rabana SAN, the lead Counsel whose name is directly under the signature. I am convinced that she signed the said process despite the absence of a tick beside her name.

The Appellant with all their arguments, submissions have not shown this Court how the omission to place a tick besides her name created any confusion in their minds as to, who signed the process. They are also not saying that the person who signed the said process is not a Legal Practitioner, or that the other persons listed there-under are not Legal Practitioners within the

context of SECTION 2 OF THE LEGAL PRACTITIONERS ACT, as the 1st set of Respondents rightly submitted. In the circumstance of this case where it is clear that the person who signed the said amended notice of appeal is a Legal Practitioner and it is obvious to Court that she, indeed, signed the said process, the failure to tick her name as the person, who signed the amended notice of appeal, does not invalidate the amended notice of Appeal _____
_____”

See also **WILLIAMS VS. ADOLP/STAMM INT’L NIG. LTD. (2017) 6 NWLR PART 1560 PAGE 1 AT 19 – 20.**

In this appeal under consideration, the stamp and seal and signature of the Appellants’ solicitor who prepared the Record of Appeal is on the Record of Appeal.

The stamp and seal show Kalu I. Uduma Esq., a Legal Practitioner with SON 076503, has his seal affixed as the person who signed and made the Record of Appeal. The name of Kalu I. Uduma is on the list of the 7 Counsel representing the Appellants, and on page 139 of the Record of Appeal, the seal, signature and name of Kalu I. Uduma are reflected.

It is therefore my view that as required by law, the stamp, seal and signature of Kalu I. Uduma Esq. who compiled the Record of

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Appeal and also signed the Notice of Appeal are clearly on those processes and the Respondents have not shown how the non-ticking beside the name of Kalu I. Uduma Esq. on the Record of Appeal has created confusion on their minds as to who signed the Record of Appeal.

Therefore, the failure to tick the name of Kalu I. Uduma in the Record of Appeal in this Appeal does not invalidate or render incompetent the Record of Appeal in this Court.

See - **MAINA VS. EFCC (2020) 2 NWLR PART 1708 PAGE 230 AT 251 – 252.**

- **MAITUMBI VS. BARAYA (2017) 2 NWLR PART 1550 PAGE 347 AT 394.**

It was also argued on behalf of the Respondents that the present appeal which was an interlocutory appeal against Interim Ex-parte Order has no legal foundation upon which it can stand. Reliance was placed on **SECTION 14(1) OF THE COURT OF APPEAL ACT 2004.**

Contrary to the position of the Respondents, the law is that by virtue of the Provisions of **SECTION 241(1)(B), (D), (F), (H) OF THE 1999 CONSTITUTION (AS AMENDED)**, the right to appeal as of right is conferred upon the Appellants by the above mentioned Section of the 1999 Constitution.

The said Sections are reproduced as follows:-

"241(1) An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:-

- (b) Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings.**
- (d) decisions in any civil or criminal proceedings on questions as to whether any part of the provisions of Chapter IV of this Constitution has been, is been or is likely to be contravened in relation to any person.**
- (f) decisions made or given by the Federal High Court or High Court.**
- (h) where an injunction or appointment of a receiver is granted or refused".**

It is my view that the above Provisions of the Constitution are set out to protect the rights of Citizens such as the Appellants in this appeal.

See – **AQUA LTD. VS. ONDO STATE SPORTS COUNCIL (1988) 7 NWLR PART 91 PAGE 622.**

The Appellants in this appeal are entitled as of right to appeal against the decision of the Rivers State High Court.

In **OJEMEN VS. MOMODU (1983) 1 SCNLR PAGE 188 AT 203**, it was held by the Supreme Court among others as follows:

"The phrase an appeal shall lie from the decisions of the Federal Court of Appeal to the Supreme Court as of right, in my view, implies that an absolute right of appeal is granted by the Constitution to an aggrieved party to challenge the decision of the Federal Court of Appeal in the Supreme Court on grounds which involves questions of law alone".

In **SARAKI VS. KOTOYE (1992) 9 NWLR (PART 264) PAGE 756 AT 187 PARAGRAPH G – H**, where it held thus amongst others:-

"The Constitution has conferred a right of appeal in respect of decisions on questions of law alone to Appellants whether interlocutory or final. The exercise of the Right cannot be denied by any other law or authority I therefore agree with the submissions of Mr. Ayanlaja that SECTION 227 OF THE EVIDENCE ACT which is designed to apply in the determination of an appeal on Final Judgment in the case cannot restrict the exercise of the right of Appeal conferred by the Constitution".

Therefore, the scope of the Constitutional Right conferred on the Appellants by **SECTION 241(1) OF THE 1999 CONSTITUTION (AS**

AMENDED) cannot be affected, taken away, whittled down or denied by any other Statutory Provisions including the Court of Appeal Act, and the Court of Appeal Rules.

See – **AQUA LTD. VS. ONDO STATE SPORTS COUNCIL (SUPRA)**, where the Supreme Court held thus:-

"It is an elementary and fundamental proposition that a right conferred by the Constitution cannot be taken away by any other provision except by the Constitution itself. The Constitution having conferred a right of appeal as of right, the Court of Appeal Act or Rules of Practice made under the Act which derive their force from the Constitution cannot take away such a right. Any law so made will be inconsistent with the Constitutional Provision and void. See SECTION 1(3) OF THE 1999 CONSTITUTION".

It must be noted that the issue of jurisdiction is a question of law that can be raised for the first time in the Court of Appeal or the Supreme Court and there is no need to seek leave before raising it for the first time on appeal. It can be raised informally, but it is desirable that some processes is filed so that the adverse party is not taken by surprise.

See - **OBIAKOR VS. STATE (2002) 10 NWLR PART 776 PAGE 612.**

- GAJI VS. PAYE (2003) 5 SC PAGE 53, (2003) 8 NWLR PART 823 PAGE 583.
- EDISON AUTOMATIVE IND. VS. NERFUND (2022) 4 NWLR PART 821 PAGE 419 AT 440 – 441 ARAGRAPHS F – B.
- C.G.G. NIG. LTD. VS. AMINU (2015) LPELR – 24463 (SC), (2015) 7 NWLR PART 1459 PAGE 577.

Furthermore, I am of the firm view that pursuant to **SECTION 240 OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)**, the Appellants have the right to appeal and the Court of Appeal has the jurisdiction to entertain an appeal against the decision of the Rivers State High Court.

Another point to examine is the meaning of a "**Decision**". By virtue of the Provisions of **SECTION 318(1) OF THE 1999 CONSTITUTION (AS AMENDED) (SUPRA)**, "**Decision**" means in relation to a Court, any determination of the Court and incudes, Judgments, Decree, Order, Conviction, Sentence or Recommendation.

In the interpretation of the word "**decision**" in the context of the entire action, the Court is guided by the liberal principle, that is wide interpretation of the word "**Decision**" as enunciated in the case of – **NAFIU RABIU VS. STATE (1981) 2 NCLR PAGE 293**, wherein it

was held that the term "decision" is wide enough to encompass the Ruling or Order of Ex-parte interim injunction made by the trial Court.

See also – **GARBA VS. OMOKIODION (2011) 15 NWLR PART 1269 PAGE 145 AT 186 – 187.**

- **IHESIE VS. ARINZE (2007) 5 NWLR PART 1027 PAGE 241 AT 251.**
- **KUBOR VS. DICKSON (2013) 4 NWLR PART 1345 PAGE 534 AT 582 AND 592.**

At this juncture, it would be appropriate to examine the Record of Appeal filed by the Appellants which contains 6 grounds of appeal.

The 6 Grounds of Appeal without its particulars, contained in the Notice of Appeal are hereby reproduced as follows:-

"Ground One

The Learned trial Judge erred in law to assume jurisdiction to entertain the suit and grant the Ex-parte Order of injunction when it lacks the jurisdiction to do so.

Ground Two

The Learned trial Judge erred in law in making the Ex-parte Orders of interim injunction when the lower Court (High Court of Rivers State) lacks the jurisdiction to hear and determine the Ex-parte application for interim injunction and also the substantive suit having regard to the

subject matter of the suit (the term of office of the Appellants) and the Provisions of SECTION 272(3) OF THE CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED).

Ground Three

The Learned trial Judge erred in law in assuming and or exercising jurisdiction in the matter when the action arose from dispute over leadership of and internal affairs of the Rivers State House of Assembly.

Ground Four

The Learned trial Judge erred in law when the Ex-parte Order of Interim Injunction made a determination affecting the civil rights of the Appellants without hearing them contrary to the Provisions of SECTION 36(1) OF THE 1999 CONSTITUTION (AS AMENDED) and THE RULES OF NATURAL JUSTICE.

Ground Five

The Learned trail Judge erred in law when in determination of the Application for Interim Injunction he proceeded to determine the same issues that would arise for determination in the substantive suit, thereby pre-judging the main issues in the substantive suit/action and occasioning a miscarriage of Justice.

Ground Six

The Learned trial Judge erred in law in granting the Ex-parte Order of Interim Injunction when there was no urgency whatsoever in the circumstances of the Application”.

A careful examination of the Appellants' 6 grounds of appeal set out above would reveal that the six grounds involve question of law alone.

It is trite that a ground of appeal which challenges the jurisdiction of the Court is a ground of law. Also, a ground of appeal which complains of the denial of fair hearing as provided by **SECTION 36(1) OF THE 1999 CONSTITUTION (AS AMENDED) (SUPRA)** is a ground of law for which no leave of Court is required.

