

IN THE HIGH COURT OF JUSTICE: EDO STATE OF NIGERIA  
IN THE IGARRA JUDICIAL DIVISION  
HOLDEN AT IGARRA

BEFORE HIS LORDSHIP HONOURABLE JUSTICE E. A. OKOH - JUDGE  
ON WEDNESDAY THE 30<sup>TH</sup> DAY OF APRIL, 2025

BETWEEN:

SUIT NO: B/30/OS/2025

1.HON. SULEMAN TAJUDEEN ALADE ..... CLAIMANTS

2.HON. MRS. BEATRICE ABUKARE

AND

1.RT. HON. ALABI BLISS OSHIONOGUE

2.RT. HON. TOPE JACON

3.RT. HON. AKOSILE IMASHIMI

4.RT. PENDO ESHOVO ADECHE ..... DEFENDANTS

5.RT. HON AFOLABI HOPE MONDAY  
(Sued As Councilors of Akoko-Edo Local  
Government Legislative Council)

6.AKOKO-EDO LOCAL GOVERNMENT LEGISLATIVE COUNCIL

7.AKOKO-EDO LOCAL GOVERNMENT COUNCIL

8.THE CHAIRMAN OF AKOKO-EDO LOCAL GOVERNMENT COUNCIL

9.THE VICE CHAIRMAN OF AKOKO-EDO LOCAL GOVERNMENT COUNCIL

10.INSPECTOR GENERAL OF POLICE

JUDGMENT

This is a Judgment on originating Summons dated and filed the 17<sup>th</sup> day of January, 2025 wherein the claimants called on this court for the determination of the following question:

1. Whether upon the proper, correct and dispassionate interpretation of the provisions of **Section 19 (1-2) of the Edo State Local Government Law 2000, (as Amended 2022)**, the purported removal/ impeachment of the Claimants from the office

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of the Chairman and Vice Chairman of Akoko –Edo Local Government Council, Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants , purporting to act on behalf of the 6<sup>th</sup> Defendant, without Notice of any allegation signed by not less than two thirds of the members of the Akoko – Edo Legislative Council to the Leader of the Legislative Council, stating that the Claimants are guilty of gross misconduct, or at all, is unconstitutional, illegal, null and void and no effect whatsoever.

2. Whether upon the proper, correct and dispassionate interpretation of the provisions of **Sections 19(3-4) of the Edo Local Government Law 2000(As Amended 2002)**, the purported removal/impeachment of the Claimants from the office of the Chairman and Vice Chairman of Akoko – Edo Local Government Council, Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants, purporting to act on behalf of the 6<sup>th</sup> Defendant, without any motion by the Legislative Council members that the allegation(if at all) be investigated and without setting up seven man panel composed of people of proven integrity to investigate the allegation if at all, is unconstitutional, illegal, null and void and of no effect whatsoever?
3. Whether upon the proper, correct and dispassionate interpretation of the provisions of **Section 19(2) & (6) of the Edo State Local Government Law 2000, (as Amended 2002)**, the purported removal/impeachment of the Claimants from the office of Chairman and vice Chairman of Akoko–Edo Local Government Council, Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants, purporting to act on behalf of the 6<sup>th</sup> Defendant, without causing a Notice of impeachment to be served on the Claimants and on each members of the 6<sup>th</sup> Defendant, within seven (7) days of the

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6<sup>th</sup> Defendant's receipt of the notice or at all, is unconstitutional, illegal, null and void and of no effect whatsoever?

4. Whether, within the meaning of **Section 19(1-9) of the Edo State Local Government Law 2000(as Amended 2002), Sections 7 and 36(1) of the Constitution of the Federal Republic of Nigeria,1999(As amended),**the Claimants have been found guilty of any misconduct or whether any allegation of misconduct has been proved against the Claimants to warrant their removal/impeachment from the office as the Chairman and Vice Chairman of Akoko-Edo Local Government Council of the Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants purporting to act on behalf of the 6<sup>th</sup> Defendant.
5. Whether within the meaning and intendment of the provisions of **Section 7 of the Constitution of the Federal Republic of Nigeria, 1999(as Amended) and Section 19 of the Edo State Local Government Law 2000(as Amended 2002),** the announcement/ swearing-in of the 1<sup>st</sup> Defendant at the Acting Chairman of the Akoko-Edo Local Government Council of Edo State is not wrongful, unconstitutional, illegal, null and void and of no effect whatsoever.
6. Whether, upon a proper, correct and dispassionate interpretation of **Sections 1(1), (2) &(3), 4(7), 7(1) &(4) AND 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) and Section 8(2) of the Supreme Court Act,** the removal/ alleged impeachment of the Claimants who are democratically elected Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants and/or in concert with the 6<sup>th</sup> Defendant, without any Notice of allegation of Misconduct served on the Claimants and

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without affording them fair hearing, is not a grave violation/breach of the provisions of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999(as altered) and non-compliance with the Judgments of the Supreme Court in SC/CV/343/202 between Attorney General of The Federation .V. Attorney General of Abia State & 35 Ors delivered on the 11<sup>th</sup> day of July 2024 and Section 19 of the Edo State Local Government Law 2000 as Amended 2002 and thus amount to gross misconduct on the part of the 1<sup>st</sup> to 6<sup>th</sup> Defendants and an abuse of power and unconstitutional, null and void and of no effect whatsoever.

If the questions distilled for determination (supra) are resolved in favour of the Claimants, the Claimants shall, with your Lordship's Kind indulgence, be seeking the Court for the following reliefs

1. **A DECLARATION OF THIS HONOURABLE COURT** that the purported removal/impeachment of the Claimants from the office of Chairman and Vice Chairman of Akoko-Edo Local Government Council, Edo State by the 1<sup>st</sup> – 5<sup>th</sup> Defendants without Notice of any allegation signed by not less than two thirds of the members of the Akoko-Edo Legislative Council to the Leader of the Legislative Council, stating that the Claimants are guilty of gross misconduct, or at all, is unconstitutional, illegal, null and void and of no effect whatsoever.
2. **A DECLARATION OF THIS HONOURABLE COURT** that the purported removal/impeachment of the claimants from the office of the Chairman and Vice Chairman of Akoko-Edo Local Government Council, Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants, purporting to act on behalf of the 6<sup>th</sup> Defendant' without any

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motion by the Legislative Council that the allegation(if at all) be investigated, and without setting up seven man panel composed of people of proven integrity to investigate the purported allegation or at all, is unconstitutional, illegal, null and void and of no effect whatsoever.

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

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Federal Republic of Nigeria (as Amended) and Section 19 of the Local Government Law of Edo State(as amended 2002), the purported removal of the Claimants from office as the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants on the 6<sup>th</sup> day of January, 2025 is unconstitutional, illegal, null and void and of no effect whatsoever.