See the following cases:-

- **GENERAL ELECTRIC CO. VS. AKANDE (2010) 18 NWLR PART 1225 PAGE 596 AT 613 – 614.**
- **AMUSA VS. NIGERIAN ARMY (2018) 12 NWLR PART 1634 PAGE 421 AT 448 – 449.**
- **JEGEDE VS. AKANDE (2015) 6 NWLR PART 1455 PAGE 228 AT 254.**
- **EFCC VS. DADA (2016) 1 NWLR PART 1694 PAGE 567 AT 591.**

In KRAUS THOMPSON ORG. LTD. VS. UNICAL (2004) 9
NWLR PART 879 PAGE 630 AT 658 PARAGRAPHS A – D, the

Supreme Court held among others as follows:-

"The Appellant's objection to the Respondent's appeal was that the decision appealed was interlocutory and as such the grounds of appeal must be grounds of pure law, before the Appeal can lie filed without leave It is very clear to me, that even though the decision of the trial Court may be interlocutory for which leave may be required, SECTION 241(1) OF THE 1999 CONSTITUTION provides that an appeal may be as of right from the decision of the High Court to the Court of Appeal in the following cases:-

(a) -----
-----'

(b) ***Where the ground of appeal involves question of law alone, decisions in any civil or criminal proceedings.***

All the five grounds of appeal question the trial Court's application of the law on the question of its jurisdiction to entertain the matter. The issues for determination filed by the Appellant referred to above clearly indicated and proved that, I accordingly find no merit in the preliminary objection".

Also in – **LOVLEEN TOYS IND. LTD. VS. KOMOLAFE (SUPRA)**
PAGE 558 PARAGRAPHS D – E, the Court held among others thus:-

"I have earlier held in this Judgment that with the nature of the two proposed grounds of appeal being jurisdictional and raising question of fair hearing, the governing provision is SECTION 241(1) OF THE CONSTITUTION. In other words, the nature of the appeal is of right and no leave was required as it did not come within SECTION 242(1) OF THE CONSTITUTION".

An appeal lie as of right from the Rivers State High Court to Court of Appeal in decisions in any civil or criminal proceeding in questions as whether any provisions of Chapter IV of the Constitution has been, is being or is likely to be contravened in relation to any person. See **SECTION 241(1) OF THE 1999 CONSTITUTION (AS AMENDED) (SUPRA)**.

In grounds 4, 5 & 6 of the Notice of Appeal, the Appellants complaints are that their right to fair hearing guaranteed by **SECTION 36(1) OF THE 1999 CONSTITUTION (AS AMENDED) (SUPRA)** were violated and or denied by the Learned trial Judge.

I am of the view that by the nature and substance of Grounds 4, 5 & 6, the Appellants are entitled to appeal as of right to the Court of Appeal.

See – **BAMIGBOYE VS. UNIVERSITY OF ILORIN (1999) 10 NWLR PART 622 PAGE 290 OF 324, PARAGRAPHS B – D.**

Also in the case of:- **VISAFONE COMMS. LTD. VS. M.C.S.N. (LTD./GTE) (2013) 5 NWLR PART 1347 PAGE 250 AT 276 – 277 PARAGRAPHS E – B.** The Court held as follows:-

"In the instant case, as the ground complains of the denial of fair hearing, it falls within areas covered by Chapter IV of the Constitution, thereby bringing it squarely within the Provisions of SECTION 241(1)(D) referred to above. Based on the foregoing a ground of appeal complaining of the denial of fair hearing requires no leave, even where it is on mixed law and fact.

See – BAMIGBOYE VS. UNIVERSITY OF ILORIN (1999) 10 NWLR PART 622 PAGE 296 AT 324 PARAGRAPHS B – D. Consequently, ground three is therefore competent".

Furthermore, there is no doubt in the fact that 1st, 2nd & 3rd Respondents filed an Ex-parte application for Interim Injunction before the trial Court which was granted. I am of the view that by virtue of the Provisions of **SECTION 241(1)(F), (II) OF THE 1999 CONSTITUTION (AS AMENDED) (SUPRA)**, this appeal which is an appeal against the grant of the said Order of Injunction is competent. This is so because by **SECTION 241(1)(F), (II) OF THE**

CONSTITUTION (AS AMENDED), the Appellants were granted absolute right of appeal against the grant of the Ex-parte injunction.

See the following case:- **ATTAMAH VS. ANGLICAN BISHOP OF NIGER (1999) 12 NWLR PART 633 PAGE 6 AT 11 – 12 PARAGRAPH H – F.**

In **ECOBANK NIG. LTD. VS. HONEYWELL FLOUR MILLS (2019) 2 NWLR PART 1655 PAGE 55 AT 76 PARAGRAPHS D – E,** where the Court held thus:-

"..... the truth is that issue of injunction took centre stage in this matter. Apart from the fact that the 1st relief sought by the Respondent was to set aside the Orders of injunction made by the trial Court, the Court below made an Order setting aside the said injunctive Orders. Thus I agree with the submission of the Learned Counsel for the Respondent that the appeal before the lower Court come squarely under SECTION 241(1)(F), (II) OF THE CONSTITUTION. Moreover the case of ATTAMAH VS. ANGLICAN BISHOP OF NIGER (SUPRA) is on all fours with this case".

See also the following cases:-

- **ONYEMELUKWE VS, ATTAMAH (1993) 5 NWLR PART 293 PAGE 350 AT 359 PARAGRAPHS F – G.**

- MASHASHA VS. ANEKWE (2001) 18 NWLR PART 744 PAGE 49 AT 60 – 61 PARAGRAPHS H – A.
- EXECUTORS, THE ESTATE OF IFEJEKWU VS. AZIZA (2013) 11 NWLR PART 1365 PAGE 307 AT 334 PARAGRAPHS F – G.

Finally on this issue, the Court of Appeal recently in the case of – CINCA NIGERIA LTD. VS. AMCON (2023) LPELR – 60668 (CA) per **Otisi JCA** considered the Constitutionality of the Provision of SECTION 14(1) OF THE COURT OF APPEAL ACT 2004 being relied upon by the Respondents.

This Court relying on the decisions in –

- ELOBISI VS. ONYEANWU (1989) LPELR – 20455 (CA).
- TOTAL E & P NIG. LTD. VS. IMOLADE (2012) LPELR – 14256 (CA).
- AQUA LTD. VS. ONDO STATE SPORTS COUNCIL (1988) LPELR – 527 (SC).
- VIRGIN ATLANTIC AIRWAYS VS. AMARAN (2021) 12 NWLR PART 1789 PAGE 91.

held as follows:-

"It follows therefore that where the Constitution has donated right of appeal, no Act or Law can validly take away that right. Where such Law or

Act exists it would be inconsistent with the Provisions of the Constitution and therefore unenforceable, I have made the point that the Provision of SECTION 241(1)(F), (II) OF THE 1999 CONSTITUTION (AS AMENDED) do not define the nature of the injunction, that is to say, if the right of appeal is defined by whether the injunction was granted on notice or ex-parte, rather SECTION 241(1)(F) (II) donates a right of Appeal where an injunction has been granted (or refused). This therefore means that SECTION 14(1) OF THE COURT OF APPEAL ACT 2004 which purports to remove the right of Appeal on ex-parte orders (of injunction) as donated by SECTION 241(1)(F) (II) OF THE 1999 CONSTITUTION (AS AMENDED) is void to the extent that it denies such right of appeal, since such right exists under the Constitution”.

In view of the foregoing, I am also of the view that any right donated by the Constitution of the Federal Republic of Nigeria (as amended) cannot be taken away or curtailed by any other law be it Court of Appeal Act or Court of Appeal Rules. To that extent, the said **SECTION 14(1) OF THE COURT OF APPEAL ACT, 2004** is therefore void.

Consequent upon the foregoing, it is my view that the appeal filed on behalf of the Appellants is competent. The Preliminary Objection filed on behalf of 1st, 2nd & 3rd and 4th Respondents lacks merit and it is hereby dismissed.

MAIN APPEAL

The Learned Senior Counsel for the Appellants formulated five issues for the determination of this appeal.

The issues are reproduced as follows:-

- "(i) Whether having regard to the subject-matter of the suit, the reliefs sought and the Provisions of SECTION 272(3) OF THE 1999 CONSTITUTION (AS AMENDED) the High Court of Rivers State (the Lower Court) lacks jurisdiction to hear and determine the ex-parte application for interim injunction and the substantive suit. (Distilled from Grounds 1 & 2 of the Notice of Appeal).***
- (II) Whether the lower Court has jurisdiction to hear and determine the suit which arose from dispute over leadership and internal affairs of the Legislature i.e., the rivers state house of assembly. (Distilled from Grounds 3 of the Notice of Appeal).***

- (III) Whether the lower Court was right in making determinations affecting the civil rights of the appellants without hearing them. (Distilled from Ground 4 of the Notice of Appeal).**
- (IV) Whether the lower Court prejudged the main issues in the substantive action when he granted the ex-parte motion for interim injunction. (Distilled from Ground 5 of the Notice of Appeal).**
- (V) Whether the lower Court was right in making and or granting the ex-parte orders of interim injunction when the 1st – 3^d respondents did not establish that there was real urgency in the circumstance. (Distilled from Ground 6 of the Notice of Appeal)."**

The Learned Senior Counsel for the 1st Respondent formulated three issues for the determination of the Appeal. The issues are reproduced as follows:-

- "(1) Whether having regard to the subject-matter of the suit and the reliefs sought the High Court is imbued with the requisite jurisdiction to hear and determine the suit before it. (Issues 1 & 2 of the Appellants' brief of argument).**

- (2) ***Whether the lower Court was right when it granted the 1st to 3rd Respondents Ex-parte Application for an interim injunction. (Issues 3, 4 and 5 of the Appellants' brief of argument).***
- (3) ***Whether the Appellants have established a good case to warrant the reliefs sought in paragraph 4 of their Notice of Appeal filed on 13th May 2024".***

In his own case, the Learned Senior Counsel for the 2nd & 3rd Respondents formulated 3 issues for the determination of the Appeal. The issues are reproduced as follows:-

- "(1) ***Whether this Honourable Court lacks the jurisdiction to entertain this appeal in the absence of a Record of Appeal compiled and duly signed by a person whose name is in the roll of Legal Practitioners as required by SECTION 2(1) and 24 OF THE LEGAL PRACTITIONERS ACT CAP L11 LAWS OF THE FEDERATION OF NIGERIA 2004 (The Preliminary Objection).***
- (2) ***Whether upon a calm appraisal of SECTION 251(1) 272(1) AND 272(3) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) and in***

view of the inherent and unlimited jurisdiction of the State High Court as prescribed by SECTION 6(2), 6(6)(A) and 6(6)(b) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) the trial Court has jurisdiction to hear and determine the ex-parte motion for interim injunction and the substantive suit. (Distilled from Grounds 1, 2 and 3 of the Notice of Appeal).

(3) Whether the trial Court was right to have granted the orders of interim injunction on 10th May 2024. (Distilled from Grounds 4, 5 and 6 of the Notice of Appeal)”.

The Learned Senior Counsel for the 4th Respondent also formulated two issues for the determination of the appeal. The issues are reproduced as follows:-

"(1) Whether having regard to the claims, parties and reliefs sought the lower Court had the jurisdiction to hear and determine the suit and to grant the ex-parte application which is the subject of this Appeal. (Distilled from Grounds 1, 2 and 3 of the Notice of Appeal).

(2) Whether the lower Court erred in law when it granted the ex-parte application which is the subject-matter of this Appeal. (Distilled from Grounds 4, 5 and 6 of the Notice of Appeal)".

In his own case, the Learned Senior Counsel for the 5th Respondent also formulated two issues for the determination of the Appeal, the issues are reproduced as follows:-

"(1) Whether the Learned trial Judge was right to have assumed jurisdiction to entertain the suit of the 1st, 2nd and 3rd Respondents as constituted. (Distilled from Grounds 1, 2 and 3 of the Notice of Appeal).

(2) Whether the Learned trial Judge was right when he granted the Ex-parte orders of interim injunction in this suit on 10/5/2024. (Distilled from Grounds 4, 5 and 6 of the Notice of Appeal)."

At the hearing of the appeal on 20th day of June 2024, the Learned Senior Counsel for the Appellants stated that the Appeal is against the decision of the Rivers State High Court delivered on 10/5/2024. He referred to pages 129 – 130 of the Record of Appeal.

The Record of Appeal was transmitted to this Court on 14/5/2024 and deemed as properly filed on 14/6/2024.

The Appellants' brief of argument was filed on 15/5/2024 and on 20/6/2024 the Appellants filed four reply briefs to the briefs of 1st, 2nd & 3rd, 4th and 5th Respondents.

Learned Senior Counsel for the Appellants applied to withdraw Prayer 2 in the Appellants' brief leaving Prayers 1 and 3.

He adopted and relied on the said Appellants' brief as well as the Appellants' reply briefs to 1st, 2nd & 3rd and 4th Respondents as his argument in urging that the appeal be allowed.

The Learned Senior Counsel for the 1st Respondent also referred to the 1st Respondent's brief filed on 19/6/2024.

He adopted and relied on the said brief as his argument in urging that the Appeal be dismissed.

He submitted that the Appellants having withdrawn Prayer 2 in the Appellants' brief, all arguments relating to the said Prayer 2 should be deemed to have been abandoned and struck out.

He finally urged that the Appeal be dismissed.

The 2nd & 3rd Respondents Learned Senior Counsel also referred to 2nd and 3rd Respondent's brief filed on 19/6/2024.

He adopted and relied upon the said 2nd and 3rd Respondent's brief as his argument in urging that the Appeal be dismissed.

The Learned Senior Counsel for the 4th Respondent also referred to the 4th Respondent's brief filed on 19/6/2024.

He adopted and relied on the said 4th Respondent's brief as his argument in urging that this Appeal be dismissed.

The Learned Senior Counsel for the 5th Respondent referred to the 5th Respondent's brief filed on 19/6/2024.

He adopted and relied on the said brief as his argument in urging that the Appeal be dismissed.

He aligned himself with the submissions of Counsel for 1st to 4th Respondents concerning the withdrawal of Prayer 2 by the Learned Senior Counsel for the Appellants.

The 6th Respondent in this Appeal did not file any process.

The Learned Senior Counsel for the Appellants having withdrawn Prayer 2 in the Appellants' brief, the said Prayer 2 is hereby struck out.

I have gone through all the issues formulated for the determination of this Appeal on behalf of all the parties.

The issues are similar, I will therefore rely on the issues formulated for the determination of the Appeal on behalf of the Appellants.

ISSUES FOR THE DETERMINATION OF THE APPEAL

- "(i) Whether having regard to the subject-matter of the suit, the reliefs sought and the provisions of SECTION 272(3) OF THE 1999 CONSTITUTION (AS AMENDED) the High Court of Rivers State (the Lower Court) lacks jurisdiction to hear and determine the ex-parte application for interim injunction and the substantive suit. (Distilled from Grounds 1 & 2 of the Notice of Appeal).***
- (ii) Whether the lower Court has jurisdiction to hear and determine the suit which arose from dispute over leadership and internal affairs of the Legislature i.e., the Rivers State House of Assembly. (Distilled from Grounds 3 of the Notice of Appeal).***
- (iii) Whether the lower Court was right in making determinations affecting the civil rights of the Appellants without hearing them. (Distilled from Ground 4 of the Notice of Appeal).***
- (iv) Whether the lower Court prejudged the main issues in the substantive action when he granted the ex-parte motion for interim injunction. (Distilled from Ground 5 of the Notice of Appeal).***

- (v) ***Whether the lower Court was right in making and or granting the ex-parte orders of interim injunction when the 1st – 3^d Respondents did not establish that there was real urgency in the circumstance. (Distilled from Ground 6 of the Notice of Appeal)."***

ISSUE NOS 1 AND 2 (TAKEN TOGETHER)

- "(i) ***Whether having regard to the subject-matter of the suit, the reliefs sought and the Provisions of SECTION 272(3) OF THE 1999 CONSTITUTION (AS AMENDED) the High Court of Rivers State (the lower Court) lacks jurisdiction to hear and determine the ex-parte application for interim injunction and the substantive suit. (Distilled from Grounds 1 & 2 of the Notice of Appeal).***
- (II) ***Whether the lower Court has jurisdiction to hear and determine the suit which arose from dispute over leadership and internal affairs of the legislature i.e., the Rivers State House of Assembly. (Distilled from Grounds 3 of the Notice of Appeal)."***

The Learned Senior Counsel for the Appellants submitted that jurisdiction is the main pillar upon which the validity of any decision of

any Court stands and without which no proceeding however brilliantly conducted by the Court can be valid.

He relied upon the cases of:-

- **OHAKIM VS. AGBASO (2010) 19 NWLR PART 1226 PAGE 172.**
- **MADUKOLU VS. NKEMDILIM (1962) 2 SCNLR PAGE 341.**
- **IHIM VS. MADUAGWU (2021) 3 NWLR PART 1770 PAGE 584 AT 624.**

It was contended on behalf of the Appellants that the main issue in the suit having regard to the averments in the statement of claim concern – whether the term or tenure of office of the Appellants have ceased or become vacant – whether the Appellants have lost their membership of the River State House of Assembly etc.

He referred to **SECTION 272(3) OF THE 1999 CONSTITUTION (AS AMENDED)** and submitted that the Federal High Court is exclusively vested with the jurisdiction to hear and determine the question as to whether the term of office of the Appellants has ceased.

He relied on the following cases:-

- **WELLINGTON VS. PDP (2023) 10 NWLR PART 1893 PAGE 455.**
- **IBRAHIM VS. AKINRISOLA (2022) 18 NWLR PART 1862 PAGE 455.**

It was submitted on behalf of the Appellants that the trial Court lacks the jurisdiction to hear and determine the suit filed by 1st – 3rd Respondents.

It was also submitted that the Ex-parte Order of injunction having been made without jurisdiction, is null and void and of no effect.

In his response, the Learned Senior Counsel for the 1st Respondent submitted that the lower Court is imbued with the requisite jurisdiction to hear and determine the substantive suit before it.

He relied on the following cases:-

- **I.N.E.C. VS. OGBADIBO LOCAL GOVT. (2016) 3 NWLR PART 1498 PAGE 196.**
- **MADUKOLU VS. NKEMDILIM (SUPRA).**
- **A.G. FEDERATION VS. A.G. LAGOS STATE (2017) 8 NWLR PART 1566 PAGE 36.**

It was contended that the reliefs sought at the trial Court have nothing to do with the vacancy or otherwise of the Appellants rather it is solely bordered on the lower Court restraining them from their

continuous actions as Legislators in Rivers State by virtue of **SECTION 109(1)(G) OF THE 1999 CONSTITUTION (AS AMENDED)**.

It was also argued that the issue of jurisdiction being raised in the Court was never raised by the Appellants before the lower Court.