6. **A DECLARATION OF THIS HONOURABLE COURT** that the purported swearing-in of the 1<sup>st</sup> Defendant as the occupant of the Office of the Local Government Chairman of Akoko-Edo Local Government Council of Edo State (8<sup>th</sup> Defendant) is in contravention of **Sections 7 and 36(1) of the 1999 Constitutions of the Federal Republic of Nigeria (as amended) and Sections 10 and 19(1-9) of the Local Government Law of Edo State 2000(as amended 2002)** and therefore illegal, unconstitutional, null and void and of no effect whatsoever.
7. **A DECLARATION OF THIS HONOURABLE COURT** that the Claimants are still the occupants of the office of the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State (8<sup>th</sup> and 9<sup>th</sup> Defendants) and that the seats of the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State have not become vacant.
8. **A DECLARATION OF THIS HONOURABLE COURT** that the refusal and/or failure of the 10<sup>th</sup> Defendant's Officers to provide security and guarantee the security of the Claimants as occupants of the office of the Chairman and Vice chairman of

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Akoko-Edo Local Government Council of Edo State is unlawful, null and void and unconstitutional.

9. **A DECLARATION OF THIS HONOURABLE COURT** restoring or reinstating the Claimants to their offices as the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo state, the 8<sup>th</sup> and 9<sup>th</sup> Defendants herein, together with the rights, privileges, paraphernalia and prerequisites of the said offices.
10. **AN ORDER OF THIS HONOURABLE COURT** of perpetual injunction, restraining the Defendants either by themselves, their agents, privies, representatives or associates, persons acting for or through them and / or deriving authority from them preventing the Claimants from performing the functions of the office of the Local Government Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State.
11. **AN ORDER OF THIS HONOURABLE COURT** mandating, directing and/or compelling the 10th Defendant to provide protection to the Claimants for the peaceful resumption and discharge of their duties and functions as bestowed in their offices.

This Originating summons is supported by a nine (9) paragraph affidavit in which the facts supporting the application are enumerated, five(5) Exhibits attached and a written address which was adopted by Claimants Counsel A. A. Asemota and signed by Oghenefegor Avrukpere Esq. wherein he raised three(3) issues for determination:

- a) Whether the purported impeachment of the Claimants from office as the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State by the 1<sup>st</sup> – 5<sup>th</sup> defendants on

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6<sup>th</sup> day of January, 2025 was in accordance with the provisions of Section 19 of the Local Government Laws of Edo State, 2000 as amended 2002.

- b) Whether the 1<sup>st</sup> to 5<sup>th</sup> Defendant can exercise the power to remove/ impeach the Claimants who were democratically elected and had secured a tenure of three (3) years from the 4<sup>th</sup> day of September, 2024 when he was sworn into office, in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999(as altered) to 4<sup>th</sup> September, 2027 without fair hearing.
- c) Whether the 1<sup>st</sup> Defendant Swearing-in as the Acting Chairmen of Akoko-Edo Local Government Council of Edo State is not unlawful having regard to Section 7 of the 1999 Constitution of the Federal Republic of Nigeria, 1999(as amended) and the fact that the offices have not become vacant.

He stressed that in addressing these court, a three- pronged objectives seeks to be achieved on the issue of Supremacy of the Constitution over all persons, institutions and authorities in Nigeria and whether the 1<sup>st</sup> to 5<sup>th</sup> Defendants have removed/impeached the Claimants as the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State in accordance with the due process of law and the procedures as stipulated by Section 19 of the Edo State Local Government Law 2000(as amended 2002) without denial of fair hearing and the Power of the court to intervene in the circumstances and protect our nascent democratic institution, no matter whose ox is gored.

He submitted that Section 23(1)-(3) of the Imo State Local Government Administration Law is similar to the Edo State Law and was held to be clear and unambiguous. He urged the Court to hold that the law to regulate/ impeach a Local Government Chairman duly elected and sworn into Office in Edo State is

clear and must be followed. He referred to the case of I.S.I.E.C .V. EHIRIM (2013) 3 NWLR (PT. 1340) 169 AT PAGES 172 TO 174.

He submitted that it is established and now trite law that for a Local Government Chairman to be removed from office, the procedure set out in the Law regulating such removal must be strictly complied with and when such is not followed, the Court can intervene to nullify the purported removal like in this case, where the Claimants were illegally and arbitrarily remove from office without due process of Law or even according to them fair hearing. He stated that the procedure laid out in the 1979 Constitution of Nigeria is similar to Section 188 of the 1999 Constitution of the Federal Republic of Nigeria as amended and same is similar to the procedure stipulated in the Edo State Local Government Law 2000 as amended 2002 as well as authorities on the removal of A Governor will assist this court to determine the issue raised. He referred to the case of EKEKUGBO .V. FIBERESIMA (1994) 3 NWLR (PT. 335) 707 AT PAGES 713-714; EKPO .V. CALABAR LOCAL GOVERNMENT COUNCIL (1993) 3NWLR (PT. 281) 324 AND ADELEKE .V. OYO STATE HOUSE OF ASSEMBLY(2007) 4 NWLR (PT. 1025) 423

He submitted that the court long ago has emphasized that the Local Government Chairman is not under the whims and caprices of any organ of Government or individual being a duly elected Officer of. the Local Government by the Voters of that Local Government therefore he cannot be removed by any arbitrary method save method stipulated by Law. He referred to the case of ORHIONMWON LOCAL GOVERNMENT .V. OGIEVA (1993) 4 NWLR (PT. 288) 469 AT PAGES 473- 474.

On the Principle of Checks and balances in Local Government administration, he submitted that what can be gleaned from the Affidavit in support of the originating Summons and hold that the 1<sup>st</sup> to 6<sup>th</sup> Defendants did not follow the method prescribed by Law when they purportedly removed/ impeached the Claimants from office who are the duly elected Local Government Chairman and Vice Chairman of Akoko-Edo Local

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Government Council and the Chief executives of the Council elected by the people of the Council to serve them, for a term of three (3) years. He referred to the case of ORHIONMWON LOCAL GOVERNMENT .V. OGIEVA (Supra).

He urged the Court to hold that the seat of the Claimants have not become vacant and that the procedure adopted by the Defendants in removing/Impeaching the Claimants without affording them fair hearing guaranteed by Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is wrongful, unconstitutional, unlawful, illegal and null and void and of no effect and vacate the illegal removal of the Claimants from their offices and restore them to their office with all their rights , entitlements and Privileges forthwith and restrained the Defendants whether by themselves, or by acting through Agents or in concert with other elements, from further doing any act or acts to undermine the performance of the functions and duties of the office of the Claimants. He referred to AKINMADE .V. AJAYI (2008) 12 NWLR (PT.1101) 498; EKPO .V. FIBERESIMA(1994) 3 NWLR (PT.335) 707 AND KOTOYE .V. CBN (1989) 1 NWLR (PT.98)419 @ 488 C-D.