Learned Senior Counsel relied on the following cases:-

- **INTERCITY BANK PLC VS. ALI (2002) 7 NWLR PART 766 PAGE 438.**
- **SOESON LTD. VS. AFRIBANK NIG. PLC (2000) 4 NWLR PART 653 PAGE 403.**

It was also submitted on behalf of 1st Respondent that the subject-matter before the lower Court does not border on disputes of internal affairs of the Legislature but rather the exercise of the Legislative powers of the Appellants as members of the Rivers State House of Assembly.

He relied on the cases of:-

- **NATIONAL ASSEMBLY VS. ACCORD (2021) 18 NWLR PART 1808 PAGE 253.**
- **PARTNERSHIP SECURITIES LTD. & OTHERS VS. EKPE (2021) LPELR – 54557 (CA).**

It was contended on behalf of the 1st Respondent that injunctions by their nature granted on Ex-parte applications can only be interim in nature. They are made without notice to the other side to keep matters

in status quo to a date usually not more than few days or until the Respondent can be put on notice. Such injunctions are for cases of real urgency. He relied on the cases of –

- **ENEKWE VS. INT'L MERCHANT BANK OF NIGERIA LTD. & OTHERS (2006) LPELR – 1140 (SC).**
- **OKAFOR & ANOR. VS. ONEDIBE & OTHERS (2002) LPELR – 5915 (CA).**

It was submitted that the lower Court has the jurisdiction to hear and determine the substantive suit, as well as the Ex-parte application before it and was right in granting the interim order sought by the 1st – 3rd Respondents before it.

Learned Senior Counsel for 1st Respondent urged that issue numbers 1 & 2 be resolved in favour of the 1st Respondent.

The Learned Counsel for the 2nd & 3rd Respondents stated that the Appellants have challenged the jurisdiction of the lower Court to entertain the motion ex-parte and substantive suit on two grounds –

- (1) The subject-matter of the suit is within the exclusive jurisdiction of the Federal High Court by virtue of **SECTION 272(3) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED).**

(2) The subject-matter of the suit arose from a dispute over leadership and internal affairs of the Legislature, which is outside the jurisdictional competence of any Court of law.

It was submitted that it is the plaintiff's claim before the Court that determines the jurisdiction of the Court, and the facts constituting that claim can only be determined from the writ of summons and statement of claim.

Learned Senior Counsel relied on the case of – **MULTI-PURPOSE VENTURES LTD. VS. A.G. RIVERS STATE (1997) 9 NWLR PART 522 PAGE 642 AT 663.**

It was contended on behalf of the 2nd & 3rd Respondents that in the absence of any question posed for determination by the Court below as to whether the Appellants seats have become vacant or seeking to declare their seats vacant, the case before the lower Court falls outside the purview of **SECTION 272(3) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED)** and that the lower Court is vested with requisite jurisdiction to entertain the claim under **SECTION 272(1) OF THE CONSTITUTION.**

It was stated further that upon a calm appraisal of **SECTION 6(2), 6(6)(A), 6(6)(B), 251(1), 272(1) and 272(3) OF THE**

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

(AS AMENDED) – that the State High Court and Federal High Court share concurrent jurisdiction to hear and determine any questions as to whether the term of office of a member of the House of Assembly of a State, a Governor or Deputy Governor has ceased or become vacant.

It was also submitted that the Federal High Court, which is a Court of limited jurisdiction, the State High Court by virtue of **SECTION 6(2), 6(3), 6(5)(E), 6(6)(A), 6(6)(B)** and **272(1) OF THE 1999 CONSTITUTION (S AMENDED)** has unlimited jurisdiction over every civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligations or claim is in issue, save for matters expressly stated by the Constitution to be within the exclusive jurisdiction of the other superior Courts of record established by the Constitution.

Reliance was placed upon the following cases:-

- **HON. MUYIWA INAKOJU & OTHERS VS. HON. ABRAHAM ADEFOLU ADELEKE (SPEAKER) & OTHERS (2007) LPELR – 1510 (SC).**
- **HON. IFEDAYO SUNDAY ABEGUNDE VS. THE ONDO STATE HOUSE OF ASSEMBLY & OTHERS (2015) LPELR – 24588.**

- **AUGUSTINE MAIKYO VS. W.E. ITODO & OTHERS (2007)**
LPELR – 1821 (SC).

It was submitted further that whenever the Constitution intends to confer exclusive jurisdiction on a Court, it says so expressly. Exclusive jurisdiction cannot be conferred or arrived at by inference.

It was submitted further that the Appellants contention is in violent conflict with **SECTION 272(3) OF THE CONSTITUTION** which gives the Federal High Court concurrent jurisdiction to inquire into whether the seat of a member of the House of Assembly has become vacant. The declaration of a seat as vacant would ordinarily be said to be an internal affair of a House of Assembly.

It was finally submitted that the trial Court had jurisdiction to entertain and grant the Motion Ex-parte. The trial Court equally possesses unvarnished jurisdiction over the substantive suit. Learned Counsel urged that the issues be resolved in favour of the Respondent.

The Learned Counsel for the 4th Respondent in his own submission in response to the Appellants Counsel submitted that jurisdiction is the life blood of any adjudication because a Court without jurisdiction is like an animal without blood. He relied on the following cases of:-

- **DANGANA & ANOTHER VS. USMAN & OTHERS (2012)**
LPELR – 250124 (SC).
- **MADUKOLU VS. NKEMDILIM (SUPRA).**

It was submitted further that it is the relief endorsed on the writ of summons and the statement of claims that determines the jurisdiction of a Court. He relied on the following cases:-

- **EKWEOZOR & OTHERS VS. REG. TRUSTEES OF THE SAVIOURS APOSTOLIC CHURCH OF NIG. (2020) LPELR – 49568 (SC).**
- **A.G. FEDERATION VS. A.G. LAGOS STATE (2017) LPELR – 42769 (SC).**
- **ADEYEMI VS. OPEYORI (1976) 9 – 10 SC PAGE 31.**
- **AKINFOLARIN VS. AKINNOLA (1994) 3 NWLR PART 335 PAGE 659.**
- **MAGAJI VS. MATARI (2000) 8 NWLR PART 670 PAGE 722 AT 735 PARAGRAPHS F – G.**
- **SAVANNAH BANK VS. PAN ATLANTIC SHIPPING & TRANSPORT AGENCIES LTD. & ANOTHER (1987) lpeir – 3021 (SC).**

The Learned Senior Counsel for the 4th Respondent submitted that **SECTION 272(3) OF THE 1999 CONSTITUTION** did not oust a State High Court from having jurisdiction to entertain matters relating to whether the term of office of a member of the House of Assembly of a State, a Governor or Deputy Governor has ceased or become vacant.

He also submitted that the claim before the trial Court is not within the contemplation of **SECTION 272(3) OF THE (1999) CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)**.

It was submitted further that it is within the trial Court's jurisdiction, as contemplated by **SECTION 272(1) and (2) OF THE (1999) CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)** to hear the claims in the suit which has culminated in the instant appeal.

He finally urged this Court to resolve the issues raised in favour of the 4th Respondent and against the Appellants.

The 5th Respondent's Learned Senior Counsel responded to the submission of Learned Senior Counsel for the Appellants. He submitted that the 1st to 3rd Respondents suit was not brought to determine whether the term of office of the Appellants as members of the Rivers State House of Assembly has ceased or become vacant.

He submitted that the seats of the Appellants had been declared vacant by the speaker of the Rivers State House of Assembly since 13/12/2023 and that this suit has nothing to do with the issue.

He submitted further that it is not correct that **SECTION 272(3) OF THE (1999) CONSTITUTION** granted exclusive jurisdiction to the Federal High Court to determine whether the term of office of members of the House of Assembly of a State and Governor or Deputy Governor ceased or become vacant.

He relied upon the case of – **SUN INSURANCE (NIG.) PLC VS. UMEZ ENGINEERING CONSTRUCTION LTD. (2015) 11 NWLR PART 1471 PAGE 576 AT 612 TO 613 PARAGRAPHS H – B.**

He argued further that the Provisions of **SECTION 272(3)** are expressly stated to be subject to the Provisions of **SECTION 251 OF THE (1999) CONSTITUTION.** He went further that this suit did not arise from any dispute over leadership and membership of the Rivers State House of Assembly. This suit arose from the fact that notwithstanding that the Appellants' seats in the Assembly have been declared vacant since 13/12/2023, the Appellants have continued to parade themselves as members of the Assembly and purport to Legislate in their living quarters. It was argued that it is in order to restrain them from carrying out such further acts of aberrations hence the suit was filed.

Learned Senior Counsel for the 5th Respondent finally urged this Court to answer the issues by 5th Respondent in affirmative.

RESOLUTION

It is now settled law that the issue of jurisdiction is the fulcrum, centre-pin and the main pillar upon which the validity of any decision of any Court stands. And without jurisdiction, no proceeding however brilliantly conducted by the Court can be valid. It cannot be assumed or implied. It cannot also be conferred by consent or acquiescence of parties.

In **OHAKIM VS. AGBASO (SUPRA) AT PAGE 243**
PARAGRAPHS A – E the Court held as follows:-

"For the sake of emphasis however, permit me to say, my Lords, that jurisdiction of court is the basis, foundation and life wire of access to court in adjudication under our civil process. Courts are set up by different statutes ranging from the Constitution, Acts; Laws etc, which cloak the courts with the powers and jurisdiction to adjudicate between litigants and on the subject matter in litigation. Where such statutes do not grant jurisdiction to a court or tribunal, the court and the parties cannot by agreement endow the court with jurisdiction, no matter how well intentioned and properly the proceedings have been conducted and once

it is incompetent, it is a nullity and an exercise in futility. Jurisdiction is the fulcrum, centre pin, or the main pillar upon which the validity of any decision of any court stands and around which other issues rotate. It cannot therefore be assumed or implied as it cannot be conferred by consent or acquiescence of parties. See: SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA LTD. V. ISAIAH (2001) 5 SC (PT. II) I, (2001) 11 NWLR (PT. 723) 168; A.-G., FEDERATION V. SODE (1990) 1 NWLR (PT. 128) 500 AT 541; OKOLO V. UNION BANK (NIG.) PIC (2004) 1 SC (PT. 1), (2004) 3 NWLR (PT.A859) 87; NATIONAL BANK OF NIGERIA LTD. V. SHOYOYE (1979) 5 SC 181; ACHINEKU V. ISHAGBA (1988) 4 NWLR (PT. 89) 411; ENUGWU V. OKEFI (2000) 3 MWLR (PT. 650) 620; OGUNMOKUN V MJ1AD OSUN STATE (1999) 3 NWLR (PT.594) 261 AT 265". Furthermore, for a Court of law to have jurisdiction to hear and determine any matter before it, conditions to be satisfied have been laid down by our Courts in a long-line of decided cases. See MADUKOLU V NKEMDILIM (1962) 2 SCNLR 341 where the Supreme Court held thus:

"A court of law or tribunal is deemed competent to entertain and determine a matter or action before it if:

- a) It is properly constituted in regard to numbers and qualification of the member thereof, and no member is disqualified for any reason whatsoever;**
- b) The subject matter of the case is within its jurisdiction, and there is no feature therein preventing the court from exercising its jurisdiction; and**
- c) The case is initiated by due process of law, and upon satisfying any condition precedent to the exercise of jurisdiction".**

See also IHIM V MADUAGWU (2021) 3 NWLR (PT. 1770) 584 AT 624, LOKPOBIRI V OGALA (2016) 3 NWLR (PT. 1499) 328 AT 360 – 361."

The reliefs sought by the 1st – 3rd Respondents in this suit at the trial Court were set out earlier in this Judgment.

It is the settled position of the law that the averments in the statement of claim and reliefs therein are the processes to consider in determining the jurisdiction of a Court.

A careful reading of the reliefs sought by the 1st to 3rd Respondents at the trial Court as well as the statement of claim would reveal that the action concern issues of –

- Whether the term or tenure of the Appellants have ceased or become vacant.
- Whether the Appellants have lost their membership of the Rivers State House of Assembly and therefore cannot carry out any legislative duty.
- Whether the Appellants have lost their legislative seats.
- Whether the legislative seats of the Appellants are vacant.

SECTION 272(3) OF THE 1999 CONSTITUTION (AS AMENDED) provides thus:-

"272(3) Subject to the Provision of SECTION 251 and other Provisions of this Constitution, the Federal High Court shall have jurisdiction to hear and determine the question as to whether the term of office of a member of the House of Assembly of a State, a Governor, or Deputy Governor has ceased or become vacant".

The Provisions of **SECTION 272(3) OF THE 1999 CONSTITUTION (AS AMENDED)** is very clear straightforward and unambiguous. In this type of situation, it is the duty of a Court to

interpret the Provisions by giving the wordings their ordinary grammatical meaning.

- See - **MODIBO VS. USMAN (2000) 3 NWLR PART 1712 PAGE 470 AT 523.**
- **ABACHA VS. A.G. FEDERATION (2021) 10 NWLR PART 1783 PAGE 129 AT 158.**

A perusal of **SECTION 272(3) OF THE (1999) CONSTITUTION (AS AMENDED)** set out above would reveal that the Federal High Court is exclusively vested with the jurisdiction to hear and determine the question as to whether the term of office of the Appellants (who are elected members of the Rivers State House of Assembly) has ceased or become vacant.

The word "*shall*" used on **SECTION 272(3) OF THE 1999 CONSTITUTION (AS AMENDED)** made it mandatory that the Provision be adhered to. The use of the word "*shall*" imposes a command.

It is therefore my view that contrary to the submission of Respondents' Counsel, the Federal High Court and no other Court is mandatorily conferred with jurisdiction to determine such causes or matters. See the following cases:-

- **WELLINGTON VS. PDP (SUPRA).**
- **IBRAHIM VS. AKINRINSOLA (SUPRA).**

- **CORPORATE IDEAL INSURANCE LTD. VS. AJAOKUTA STEEL CO. (2014) 7 NWLR PART 1405 PAGE 165 AT 193.**

Furthermore, the express mention of the Federal High Court in **SECTION 272(3) OF THE 1999 CONSTITUTION (AS AMENDED)** automatically excluded all State High Courts (including Rivers State High Court).

Flowing from the foregoing is that the express mention of one thing in a Statutory Provision automatically excludes other stipulations which would otherwise have been applied.

See the case of – **JEV VS. IYORTOM (2015) 15 NWLR PART 1483 PAGE 484 AT 506.**

In view of the foregoing, the Court vested with jurisdiction to hear and determine the suit filed by 1st – 3rd Respondents is the Federal High Court, and not the River State High Court.

In **INEC VS. DPP (2014) LPELR – 22809 (CA) 45 – 46**, the Court held as follows –

"SECTION 272(3) OF THE 1999 CONSTITUTION provides as follows:

"Subject to the Provisions of SECTION 251 and other Provisions of this Constitution, the Federal High Court shall have the jurisdiction to hear and determine the questions as to whether the term of office of a member of a

House of Assembly of a State, a Governor or Deputy Governor has ceased or become vacant."

It is clear that it is only the Federal High Court that has jurisdiction to determine the question as to whether the term of office of the 5th Respondent being a member of the Delta State House of Assembly has ceased or become vacant. The fact that SECTION 272(3) is made subject to SECTION 251 is of no moment since there is nothing in SECTION 272(3) that contradicts the Provision of SECTION 251".

Also in – **OFOBRUKWU VS. DPP (2015) LPELR – 24899 (CA)**

12 – 13, the Court held thus:-

"I have already redacted the background to the action. It is all about whether the seat of the Appellant should be declared vacant as a result of his defecting from the 1st Respondent; the political party that sponsored him and on whose platform he was elected as a member of the Delta State House of Assembly, to the Peoples Democratic Party. In succinct terms, the action is all about whether the seat of the Appellant in the Delta State House of Assembly has become vacant. Section 272(3) of the 1999 Constitution (as amended) stipulates:

"(3) Subject to the provisions of Section 251

and other provisions of this Constitution, the Federal High Court shall have jurisdiction to hear and determine in question as to whether the term of office of a member of the House of Assembly of a State, a Governor or Deputy Governor has ceased or become vacant"

So, clearly, the Constitution vests jurisdiction in the Lower Court to hear and determine whether the seat of the Appellant in the Delta State house of Assembly has become vacant. In INEC VS DEMOCRATIC PEOPLES PARTY (2014) LPELR (22809) 1 at 23 - 24, this Court per Ogunwumiju, JCA, held that it is only the Federal High Court that has jurisdiction to determine the question as to whether the term of office of a member of the House of Assembly has ceased or become vacant"

In view of the authorities cited above, it is clear that the trial Court lacks the jurisdiction to hear and determine the suit filed by the 1st to 3rd Respondents.

Furthermore, after a careful reading of the statement of claim of the 1st to 3rd Respondents, it is clear in paragraph 13(1) of the said statement of claim that the 1st to 3rd Respondents prayed the trial Court to declare the 1st Respondent as the legitimate and substantive Speaker

of the Rivers State House of Assembly, while other reliefs concern membership of Rivers State House of Assembly.

Consequent upon the foregoing, the ex-parte order of interim injunction having been made without jurisdiction is null and void and of no effect.

I am of the view that the trial Court lacks jurisdiction to entertain and determine the suit.

In the result, this issue numbers 1 and 2 are resolved in favour of the Appellants and against the Respondents.

ISSUE NUMBERS 3, 4 AND 5 TAKEN TOGETHER

ISSUE NO 3

"Whether the lower Court was right in making determinations affecting the civil rights of the Appellants without hearing them. (Ground 4 of the Notice of Appeal)".

ISSUE NO 4

"Whether the lower Court prejudged the main issues in the substantive action when he granted the ex-parte motion for interim injunction. (Ground 5 of the Notice of Appeal)".

ISSUE NO 5

"Whether the lower Court was right in making and or granting the ex-parte orders of interim injunction when the 1st – 3rd respondents did not establish that there was real urgency in the circumstance. (Ground 6 of the Notice of Appeal)."

In this appeal, the Learned Senior Counsel for the Appellants stated that the orders complained of was made Ex-parte and the facts that necessitated the Motion Ex-parte filed by 1st to 3rd Respondents are contained in paragraphs 9, 10, 11, 12 and 17 of the affidavit in support of the Motion Ex-parte.

It was submitted that Order of Interim Injunction are granted in cases of real urgency.

The following cases were relied upon:-

- **KOTOYE VS. CBN (1989) 1 NWLR PART 98 PAGE 419 AT 449 PARAGRAPHS C – D.**
- **OKECHUKWU VS. OKECHUKWU (1989) 3 NWLR PART 108 PAGE 234 AT 245 PARAGRAPHS D – E.**

It was also submitted that in the determination of the ex-parte application, the trial Court proceeded to determine the same issues that would arise for determination in the substantive suit.

It was also submitted that the same issues were presented to the trial Court by the 1st – 3rd Respondents in the substantive suit. And as a result, the Order of Interim Injunction made by the trial Court affected the Civil Rights of the Appellants.

Learned Senior Counsel for the Appellants urged this Court to hold that the said Ex-parte Order of Interim Injunction is null and void.