He stressed that the failure of the 1<sup>st</sup>- 5<sup>th</sup> Defendants to serve the Claimants with the impeachment notice and invite them to be heard before the decision/resolution to impeach them from office was passed, amounts to a denial of their right to fair hearing, that the Claimants had deposed in Paragraph 4-5 of the Affidavit in support of the Originating Summons that they found out about their purported impeachment through the various news media and social media handles and they were not informed of any alleged misconduct or gross misconduct. He further stressed that all efforts by the Claimant to gain access into their offices proved abortive as all their securities detailed were withdrawn by the 10<sup>th</sup> Respondent, whose men deliberately aided and enabled the 1<sup>st</sup> to 5<sup>th</sup> Defendants to gain access into the 8<sup>th</sup> and 9<sup>th</sup> Defendants.

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He submitted that the right to fair hearing is well entrenched in our jurisprudence, that the Defendants were duty bound to properly inform the Claimants of the offence committed and give them a reasonable time to defend themselves, the absence of which renders the said suspension a nullity. He referred to the case of DESTRA INVESTMENT LTD .V. FRN & ANOR (2020) LPELR-52293(CA);HARMONY TRANSPORT SERVICES LTD .V. BISCOM TDIGIT LTD(2021) LPELR-55622(CA) AND SECTION 36(1) OF THE 1999 CONSTITUTION.

On the 19<sup>th</sup> day of February 2025, the 1<sup>st</sup> – 9<sup>th</sup> Defendants' filed an 11(eleven) Paragraph Counter Affidavit in Opposition to the Originating summons, an Exhibit marked as "ÁK1" and a written address signed by Ogbeifun Evans Esq. wherein he raised a lone issue for determination which is:

***"Whether or not this suit has merit"***

He submitted that it is well settled in our Laws that only natural and juristic persons in whom the rights and obligations are vested are capable of being proper parties to law suits before courts of law and must be sued in their proper names, that when proper parties are not before the court, its jurisdiction is limited as it cannot give judgment against a person who may be affected by its decision who is not a party to the action. He referred to the case of REGISTERED TRUSTEES OF THE AIRLINE OPERATORS OF NIGERIA .V. NIGERIA AIRSPACE MANAGEMENT AGENCY (2014 8 NWLR PART 1408 PAGE 1 AND OYEYEMI .V. OWOEYE (2017) 12 NWLR PART 1580 PAGE 364.

He submitted that a court's jurisdiction is limited to the Parties, Issues raised and reliefs sought before it, confining its decisions to the Parties and their claims. He stressed that in the instant suit, the Claimants were never elected into office in Akoko Edo Local Government Council and were not impeached from office by the 1<sup>st</sup> to 9<sup>th</sup> Defendants hence they cannot maintain the action against the Defendants who impeached some other persons not party to this suit. He

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stated that the Claimants are not proper Parties and urge the court to so hold. He referred to the case of AERONAUTICAL INDUSTRIAL ENGINEERING AND PROJECT MANAGEMENT CO LTD (2017) 14 NWLR PART 1586 PAGE 397.

He submitted that the two Claimants named on the Originating Summons made an elementary error initiating a suit wherein they were seeking several declarations of the court as well being quite aware that the 1<sup>st</sup> to 9<sup>th</sup> Defendants will respond copiously to any false allegations against them via Originating Summons contrary to the rules of the court, that matters of contentious matters and claims for declarations are by Writ of Summons. He referred to the case of MADUKOLU .V. NKEMDILIM (1962) ALL NLR (PART 2) 581 AT 589; OBARO .V. HASSAN (2013) 8NWLR (PART 1375) AT PAGE 425 and ORDER 3 RULE 1(2) OF THE EDO STATE HIGH COURT RULES.

He stressed that the court may be able to remedy the error of wrong procedure by ordering the Claimants to file a Writ of Summons and accompanying processes in line with the rules of this court but there is absolutely no way the court can assist the Two (2) different sets of Claimants listed in this suit. He further stressed that the Originating Summons has Hon. Suleman Tajudeen Alade and Hon Mrs. Beatrice Abukare as Claimants while in the Affidavit in support and written address has Hon. Newman Oghomwne Ugiagbe and Hon. Ogbemor as Claimants, hence the suit is incurably bad and incompetent as presently constituted and ought to be struck out. He referred to ORDER 5 RULE 2 OF THE EDO STATE HIGH COURT RULES

He stressed that Local Governments are creations of the Constitution which also gives the State House of Assembly powers to enact Laws for the good governance of the State, that in exercising such powers, the Edo State House of Assembly in 2000 enacted a local Government Law which it amended in 2002 to regulate the conduct of Local Government Council Affairs.

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He submitted that the 1<sup>st</sup> to 9<sup>th</sup> Defendants acted under their Legal authority expressly prohibits the court or any other court from looking into the acts of the 1<sup>st</sup> to 9<sup>th</sup> Defendants. He referred to SECTIONS 19 AND 19(10) OF THE LOCAL GOVERNMENT LAW 2000(AS AMENDED 2002).

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

On the 21<sup>st</sup> day of February 2025, the Claimants' filed a 15 (fifteen) Paragraph further affidavit to the 1<sup>st</sup> to 9<sup>th</sup> Defendants' Counter Affidavit dated and filed on the 19<sup>th</sup> day of February 2025 and a Reply on Point of Law to the written address in support of the 1<sup>st</sup> to 9<sup>th</sup> Defendant's written address in support of counter Affidavit

On whether a general denial is sufficient traverse, he submitted that the general traverse of the Defendants in their Counter Affidavit without any specific denial of the Affidavit in support of the Originating summons, are no denial at all, hence amounts to admittance of the Claimant's fact. He referred to the case of UGELA .V. TARVENDA & ORS (2013) LPELR -21232 (CA) AND AMBER RESOURCE (NIG) LTD .V. CENTURY ENERGY SERVICES LTD CITATION (2018) LPELR-43671(CA).