The Learned Counsel for the 1st Respondent submitted that the said Ex-parte Order of the lower Court was to be in force pending eventual hearing and determination of the Motion on Notice to be heard on 29/5/2024. Therefore, the Appellants could not be heard to say that their right to fair hearing was violated.

The Learned Senior Counsel for the 1st Respondent submitted that by their nature, injunctions granted on Ex-parte applications can only be interim in nature. They are made without notice to the other side to keep matter in status quo to a named date. The rationale of an order made on such application is that the delay to be caused by proceeding in the ordinary way by putting the other side on notice might cause irretrievable mischief. Such injunctions are for case of real urgency.

It was contended that the 1st Respondent herein in paragraphs 17 and 18 of the affidavit in support of their Ex-parte Motion filed on

9/5/2024 stated the real urgency that necessitated the filing of the said Ex-parte motion.

The following cases were relied upon:-

- **ENEKWE VS. INT'L MERCHANT BANK OF NIG. LTD. VS. OTHERS (2006) LPELR – 1140 (SC).**
- **OKAFOR & ANOTHER VS. ONEDIBE & OTHERS (2002) LPELR – 5915 (CA).**

It was submitted that the trial Court has the jurisdiction to hear and determine the substantive suit as well as the Ex-parte application before it and it was right in granting the interim order sought by the 1st to 3rd Respondents.

The Learned Senior Counsel for the 2nd & 3rd Respondents submitted that a party alleging breach of his right of fair hearing is required to demonstrate same by cogent facts to dislodge the presumption of regularity of Court proceedings.

He submitted further that the ex-parte hearing and grant of a motion does not *ipso facto* translate to a denial of fair hearing. He relied on the following cases:-

- **CARNATION, REGISTRAR LIMITED VS. THE PRESIDENT OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA & ANOTHER (2023) LPELR – 60102 (SC).**

- **CINCA NIGERIA LIMITED & OTHERS VS. ASSET
MANAGEMENT CORPORATION OF NIGERIA & ANOTHER
(2023) LPELR – 60668 CA AT 37 – 39 PARAGRAPHS C –
A.**

It was contended that the order made by the lower Court did not in any way prejudice the issues to be determined in the substantive suit. It was also stated that the Appellants' contention that their status as defected members of the Rivers State House of Assembly is an issue to be decided in the substantive suit is based on a misconception of the 1st to 3rd Respondent's case at the trial Court and the college of facts before the trial Court at this state of the trial. The trial Court was not asked to determine the question of whether the Appellants had defected. That issue would only have been thrown up if the Appellants had filed a Counter Affidavit to the motion for interlocutory injunction or statement of defence where they contested the fact that their seats were vacant.

On the whole, it was submitted that the lower Court did not prejudice the issues arising for determination in the substantive suit while making the orders complained of and further, that the trial Court did not deny the Appellants their right of fair hearing in making the said orders. It was also stated that there was sufficient urgency

disclosed in the facts before the lower Court to justify the grant of the order they complained of.

Learned Senior Counsel urged that the issues raised in this appeal be resolved against the Appellants and in favour of 2nd & 3rd Respondents.

The Learned Senior Counsel for the 4th Respondent in his response submitted that in an application for an injunctive order, whether interim or interlocutory is equitable in nature and as such the Court is required to ensure that all conditions for its grant are satisfied. He relied on the cases of:-

- **USHIE VS. EDET (2010) 6 NWLR PART 1190 PAGE 386 AT 403 PARAGRAPH F.**
- **BUHARI VS. OBASANJO (2003) 17 NWLR PART 850 PAGE 510 AT 648 – 649 PARAGRAPH F – F.**

It was also submitted that the 1st to 3rd Respondents satisfied the conditions precedent to the grant of Ex-parte Order which is the subject of the instant appeal. Reference was made to the affidavit of urgency on pages 45 – 46 of the Record.

Apart from the affidavit of extreme urgency filed by the 1st to 3rd Respondents, there is also the paragraph 25 of the affidavit in support

of the ex-parte application found on page 55 of the Record of Appeal which states as follows:

"25) The 1st to 25th Defendants and their residences are guarded by heavily armed security operatives as a result. It will be difficult and impracticable for the bailiff of the Court to have access to them _____

_____".

He finally urged this Court to resolve the issue in favour of the 4th Respondent and against the Appellants.

The Learned Counsel for the 5th Respondent in his response stated that the contention of the Appellants is misconceived in that 1st to 3rd Respondents did show the existence of real urgency before the trial Court.

He went further that the affidavit in support of the motion ex-parte is at pages 51 - 55 of the Record of Appeal.

Also the 1st to 3rd Respondents filed an affidavit of extreme urgency on behalf of 5th Respondent.

It was contended that all the Orders made in the Interim Injunction were made pending the hearing and determination of the Motion on Notice. They were temporary in nature.

Learned Senior Counsel for the 5th Respondent urged that the issues be resolved in favour of the 5th Respondent and against the Appellants.

RESOLUTION

In this appeal, there is no dispute in the fact that the orders complained of was made ex-parte by the trial Court. The facts relied upon in the motion ex-parte are contained in the affidavit in support of the motion ex-parte. The relevant paragraphs are 9, 10, 11, 12 and 17 reproduced as follows:-

- "9. On 11th December, 2023 the 1st to 25th Defendants who were elected to represent their various Constituencies at the Rivers State House of Assembly on the Platform of the People's Democratic Party (PDP), like I the Claimants, met and publicly announced their defections from the People's Democratic Party (PDP) and joined the All Progressives Congress (APC), without any lawful justifications.***
- 10. Following the said unconstitutional cross-carpeting of the Defendants, the immediate past Speaker of the Rivers State House of Assembly, Rt. Hon. Edison Ogerenye Ehie, DSSR5, then as the head of***

the Rivers State House of Assembly, in the plenary sitting of the Rivers State House of Assembly on 13th December, 2023 formally declared the legislative seats of the 1st to 25th Defendants vacant, thereby leading to the cessation of their membership of the Rivers State House of Assembly, A copy of the House proceedings/hansard of 13th December, 2023 is attached herewith and marked as EXHIBIT "A".

- 11. Despite the declaration of the 1st to 25th Defendants legislative seats vacant as aforesaid, the 1st to 25th Defendants on 14th December, 2023 and other subsequent days converged at the auditorium of the House of Assembly Quarters located Off Aba Road, Port Harcourt and purported to sit as members of the Rivers State House of Assembly, in total and utter defiance to the said declaration of the immediate past Speaker of the Rivers State House of Assembly.***
- 12. Notwithstanding the declaration of the legislative seats of the 1st to 25th Defendants vacant, the 1st to 25th Defendants have vowed to continue parade and hold themselves out as***

members of the Rivers State House of Assembly and will continue to meet at any place possible to purport to carry out the legislative business of the Rivers State House of Assembly, even when they have ceased to be members of the Rivers State House of Assembly, all in a bid to create confusion and heat up the polity in Rivers State.

- 17. The 1st to 25th Defendants/Respondents' parading and holding themselves out as members of the Rivers State House of Assembly and having parallel sittings and plenaries is already brewing tension in Rivers State, which may snowball into full political instability and crisis, and affect the fragile peace the State is enjoying"***

It is trite that in an Ex-parte Order of Interim Injunction, the Applicant must show the existence of a real urgency.

Real urgency is the basis, rationale and or *sine qua non* for granting an ex-parte order of injunction.

In **KOTOYE VS. CBN (1989) 1 NWLR PART 98 PAGE 419 – 449 PARAGRAPHS C – D**, the Court held as follows:-

"Put in another way, if the matter is not shown to be urgent, there is no reason why ex parte order should be made at all, the existence of real urgency, and not self- induced urgency, is a sine qua non for a proper ex parte order of injunction. On the contents of the affidavit of urgency set out above, I agree with the learned Justices of the Court of Appeal that no case of real urgency or any other exceptional circumstances was made out. What was shown was self-imposed urgency caused by the applicant's culpable delay in bringing the application. This was not enough".

And at Page 468 Para D it was added thus:

"Urgency is the necessary fulcrum on which the application rests. However, the basis of granting the application is also the existence of special circumstances and the urgency to protect the destruction of the right involved in the suit. Thus in the absence of a real urgency, the rationale for an ex parte application cannot be justified".

Also in **OKECHUKWU VS. OKECHUKWU (1989) 3 NWLR PART 108 PAGE 234 AT 245 PARAGRAPHS D – F**, the Court held as follows:-

"Ex parte injunctions are for cases of extreme urgency where there has been a true impossibility of giving notice of motion, and such an injunction

will be refused, unless the applicant (i.e. the Plaintiff) has an over-whelming case on the merits, on the ground that the delay in making the application has been insufficiently explained”.

Another area to examine is the fact that an ex-parte interim injunction is an equitable remedy and the delay in bringing it will defeat it because delay defeats equity and that element of urgency which is the very essence and basis of ex-parte application for interim injunction is gone.

In **KOTOYE VS. CBN (SUPRA) AT PAGE 454 PARAGRAPHS**

D – E, the Supreme Court held among others thus:-

“The real issue, therefore, in this appeal is, as stated in the issues for determination, whether there circumstances here justifying the grant of interlocutory injunction ex parte. More directly, was there real urgency? Usually in cases of ex-parte applications for injunction on the ground of real urgency the court would, as indicated earlier, examine the fact to ensure that the party applying has not been guilty of delay and furthermore that there is an impossibility of bringing an application on notice and serving the other party”

And at Page 440 it was held thus:

"So, if an incident which forms the basis of an application occurred long enough for the applicant to have given due notice of the application to the other side if he had acted promptly but he delays so much in bringing the application until there is not enough time to put the other side on notice, then there is a case of self-induced urgency, and not one of real urgency within the meaning of the law. This self-induced urgency will not warrant the granting the application ex parte"

In this appeal, the Respondents contended that affidavit of extreme urgency was filed at the trial Court, but a careful reading of paragraphs 9, 10, 11, 12 and 17 of the affidavit in support of the Motion Ex-parte would show that the cause of action arose on 13/12/2023 and the Appellants have been carrying on with their duties without any hindrance.