He Submitted that paragraphs 3 to 10 of the Defendants' Counter affidavit have failed to frontally meet the allegation of the Claimants, that it has also failed to contradict the material, credible and cogent exhibits annexed to the Claimants' affidavit. He stressed that the Defendants have accepted and admitted the facts deposed by the Claimants by failing to traverse them specifically, that a transverse must be explicit, unequivocal and should not leave anyone in doubt as to the intention sought to be portrayed. He referred to the case of RUKUJE .V. DEBA (2018) LPELR - 44422 (CA)

He submitted that it is established principle of law that facts not expressly denied in the counter affidavit are deemed admitted. He referred to the case of

ADAMSON .V. ZENITH BANK & ANOR (2022) LPERLR-55144 AND LAWSON .V. OKORONKWO & ORS (2018) LPELR- 46356 (SC)

On Averments of the Defendants Affidavit not supported by any strand of material evidence, he stressed that facts/averment not supported or proved by evidence is deemed abandoned and consequently worthless, that this principle is well rooted in the legal jurisprudence of decided cases. He submitted that the Defendants woefully failed to substantiate these allegations with any material evidence. He referred to the case of CAMEROON AIRLINES .V. OTUTUIZU (2011) 4 NWLR (PT. 1238) AND AYOADE &ORS .V. OMOYELE (2023LPELR-59578 (CA).

He submitted that the Defendants contention that there was no proper parties before the court and that the Claimants are not the Chairman and vice chairman of the Akoko Edo Local Government Council is misconceived, fanciful and completely veered off tangent to say the least. He stressed that that the Claimants have demonstrated vide "Exhibit AKE 1" that HON. SULEIMAN TAJUDEEN ALADE and HON. MRS BEATRICE ABUKARE are the Chairman and Vice Chairman of the Akoko Edo Local government Council, same contention which the Defendants/ Applicants have not been able to displaced by documentary evidence. He further submitted that the Defendants sued here were sued as members of the legislative arm of the Local Government for orchestrating the purported impeachment against albeit unlawful and without the command of the law hence are proper parties. He referred to the case of ENTERPRISE BANK LTD .V. AROSO (2014) 3 NWLR (PT. 1394) 256 @ 266 S.C

On the issue of wrong procedure and incompetent process, he submitted that the Defendants has speculatively asserted wrong procedures, without itemizing or demonstrating the said wrong procedure(s) and the miscarriage of justice that would be occasioned by the assume wrong procedure. He stress that the court does not act on speculation. He referred to the case of ENGR. FRANK OKON DANIEL .V. INEC & ORS (2015) LPELR 24566 (SC).

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He submitted that the Defendants have argued erroneously that the apparent mistake where the name of another person was featured in some part of the process rather than the named Claimants in the Originating summons have render the Claimants' case to be incurable bad without placing reliance on any judicial authority evidence, that the fact that the argument of the Defendants is misconceived and alien to jurisprudence of our law in Nigeria. He stressed that the Defendants are not in confusion about the identity of the Claimants, rather the Defendant's contention is that the Claimants were wrongly described in other portion of the processes, that a wrong description of the Claimants does not invalid this suit but only amounts to misnomer. He referred to the case of CALABAR MUNICIPAL GOVT & ORS .V. HONESTY & ORS (2021) LPERLR 58391 (SC) AND APGA .V UBAH & ORS (2019) LPELR 48132 (SC)

On the issue of Jurisdiction of court in impeachment matters, he submitted that the Supreme Court have in several cases extrapolated on the ouster clause that seems to deny the court jurisdiction in impeachment matters. He reproduced Section 19(10) of the Edo State Local Government Law He referred to EKPENYONG .V. UMANA(2009) 14 NWLR (PT.1162) 509 AND INAJOKU .V. ADELEKE (SUPRA)

He submitted that in the present suit, the Claimants' complaint is that the Provision of Section 19(1-9) of the Edo State Local Government Law which is on all fours with Section 188(1-9) of the 1999 Constitution has been grossly violated breached in the Defendant's avowed inclination to remove the Claimant's from office, albeit illegally and unconstitutionally and the court is duly clothed with Jurisdiction to hear and determine the same and restore the Claimant's to their offices.

On the 19<sup>th</sup> day of February 2025, Defendants/ Applicants filed Notice of Preliminary Objection pursuant to Order 5 Rule (2). Order 15 Rule (16) and Order 22 Rule 4 of the Edo state High Court (Civil Procedure) Rules 2012 seeking the following orders:

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1. **AN ORDER OF THIS HONOURABLE COURT** striking out this suit for lack of Jurisdiction to determine matters arising from, closely or loosely connected with, emanating, relating to or resembling the impeachment of a Local Government Council Chairman and /or his Vice chairman in Edo state.
2. **AN ORDER OF THIS HONOURABLE COURT** striking out this suit for lack of Locus standi by the named Claimants in the Claimants' Affidavit in support of Originating Summons as well as the Written Address.
3. **AN ORDER OF THIS HONOURABLE COURT** setting aside all the originating processes filed by the claimants for failure to issue the requisite pre-action notices of the Defendants being Public officers.
4. **AN ORDER OF THIS HONOURABLE COURT** striking out this suit for lack of a reasonable cause of action.
5. **AN ORDER OF THIS HONOURABLE COURT** directing the Claimants to institute the action through the proper method of issuing a Writ of Summons.

This Application is predicated on five (5) grounds thus:

1. That Subsection 10 of Section 19 of the Edo State Local Government Law 2000 as amended in 2002 expressly prohibits this Honourable Court from hearing/ or determining matter related to impeachment of Local Government Chairmen and Vice Chairmen in Edo State.
2. The Claimants affidavit in support of the Originating Summons as well as the written address has the names of Persons who

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never contested nor were they ever elected into office in Akoko Edo Local Government Council.

3. A pre-action notice must be issued on a public offer at least 3(Three months) prior to instituting any suit against such public offer. The claimant did not comply with the Condition precedent to instituting the action against the Defendants.

4. The Claimants have never been elected into Office in Akoko Edo Local Government Council as Chairmen and Vice Chairmen, were not the persons impeached by the Defendants and therefore do not have any cause of action against the Defendants

5. That Order 3 Rule 3 of the Civil Procedure rules of this Honourable Court mandates a litigant seeking a remedy for a civil wrong or breach of duty or where an interested person claims a declaration, to commence the action by a Writ of Summons contrary to the Originating Summons employed by the Claimants.

The Application is Supported by a 10 (Ten Paragraph) Affidavit and a written address wherein Counsel raised a lone issue for determination.

On the 21<sup>st</sup> day of February 2025, Claimant/ Respondent Counsel a 18 (Eighteen) paragraph Counter Affidavit and a written address wherein he raised a lone issue for determination which is:

*"Whether the Defendants/Applicants have placed sufficient materials before this Honourable Court to be entitled to the reliefs sought in their Preliminary Objection"*

He submitted that he who asserts must prove, that the defendants have asserted heavily in Paragraph 4 of the Affidavit in Support of the preliminary

objection that the impeachment of the Claimant was in compliance with the Law, without substantiating this averment with credible, cogent and compellable proofs. He stressed that the Defendant/Applicants in one breath denies the Claimants as the Chairman and Vice Chairman of Akoko Edo Local Government Council and in another breath contends that the Claimants cannot sue the Defendants under the Public Officers Law for impeachment orchestrated against the Claimants, that the Defendants have failed to supply the provision of the Public Officer law that requires pre-action notice before a suit is instituted against the 8<sup>th</sup> Defendant. He referred to the case of DEMATI (NIG) LTD .V. UTUK & ANOR (2022) LPELR 56878 (SC) AND SECTION 136 (10 OF THE EVIDENCE ACT 2011 AS AMENDED.

He submitted that the Defendant has failed to attach any shred of documentary evidence to authenticate due compliance with the procedures of impeachment outlined in Section 19 of the Local Government Law of Edo State 2000, as amended 2002, that the Defendants have failed to substantiate their assertions with cogent and credible proofs/evidence hence the court cannot rely on these aforementioned averments.

He stated that the Defendants/Applicants cannot hide under the Protection of Public Officers Protection Law of Edo State to fetch the favour of the court having acted malafide and in abuse of their office, more so the action was instituted within three months of the actions complained about. He stressed that in the instant case the 1<sup>st</sup> to 5<sup>th</sup> Defendants being a Public officer deliberately refused to comply with the strict provisions of Section 19 subsections 1 to 9 of the Edo State Local Government Law which outlined the steps to be taken before the Claimants can be impeached or removed from office, hence this same Public Officer who has failed to comply with the law cannot at this stage be raising defence of Public Officers Protection Law, having acted in malice, bad faith, abuse of office and whose action of refusing to comply with the Judgments of court in favour of the Claimants is clearly outside the scope of their authority. He

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referred to the case of HASSAN .V. AKILU (2010) 17 NWLR (PT. 1223) 547; ELDER J.O. AGHIMIEN & ORS .V. THE EXECUTIVE GOWERNOR OF EDO STATE& ORS (2021) LEGAL PEDIA (CA) 3510.1 AND OBA .J.A. AWOLOLA, THE EDEDA OF EDA- ONIYO EKITI .V. THE GOVERNOR OF EKITI STATE & 2 ORS.

He urge this court to dismiss/ strikeout the Defendant' Notice of Preliminary Objection as same is predicated on frivolous grounds and a waste of the time of the court.

On the 3<sup>rd</sup> day of March 2025, Defendants Counsel filed a Reply On Point of Law in support of Notice of Preliminary Objection wherein he raised a lone issue for determination which is:

***“Whether or not this Application has merit”***

He submitted that for a court to properly assume jurisdiction to adjudicate over a matter, it must have initiated the following due process. In order words, the conditions precedent to bringing the action must have been fulfilled, a condition laid down by the constitution, status, or rule of law must be strictly complied with. He referred to the case of MADUKOLU .V. NKEMDILIM (1962) SCNLR 341; EDET .V. C.B.N (2015) ALL FWLR PT. 769 PP. 1126- 1127 AND UTORO .V. LAWAL (2018) ALL FWLR (PT. 938) 1823 @ PARA D.

He submitted that the Applicant objected to the use of Originating Summons to initiate proceeding which are Contentious and likely to be hostile, which point the Respondents have proved in their Counter Affidavit by seeking proof of the Applicant's assertions. He stressed that the facts of the instant suit are contentious as the Claimants allege that they were improperly removed from office while the Defendants contend that the Claimants impeachment was regular and properly done, that it is impossible for the Court to determine such a matter from affidavits alone without parties calling witnesses to prove their case. He referred to the case of JEV .V. IYORTYOM (2014) 14 NWLR (PART 1428) PAGE 575 AT PAGE 615 PARA F AND WAKAH .V. OSSAI (2002) 2 NWLR (PART 752) PAGE 561.

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He submitted that in their Counter Affidavit opposing this Application, the Respondents were very concerned about the Applicants evidence(or lack thereof) of their assertions in the affidavit support which he said was indeed presented but like that of the Respondents could not be tested by the fire of Cross examination as in a proper trial. He referred to the case of ELEBANJO .V. DAWODU (2006) 15 NWLR (PART 1001) PAGE 76 AT PAGE 137 PARA E-F

He submitted that it is trite law that Preliminary Objections challenging the validity of the institution of a suit can only be determined by reference of the Statement Of Claim and not on any evidence, or lack thereof, provided by the Defendant. He referred to the case of EHEMETA .V. OGUEVI (1996) 5 NWLR (PART 447) PAGE 227.

He submitted that while the Respondents have gone on a long argument about who asserts ought to prove, the Applicant contend that the Burden of proof is on the Respondents to prove that their impeachment was irregular and not on the Applicants to prove that it was, as it is trite law that the burden of proof lies on the person who would fail if no evidence at all is given. He stressed that the Applicant do not have any obligation to provide any evidence whatsoever as the burden of proving his case rest on the Claimant and he succeeds on the strength of his case not on the absence or weakness of a defence. He referred to the case of NITEL LTD .V. OKEKE (2017) 9NWLR (PART 1571) PAGE 439 AND ACTION CONGRESS OF NIGERIA .V NYAKO(2015) 18 NWLR (PART 1491) PAGE 351.

He submitted that contrary to the arguments of the Respondents, Nigerian Courts regularly enforce legislation which precludes the Courts from looking into the decisions of various bodies or organizations. He referred to the cases of CHIEF GANI FAWEHINMI .V. GENERAL SANI ABACHA(2000) 4 NWLR (PT. 654) 416 AND CHIEF EMMANUEL .N. UKALA .V. ALHAJI UMARU SHINKAFI (2000) 6 NWLR (PT.660) 382.

He submitted that on the guiding Principles of whether a court will enforce a clause ousting its jurisdiction to entertain certain matters, he listed as follows:

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- 1). On Clear and Unambiguous Language. He referred to the case of ADESANYA .V. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA (1981) 2 NCLR 358
- 2). On Constitutional Validity. He referred to the case of UWAIFO .V. ATTORNEY- GENERAL OF BENDEL STATE (1982) 7 SC 124
- 3). Legislative Intent. He referred to the case of THE STATE .V. ALHAJI AKINPELU (2000) 12 NWLR (PT. 682) 685
- 4). No Ultra Vires or Bad Faith. He referred to the case of NIGERIAN ARMY .V. SGT ANTHONY.O. EGBUONU (20000 2 NWLR (PT.646) 542.
- 5). On no dispute as to interpretation. He referred to the case of CHIEF EMMANUEL .N. UKALA .V. ALHAJI UMARU SHINKAFI (20000 6NWLR (PT. 660) 382.
- 6). On Compliance with Natural Justice, He referred to the case of A.G LAGOS STATE .V. EKO HOTELS LTD. (2017) LPELR-42542(CA)
- 7). On no Breach of Fundamental Human Right. He referred to the case of UWAIFO .V. ATTORNEY- GENERAL OF BENDEL STATE (1982) 7 SC 124

He submitted that Section 10 and 19 of the Edo State Local Government Law 2000 meets the conditions stipulated above and as such the subject matter of this suit is out of jurisdiction of this court and urged the court to so hold. Finally, he stressed that the current suit is not initiated by the proper process and does not comply with conditions precedent to its filing and more importantly, the subject matter cannot be dealt with by this Honourable Court. He stated that the suit is incurably bad and should be struck out.