Between 13/12/2023 to 8/5/2024, the 1st to 3rd Respondents did not take any legal action to challenge the acts of the Appellants. The 1st to 3rd Respondents delayed for more than 140 days before bringing the action. What this means is that there is no more urgency on the part of the Respondents. The delay is self-induced.

The Learned Senior Counsel for the Appellants submitted that by granting and making ex-parte orders, the lower Court determined the same issues that would arise for determination in the substantive suit.

Furthermore, it was contended that without affording the Appellants hearing, the lower Court proceeded to decide that the Appellants ought not to parade or hold themselves as members of the Rivers State Legislative House.

By virtue of the Provisions of **SECTION 36(1) OF THE 1999 CONSTITUTION (AS AMENDED)** and **PRINCIPLES OF NATURAL JUSTICE**, the Appellants are entitled to fair hearing within a reasonable time by the trial Court before the adverse and prejudicial pronouncement and determination complained of which were made by the said ex-parte orders.

In **KOTOYE VS. CBN (SUPRA)**, the Supreme Court held at Page 444 – 445 as follows:-

"Clearly whenever the need arises for the determination of the civil rights and obligations of every Nigerian, this provision guarantees to such a person a -fair hearing within a reasonable time. Fair hearing has been interpreted by the courts to be synonymous with fair trial and as implying that every

reasonable and fair minded observer who watches the proceedings should be able to come to the conclusion that the court or other tribunal has been fair to all the parties concerned. See on this Mohammed v. Kano N.A. (1968) 1 All N.L.R. 424, at p. 426. There are certain basic criteria and attributes of hearing, some of which are relevant in this case. These include:

- (i) that the court shall hear both sides not only in the case but also in all material issues in the case before reaching a decision which may be prejudicial to any party in the case. See Sheldon v. Bowfield Justices (1864) 2 Q.B. 573, at p.578.**
- (ii) that the court or tribunal shall give equal treatment, opportunity, and consideration to all concerned. See on this: Adigun Attorney-General, Oyo State & Ors. (1987) 1 NWLR (Pt.53) 678.**
- (iii) that the proceedings shall be held in public and all concerned shall have access to and be informed of such a place of public hearing and that having regard to all the circumstances, in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to**

have been done: R V Sussex Justices, Ex parte McCarthy (1924) 1 K.B. 256, at p. 259; Deduwa & Ors. v Okorodudu (1976) 10 S.C. 329.

Thus, fair hearing in the context of Section 33(1) of the Constitution of 1979 encompasses the plenitude of natural justice in the narrow technical sense of the twin pillars of justice - audi alteram partem and nemo iudex in causa sua - as well as in the broad sense of what is not only right and fair to all concerned but also seems to be so"

It is my view that the trial Court ought to have listened to both sides before coming to a decision prejudicial to the Appellants. See – **POPOOLA VS. NIGERIAN ARMY (2022) 6 NWLR PART 1825 PAGE 28 – 29, PAGE 1 AT 28 – 29.**

Consequent upon the foregoing, this issue Nos 3, 4 & 5 are resolved in favour of the Appellants and against the Respondents.

In the result with the resolution of Issue Numbers 1, 2, 3, 4 & 5 in favour of the Appellants and against the Respondents, it is my view that this appeal has merit and it is allowed.

In view of my findings earlier in this Judgment that the trial Court lacks the jurisdiction to hear and determine the suit filed by the 1st to

3rd Respondents, therefore Suit No PHC/1512/CS/2024: RT. HON. VICTOR OKO JUMBO AND 2 OTHERS VS. HON. MARTIN CHIKE AMAWHULE & 22 OTHERS is hereby struck out.



**JIMI OLUKAYODE BADA
JUSTICE, COURT OF APPEAL**



COUNSEL

- **MR. K. C. O. NJEMANZE SAN** and **CHIEF S. OBIH SAN** with them are **C. B. I. ANIMIWOYA ESQ., M. L. YOUNG-ARMY ESQ., V. C. UCHENDU ESQ.** for the Appellants.
- **MR. S. A. SOMIARI SAN** with him are **B. N. OWUNABO ESQ., K. O. OGUNJOBI ESQ., B. S. ORUPABO ESQ.** and **O. J. IFEJIKA ESQ.** for the 1st Respondent.
- **MR. D. O. OKORO SAN** with him is **N. E. ONYIRI ESQ.** for the 2nd & 3rd Respondents.
- **MR. A. EKE-EJELAM SAN** with him are **C. C. CHIKERE ESQ., ANIKA ALIKOR ESQ.** and **O. P. MADUEKWE ESQ.** for the 4th Respondent.
- **MR. J. T. O. UGBODUMA SAN** with him are **A. UGBOGBEIN ESQ., P. N. ZEPHANIAH ESQ.** for the 5th Respondent.
- 6th Respondent served with hearing notice on 19/6/2024 via SMS and WhatsApp 08098124928.

APPEAL NO: CA/PH/198/2024
HAMMA AKAWU BARKA, PJCA

My learned brother, Jim Olukayode Bada JCA, kindly availed me a copy of the judgment just delivered in draft. I agree with the reasoning as well as the conclusion reached to the effect that the appeal has merit and deserved to be allowed. For emphasis, I intend to chip in a few words of mine.

This is an appeal against the interlocutory decision of the High Court of Rivers State, sitting in Port Harcourt in suit with No. PHC/1512/CS/2024; RT Hon. Victor Oko Jumbo, and 2 ors vs. Hon. Martin Chike Amaewhule and 24 ors, delivered on the 10th of May, 2024. By the said ruling located at pages 127 – 128 of the record, the lower court in the interim ordered as follows:

1. An Order of interim injunction is granted restraining the 1st to 25th Defendants from parading and holding out themselves as members of Rivers State House of Assembly and/ or meeting/sitting at the Auditorium of the House of Assembly Quarters located at off Aba Road, Port Harcourt or any other place whatsoever to purport to carry out the legislative business of the Rivers State House of Assembly, their legislative seats having been declared vacant pending the hearing and determination of the Motion on Notice.

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2. An Order of interim injunction is hereby made restraining the 26th to 28th Defendants from dealing with, interfacing, accepting any resolutions, bills and/or howsoever interacting with the 1st to 25th Defendants in their purported capacities as members of the Rivers State House of Assembly, their legislative seats having been declared vacant with effect from 13th December, 2023 pending the hearing and determination of the Motion on Notice.
3. It is further Ordered that this Order, the Motion on Notice and the writ and other processes in this case be served on the 1st to 25th Defendants/Respondents within seven (7) days from date by substituted means to wit: by pasting at the entrance gate of the Rivers State House of Assembly Legislative Quarters, Off Abba Road, Port Harcourt and for such service to be deemed good and proper.
4. That this case is adjourned to the 29th May, 2024 Motion on Notice.8th

It should be noted that the 1st Respondent herein as the 1st Claimant before the lower court, together with the 2nd and 3rd Respondents herein as 2nd and 3rd Claimants respectively on the 9th of May, 2024 vide a writ of summons commenced the suit originating the instant appeal against the present appellants as well

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as the 4th – 6th Respondents herein as the 26th – 28th defendants respectively, seeking for the following reliefs: -

1. A. Declaration that the 1st Claimant is the legitimate and substantive Speaker of the 10th Assembly of the Rivers State House of Assembly.
2. A Declaration that with effect from 13th December, 2023, the 1st to 25th Defendants lack the competence to purport to function and/or carry out any legislative duty as members of the Rivers State House of Assembly.
3. A Declaration that all the purported meetings, sittings, proceedings and/or resolutions made by the 1st to 25th Defendants after 13th December, 2023 when their legislative seats were duly declared vacant in accordance with the Constitution of the Federal Republic of Nigeria, 1999, as amended, are null and void and of no effect whatsoever.
4. An Order of this Honourable Court setting aside all the purported meetings, sittings, proceedings and/or resolutions made by the 1st to 25th Defendants after 13th December, 2023 when their legislative seats were duly declared vacant in accordance with the Constitution of the Federal Republic of Nigeria, 1999, as amended.
5. An Order of perpetual injunction restraining the 1st to 25th Defendants from parading and holding out themselves as

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members of the Rivers State House of Assembly and/or meeting/siting at the Auditorium of the House of Assembly Quarters located at Off Aba Road, Port Harcourt or at any other place whatsoever to purport to carry out the legislative business of the Rivers State House of Assembly, their legislative seats having been declared vacant.

6. An Order of perpetual injunction restraining the 26th to 28th Defendants from dealing with, interfacing, accepting any resolutions, bills and or howsoever interacting with the 1st to 25th Defendants in their purported capacities as members of the Rivers State House of Assembly, their legislative seats having been declared vacant with effect from 13th December, 2023.

The aforesaid Writ of Summons was accompanied by the 1st – 3rd Respondents' Statement of Claim and other necessary processes.

The above-mentioned Writ of Summons was equally filed alongside and Affidavit of Extreme Urgency, Ex-parte Motion for an interim injunction and a Motion on Notice for an interlocutory injunction.