On the 12<sup>th</sup> day of March 2025, Claimant's Counsel filed a Notice of Discontinuance against the 7<sup>th</sup> Defendant

On the 18<sup>th</sup> day of March 2025, Counsel to the 1<sup>st</sup> to 9<sup>th</sup> Defendants filed a written address in opposition to the Claimants' Notice of Discontinuance against the 7<sup>th</sup> Defendant wherein he raised a lone issue for determination which is:

***“Whether or not the Claimants/Respondents can maintain this suit in the absence of the 7<sup>th</sup> Defendant/ Applicant”***

He submitted that the 1<sup>st</sup> to 5<sup>th</sup> Defendants were sued in their personal capacities, as well as the reliefs sought against them is in relation to the performance of their duties as members of the 6<sup>th</sup> Defendant. He stressed that the 7<sup>th</sup> Defendant is the creation of the Constitution and the subject of the Edo State Local Government Law, that the 6<sup>th</sup> Defendant along with the 8<sup>th</sup> and 9<sup>th</sup> Defendants are not juristic persons who can sue or be sued in their own names but are integral parts of the 7<sup>th</sup> Defendants. He referred to the case of CHAIRMAN, OTUKPO LOCAL GOVERNMENT COUNCIL .V AGBO (2023) LPELR- 60860 (CA); DWANA .V. IBRAHIM & ORS (2014) LPELR- 24165 (CA) AND SECTION 11(1) OF THE EDO STATE LOCAL GOVERNMENT LAW 2000 AS AMENDED.

He stressed that all actions of the 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendant are deemed acts of the 7<sup>th</sup> Defendant and in order to maintain a suit against their actions, they must be sued as the 7<sup>th</sup> Defendant since they do not possess any legal capacity to be sue or to be sued in their own names. He further stressed that the 7<sup>th</sup> Defendant is a necessary party to this suit as the actions of the 1<sup>st</sup> to 5<sup>th</sup> Defendants as well as that of the 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants are deemed the acts of the 7<sup>th</sup> Defendant and the reliefs sought by the Claimants will definitely affect the 7<sup>th</sup> Defendant.

It is trite law that a court that has no jurisdiction to make an order which affects the interests of a party who has not been joined as a party to the suit. He referred to the case of OKONTA .V. PHILLIPS (2010) 12 SCNJ 343 AT 347 AND AWONIYI .V.

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THE REGISTERED TRUSTEES OF THE ROSICRUCIAN ORDER (AMORC) (2000) 10 NWLR (PART 676) 522 AT 540.

He submitted that the rules of this court stipulates that a Claimant may discontinue a matter against a Defendant prior to the Defendant filing and serving a defence and after a defence has been filed but before trial. He stressed that in no instance can a Claimant withdraw or discontinue against one or many parties after the trial has commenced and the matter adjourned for Judgment or ruling. He referred to the case of CARLEN (NIG) LTD .V. UNIJOS (1944) 1 NWLR PART 323 PAGE 631 AT 667, PARA B-C AND ORDER 23 RULES 1 AND 2 OF THE EDO STATE HIGH COURT (CIVIL PROCEDURE RULES.

Finally, he stressed that the Claimants discontinuing the suit against the 7<sup>th</sup> Defendant effectively oust the Jurisdiction of the Court to determine this suit as the 7<sup>th</sup> Defendant is a necessary party for the proper determination of the Claims of the Claimants. He further stated that the 1<sup>st</sup> to 6<sup>th</sup> Defendants as well as of the 8<sup>th</sup> and 9<sup>th</sup> Defendants complained of by the Claimants are deemed acts of the 7<sup>th</sup> Defendant and the reliefs sought by the Claimants are also against the 7<sup>th</sup> Defendant.

Finally, he stressed that the Claimant's application is not only deficient in content and form, it is designed to over reach the Defendants. He urged this Honourable Court to refuse same and strike out with costs that reflect malodorous nature of the Application.

On the 21<sup>st</sup> day of March 2025, Claimant filed a written address in opposition to the written address of the 1<sup>st</sup> to 9<sup>th</sup> Defendants written address in opposition to Claimants' Notice of Discontinuance against the 7<sup>th</sup> Defendant wherein he raised a lone issue for determination which is ;

*“Whether the purported objection raised against the competence of this suit by the 1<sup>st</sup> to 9<sup>th</sup> Defendants in view*

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*of the Notice of Discountenance filed by the Claimants having merit regard to the extant decision of the Court of Appeal in Chairman, Otukpo Local Government Council .v. Agbo (2023) LPELR -60680 (CA) cited and relied upon by the 1<sup>st</sup> to 9<sup>th</sup> Defendants, albeit wrongly”*

He submitted that the 1<sup>st</sup> to 9<sup>th</sup> Defendants wrongly relied on the case of **CHAIRMAN OTUKPO LOCAL GOVERNMENT COUNCIL .V. AGBO (2023) LPELR -60680(CA)** and urged the court to discountenance the argument of the 1<sup>st</sup> to 9<sup>th</sup> Defendants made at paragraphs 3.1.1 to 3.1.6 of the 1<sup>st</sup> to 9<sup>th</sup> Defendants written address filed on the 18<sup>th</sup> March, 2025 and urge the Court to hold that the 1<sup>st</sup> to 6<sup>th</sup> and the 8<sup>th</sup> to 9<sup>th</sup> Defendants can be sued in their capacity and in the Capacities they have been so sued in this case and that the presence or absence of the 7<sup>th</sup> Defendant cannot affect the competence of this suit in anyway. He referred to the case of *BABATUNDE .V. P.A.S.T.A LTD (2007) 23 NWLR (PT. 1050) 113 AT PAGES 118.*

He submitted that contrary to the argument of the 1<sup>st</sup> and 9<sup>th</sup> Defendants at Paragraphs 3.2.1 to 3.2.2 and 4 of the written Address filed on the 18<sup>th</sup> day of March 2025, that the Notice of Discountenance is at discretion of the court and the proper order to make is to strike out the name of the 7<sup>th</sup> Defendant, having shown that they had no claims against the 7<sup>th</sup> Defendant save the other Defendants. He referred to the case of *EEPEE IND. LTD .V. O.F . (NIG) LTD (2023) 9 NWLR (PT. 1889) AND EZE .V. OKECHUKWU(2002) 18 NWLR (PT. 799) 348 SC*

Finally, he submitted that the Claimants are within their right and the court jurisdiction to entertain this case is not affected and same is intact and if the court is minded not to discontinue the suit against the 7<sup>th</sup> defendant at this stage. He urged the court to hold that the defendants having failed to raise the non-service of the pre-action notice in their preliminary objection or plead their counter affidavit waived their right.