On 10th May, 2024, when the substantive suit leading to the present appeal came up for the first time before the trial court for Mention, the Learned Senior Counsel for the 1st – 3rd Respondents herein moved their Ex parte Motion which was granted. Thereafter, the learned trial Judge ordered that both the Interim Order and the

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Motion on Notice as well as the Writ of Summons be served on the Appellants herein within 7 (seven) days May, 2024 for the Motion on Notice to be heard. Agitated by the orders granted ex-parte, Appellants approached this court vide a notice of appeal filed on the 14th of May, 2024, and predicated upon six grounds of appeal. On the same 14th day of May, 2024, the records of appeal were duly transmitted to this court consequent upon which Appellants filed a brief of argument on the 15th of May, 2024, wherefore the following issues were distilled for the resolution of the appeal, thusly: -

- (i). Whether having regard to the subject matter of the suit, the reliefs sought and the provisions of Section 272(3) of the 1999 Constitution (as amended) the High Court of Rivers State (the Lower Court) lacks the jurisdiction to hear and determine the exparte application for interim injunction and the substantive suit. (Grounds 1 and 2 of the Notice of Appeal).
- (ii). Whether the Lower Court has the jurisdiction to hear and determine the suit which arose from dispute over leadership and internal affairs of the Legislature i.e. the Rivers State House of Assembly. (Grounds 3 of the Notice of Appeal).
- (iii) Whether the Lower Court was right in making determinations affecting the civil rights of the Appellants without hearing them. (Ground 4 of the Notice of Appeal).

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- (iv) Whether the Lower Court prejudged the main issues in the substantive action when he granted the ex parte motion for interim injunction. (Ground 5 of the Notice of Appeal).
- (v) Whether the lower Court was right in making and or granting the ex parte orders of interim injunction when the 1st – 3rd Respondents did not establish that there was real urgency in the circumstance. (Ground 6 of the Notice of Appeal).

The 1st, 2nd and 3rd, 4th and 5th Respondents all filed briefs, enumerating issues which if considered will resolve the appeal. On the scheduled hearing date, all counsel representing the respective parties, save for the 6th Respondent who did not file any process, and did not put in an appearance in spite of the fact that all processes including the hearing notice for the day, identified their respective processes, and urged the court to grant their prayers.

I have accordingly studied the grounds of appeal, the records and the submissions of learned counsel. I have equally given rapt attention to the oral arguments made by way of adumbration, and I am convinced that two fundamental questions arise for resolution. The first question in my humble view is whether this court has the requisite jurisdiction entertaining this appeal, in view of the clear stipulations in section 14 (1) of the Court of Appeal Act, 2004, and secondly, whether the lower court was imbued with the jurisdiction to have entertained the application made before it. The first

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question arose from the preliminary objections raised in all the briefs filed for the Respondents, while the 2nd question predominantly forms the grouse of the Appellants.

Now it is beyond disputation that jurisdiction is key, being the live-blood, the fulcrum and the main pillar upon which the validity of any decision by a court of law is predicated upon. The Apex Court emphasizing the legal position in *Solumade vs. Kuti* (2022) 1NWLR (pt 1810) 31 @ 64, per Oseji JSC, stated that: -

“Jurisdiction is the pillar upon which the entire case stands. Filing an action in a court of law presupposes that the court has jurisdiction. But once the defendant shows that the court has no jurisdiction, the foundation of the case is not only shaken but is entirely broken. The case crumbles, in effect there is no case before the court for adjudication. The parties cannot be heard on the merit of the case. That is the end of the litigation.....jurisdiction being the threshold of judicial power and judicialism and by extension extrinsic to adjudication, parties cannot by connivance, acquaintance or collusion confer jurisdiction on the court. As a matter of law, jurisdiction cannot be waived by one of the parties. This is because parties cannot conspire to vest jurisdiction in a court when there is none.”

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The learned Jurist, continued to hold that: -

“Since proceedings conducted without jurisdiction are null and void, no act of waiver, or other act that may be seen to have that effect can confer jurisdiction to validate such proceedings. See, *Ishola vs. Ajiboye* (1994) 6NWLR (pt. 352) 506, *Odutola vs. Kayode* (1994) 2NWLR (pt. 324)1. The existence or absence of jurisdiction in the court goes to the root of the matter and sustains or nullifies the decision of the court in respect of the relevant subject matter. See, *Obikoya vs. Registrar of Companies* (1975) 4SC 31.

See, *Ohakim vs. Agbaso* (2010) 19NWLR (pt. 1226) 172.

It is the state of the law that a court cannot assume jurisdiction to adjudicate in a cause or matter, unless its jurisdiction has been properly invoked, and any proceedings conducted without jurisdiction a nullity, no matter how well conducted or how sound the decision or orders made. See on this the cases of *Onward Enterprises Ltd vs. M.V.Matrix* (2022) 18NWLR (pt. 1861) 161, *Nzei vs. University of Nsukka Nsukka* (2017) 6NWLR (pt. 1561) 300, *NCC vs. Motophone Ltd* (2019) 14NWLR (pt. 1691) 1. What this means is that the invocation of the jurisdiction of a court of law must adhere to those established principles established in the case of *Madukolu vs. Nkendilim* (1962) 2SCNLR 341.

My learned brother Bada JCA, dealt admirably with the two issues earlier highlighted. I adopt his reasoning and conclusion on the two issues, and accordingly agree that the High Court of Rivers State per Wali J, by dint of section 273 (3) of the Constitution of the Federal Republic of Nigeria 1999 as amended, acted without jurisdiction to have entertained the application in the first place dealing with the question whether Appellants seats can be declared vacant, talk less of granting the far-reaching orders made. In the event this court is seized with the powers declaring all the acts of the Lower court null and void, being acts done without jurisdiction and the suit filed before it struck out for want of jurisdiction.

For clarity, the suit before the lower court having been struck out, all orders made by that court were so made without jurisdiction and therefore void ab initio. This means that Appellants shall revert to their positions prior to when those orders were made, and all actions made or taken in consequent upon those orders by the lower court are hereby declared null and void and thereby vacated. I make no order on costs.


HAMMA AKAWU BARKA
JUSTICE, COURT OF APPEAL

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SIGN. 
MBAH CHIAMAKA BLESSING
HIGHER EXECUTIVE OFFICER
DATE 

CA/PH/198/2024

(BALKISU BELLO ALIYU, JCA)

I have had the privilege of reading in draft, the Judgment prepared by my learned brother **JIMI OLUKAYODE BADA, JCA**, and I am in entire agreement with the judgment, and I adopt it as mine in this appeal.

In the peculiar facts of this appeal which are lucidly captured in the lead judgment it is shown that the motion ex-parte seeking the orders of interim injunction that gave birth to this appeal was filed along with the writ and statement of claim before the trial Court. Therefore, the learned trial Judge had before him the claims and the reliefs that the 1st to 3rd Respondents, as at the time he granted the orders of injunction among which he restrained the Appellants from parading themselves as members of the House of Assembly of Rivers State. It was manifestly clear and he ought to know that in view of the provisions of Section 272(3) of the Constitution of Nigeria, 1999 as amended, the trial Court had no jurisdiction on the subject matter of the suit, being whether the seats of the Appellants in the River State House of Assembly have become vacant.

A court that has no jurisdiction to determine a suit will have no power whatsoever to make a pronouncement on the rights of the parties in that suit. All that the law requires it to do is to strike out the suit thereby returning the parties to the status quo in which

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they were before the filing of the suit. See APGA VS. ANYANWU (2014) 7 NWLR (PT. 1407) 541.

It has been argued before us by the Respondents that the trial Rivers State High Court has 'unlimited jurisdiction' in view of Section 6(2), 6(6)(b) of the Constitution of Nigeria as amended, and therefore it was right to assume jurisdiction to make the orders it made in this case. I think that submission is grossly untenable and a mirage, since the said Section 6(2) provides that:

The judicial powers of a state shall be vested in the courts to which this section relates being courts established, subject as provided by the Constitution, for a state. (Underlining supplied).

And by the provisions of Section 272(3), the same Constitution provided that, it is only the Federal High Court which "***shall have jurisdiction to hear and determine the question as to whether the term of office of a member of the House of Assembly of a State ... has ceased or become vacant.***" The Constitution never used the word unlimited jurisdiction in respect of any Court that it created under its Section 6(5).

On the argument that this appeal has no basis in law being against interim orders made by the trial Court ex-parte, as ably captured in the lead judgment, this contention is erroneous especially in the peculiar circumstances of this case. This is

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because the injunctive orders were made in respect of a subject-matter on which the trial Court lacks jurisdiction to determine. Besides, the right of appeal against decisions of the High Courts of States or Federal High Court, etc. are appealable to this Court in view of the provisions of Section 241(1) of the Constitution. In the case of ALLIED INT'S. IND. LTD VS. ECOBANK (NIG.) LTD (2023) 10 NWLR (PT. 1893) 513, (PER NWEZE, JSC of blessed memory), the Apex Court re-iterated the position of the law that:

The right of appeal conferred under Section 241(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 is all-encompassing. Such an appeal is as of right without any stricture, interference or need for leave.

Finally, the law is settled without any argument that jurisdiction can be raised at any time, anyhow and at any stage of judicial proceedings because it is a threshold issue. Where a court acts without jurisdiction, it only labors in vain and whatever pronouncement it made becomes a nullity.

With these few words of mine and on the fuller reasons brilliantly stated in the lead judgment which I adopt as mine, I too find merit in this appeal, and I allow it. I strike out the suit NO: PHC/1512/CS/2024 filed before the trial Court for lack of jurisdiction.



Balkisu Bello Aliyu 4/7/24.
**BALKISU BELLO ALIYU
JUSTICE, COURT OF APPEAL**