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I have carefully examined all the processes filed in the application together with the submissions of the Learned Counsel for the parties with the oral concessions which they made at the hearing of this suit. However, I have condensed the issues into a sole issue for determination as follows:

**WHETHER THE CLAIMANTS ARE ENTITLED TO THE RELIEFS SOUGHT IN THEIR ORIGINATING SUMMONS?**

Before I resolve the sole issue for determination, I intend to determine the preliminary objection raised by the 1<sup>st</sup> to 9<sup>th</sup> Defendants/Applicants on the competence of the suit and of the Jurisdiction of this court to entertain same.

In the Defendants/Applicants Preliminary Objection in his first relief, he is praying the court striking out this suit for lack of Jurisdiction to determine matters relating to or resembling the impeachment of a local government council chairman and/or his Vice Chairman in Edo State.

He relied on Section 19 subsection 10 of the Edo State Local Government Law 2000 as amended in 2002.

Section 19(10) provides that

"No proceedings or determination of the panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court".

It is worthy to note there are instances where the court will have Jurisdiction to intervene in a suit founded on impeachment proceedings.

AKA'AHS JCA as he then was in the case of *EKPENYONG V. UMANA & ORS* had this to say

"The Courts too have power to nullify any impeachment which is not carried out strictly in accordance with Section 188(1) – (9) of the 1999 Constitution as was done in *ADEOLU ADELEKE & ORS .V. OYO STATE HOUSE OF ASSEMBLY & ORS (2006) 16 NWLR (PT 1006) 608.*

On a combined reading of Section 188 Subsections 1-10 of 1999 Constitution and Section 19 subsections 1-11 of Edo State Local Government Law 2000 as amended in 2002, Section 188 of 1999 constitution talks about the removal of a

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Governor and Deputy Governor, while Section 19 (1-11) talks about the removal of a chairman or the Vice Chairman.

**OGBUAGU, JSC** in the case of *INAKOJU & ORS .V. ADELEKE & ORS (2007) LPELR – 1510 (SC)* had this to say

"It can be seen that the draftsmen were alert in respect of the seriousness or magnitude of the removal of a Governor or his Deputy. They choose their words and every word in this section or provisions, is weighty and material. Therefore in the removal of such officers, the procedure clearly specified, must be followed and strictly complied with before such removal becomes valid and constitutional. Any breach of any of the said provisions, surely and certainly, renders such removal ineffective, null and void and of no effect.

It is now settled firstly, that where a statute or constitution, prescribes a procedure for seeking a remedy or of the doing of anything or act and the language used is clear and unambiguous (as in the above section) that is the only procedure open to the parties concerned and any departure therefore will be an exercise in futility. See the case of system *APPLICATIONS PRODUCTS (NIG) LTD .V. CENTRAL BANK OF NIGERIA (2004) 15 NWLR (PT 897) 663 at 687*".

It is worthy to note that Sections 19 subsection 1-11 of the Edo State Local Government Law 2000 as amended in 2002 was not met or followed in this case.

With the decision of the Supreme Court in the case of *ATTORNEY GENERAL OF FEDERATION .V. ATTORNEY GENERAL OF ABIA STATE & 35 ORS (2024) LPELR – 62576 (SC)* that the thirty six States of Nigeria acting through their respective State Governors and or State Houses of Assembly, cannot using State power derivable from Laws enacted by the State Houses of Assembly (anyhow so called) lawfully dissolve democratically elected Local Government Council within the said states/state.

In essence the Governor of Edo State cannot direct the House of Assembly to, by a resolution dissolve a Local Government Council or to remove an elected Chairman of a Local Government Council.

I hereby hold that this court has Jurisdiction to hear this suit.

Issue 1 hereby fails.

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In the second issue he talked about striking out this suit for lack of locus standi by the named Claimants in their affidavit in support of the originating summons as well as the Written Address.

Locus standi connotes the legal right that a person has to file an action or be heard in a court of law. A party will have locus standi in a matter only if he has special legal right or can show that he has sufficient or special interest in the performance of a duty sought to be enforced, or where his interest is adversely affected. See AROWOLO V. OLOWOOKERE & ORS (2011) LPELR – 561 (SC), OWODUNNI V. REG. TRUSTEES OF (CC(2000) 10 NWLR (PG 675) 315 SC.

What the court considers in determining whether a plaintiff has locus standi is the facts in the originating process of a plaintiff that denotes a standing to sue. See JFS INVESTMENT LIMITED V. BRAVAL LINE LTD (2020) 18 NWLR (PT 1225) 495.

I have taken a look at the front page of the Originating Summons and the Claimants Hon. Suleman Tajudeen Alade and Hon. Mrs. Beatrice Abukare are the correct and proper names of the Claimants in this suit.

I have also looked at the 1<sup>st</sup> – 9<sup>th</sup> Defendant Notice of Preliminary Objection, the parties there are the correct Claimants before this Court.

The Era of technicalities are gone. This Court holds the obligation to ensure that Justice is not only done but must be seen to have been done. See the recent authority on this in the case of FIDELITY BANK PLC .V. OLANREWAJU & ANOR (2024) LPELR – 62974 (SC).

Issue 2 also fails.

In the third issue, counsel talked about setting aside all originating processes filed by the Claimants for failure to issue the requisite pre-action notices to the Defendants and that the 3 months pre action notice was not issued against the Defendants.

Counsel for the 1<sup>st</sup> – 9<sup>th</sup> Defendants made heavy weather about a pre-action notice not served on the Defendants. There is a Latin maxim that says who comes to equity must come with clean hands.

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By the provision of Section 2(a) of the Public Officers Protection Act, a Public Officer cannot run under the cover of the Act, when acting in bad faith, or outside the limits of the law. See the case of HASSAN .V. ALIYU (2010) 17 NWLR (PT 1223) 547, "Where a public officer acts outside the scope of his authority or without semblance of legal Jurisdiction, he cannot claim the protection of the Act. See also the latest authority on this in the case of FEDERAL UNIVERSITY OF AGRICULTURE, MAKURDI & ORS .V. ADAIPONU (2021) LPELR – 54772 (CA).

Issue 3 fails too.

In the 4<sup>th</sup> issue Counsel is asking the court to strike out this suit for lack of reasonable cause of action.

PER OKORO JCA as he then was in the case of A.G FEDERATION V. ABACHA (2010) LPELR – 8997 (CA) had this to say on how the court determines reasonable cause of Action.

"I understand a cause of action to mean the entire set of facts or circumstances giving rise to an enforceable claim. It also includes all those things necessary to give a right of action and every facts which is material to be proved to entitle the Plaintiff to succeed. See EMIATOR V. NIGERIAN ARMY (SUPRA), SANDA V. KUKWEA LOCAL GOVERNMENT (SUPRA) AND IBRAHIM V. OSUN (Supra). The APEX COURT IN ARABAMI V. ADVANCE BEVERAGES INDUSTRIES LIMITED (Supra) @ p.597 paras B – C defined cause of action as follows: To our mind, it is in effect, the fact or combination of facts which gives rise to a right to sue and it consists of two elements; the wrongful act of the defendant which gives the Plaintiff his cause of complaint and the consequent damage. As was rightly submitted by the Learned Counsel for the Appellant, if a Plaintiff's claim discloses a violation of his legal right, no matter how slight that violation may have been, it would have disclosed a reasonable cause of action and the court would be bound to hear it. Let me quickly point out here that in determining whether a reasonable the plaintiff as bourne out by his writ of summons and statement of claim that will be considered. In the instant suit which gives birth to this appeal, it is the originating summons together with the affidavit in support and all the accompanying documents therein attached. See

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FARINRE V ALAKA-COKER (2003) FWLR (pt 181) 1755 @ 1761 paras F-G".

The Supreme Court also dealt with the meaning of cause and action and when does it arise in the case of AGHWARIANOVWE V. PDP & ORS (2023) LPELR – 60783 (SC).

Flowing from this, it is clear that there is a reasonable cause of action, the Claimants are aggrieved and have a reasonable cause of action.

This issue also fails.

In the 5<sup>th</sup> issue Counsel is praying this Honourable Court to direct the Claimants to institute this action through a writ of summons.

The Courts have held in phlethora of cases that the form of commencement of an action does not make it incompetent. It does not matter whether the action was begun by writ of summons or by originating summons, what is relevant is the question of Justice of the case. See FGN V. ZEBRA ENERGY LTD; (2002) 18 NWLR (PT. 798) 162; FAMFA OIL LTD V. A.G. FEDERATION (2003) 18 NWLR (PT. 852) 453.

Order 3 Rule 9 of the Edo State High Court Civil Procedure Rules 2018 states:-

"Any person claiming to be interested under a Deed, Will, Enactment or other written law may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the right of the persons interested.

It is clear that the Claimants are in court because Section 19(1-9) of the Edo State Local Government Law 2000 as amended in 2002 was not followed.

I am of the view that the Claimants instituted this suit properly by way of an originating summons.

This issue also fails.

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IN THE EVENT, I AM OF THE VIEW THAT THE MATTER IS WITHIN THE JURISDICTION OF THIS COURT AND THE PRELIMINARY OBJECTION IS THEREFORE OVERRULED.

Before I delve into the Judgment proper, there is an application filed by the Claimants withdrawing against the 7<sup>th</sup> Defendant which was opposed by Counsel for the 1<sup>st</sup> to 9<sup>th</sup> Defendant.

The issue in my humble opinion is whether the Claimants can withdraw against the 7<sup>th</sup> Defendant after arguments have been canvassed by Counsel for the parties and the court reserving a date for Judgment.

I have perused through the originating summons and I noticed there is no relief sought against the 7<sup>th</sup> Defendant in this suit, more so a withdrawal of continuance was filed after Counsel for parties have argued their application before this Honourable Court.

Order 23 Rules 1 and 2 of Edo State High Court (Civil Procedure) Rules 2018 clearly states instances when a Claimant may discontinue a matter against any named Defendant.

- 1) Prior to the Defendant filing and serving a defence; and
- 2) After a defence has been filed but before trial.

This application will be overreaching if granted and more so it was not timeously filed. It is hereby refused.

The crux of this case in my opinion is whether the impeachment carried out by the 1<sup>st</sup> – 5<sup>th</sup> Defendants was carried out as required by Sections 19 (1 – 11) of the Edo State Local Government Law 2000 (As amended 2002).

Section 19 (1 – 11) are hereby reproduced

- (1) The Claimant or his Vice may be removed from office in accordance with the provisions of this section.
- (2) Whenever a notice of any allegation in writing signed by not less than two thirds of the members of the Legislative Council.
  - (a) Is presented to the Leader of the Legislative Council.

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- (b) Sitting that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified.
- (3) Within fourteen days of the presentation of the notice to the leader of the Legislative Council (whether or not any statement was made by the holder of the office in reply to the allegation (contained in the notice) the Legislative Council shall resolved by motion, within any debate whether or not the allegation shall be investigated.
- (4) A motion of the Legislative Council that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-thirds majority of all the members of the Legislative Council.
- (5) Within seven days of the passing of a motion under the foregoing provisions of this section, the Legislative Council shall set up seven man panel which shall be composed of people of proven integrity from outside the Council not being members of any public service, Legislative Council or Political Party, to investigate the allegation as provided in this section.
- (6) The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented before the panel by a legal practitioner of his own choice.
- (7) The panel appointed under this section shall:
- (a) Within four weeks of its appointment report its findings to the Legislative Counsel;
  - (b) Where the panel report to the Legislative council that the allegation against the holder of the office has not been proved, no further proceedings shall be taken in respect of the matter;
  - (c) Where the report of the panel is that the allegation against the holder of the office has been proved, then within seven days of the receipt of the report, the Legislative council shall consider the report and it by resolution supported by not less than two third of all members of the Legislative Council, the report of the panel is adopted, such resolution shall be forwarded to the State House of Assembly that may re-examine the findings of the panel and asses the merits of the resolution of the Legislative Council.
- (8) The House of Assembly shall within four weeks return same to such Legislative council with approval or disapproval by resolution supported by not less than two third majority of all the members of the house.
- (9) The holder of the office under investigation shall not be suspected from office within the period of investigation.

(10) No proceedings or determination of the Panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court;

(11) In this section:-

"Gross Misconduct" means a grave violation or breach of the provisions of this law or a misconduct of such nature as amounts in the opinion in the House of Assembly to gross misconduct.

Section 19(4) says "A motion of the Legislative Council that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-thirds majority of all the members of the legislative council.

The Legislative arm of Akoko-Edo Local Government Council comprises of 10 members. Exhibits AKE (i-v) are the Affidavit of facts deposed to by the said five councilors who did not participate in the alleged impeachment. So 2/3 of 10 members will equal to 6.66666667 persons that is approximately 7 persons. So it is clear that only five members supported the decision. So it is clear that two-thirds majority was not met.

The alleged impeachment/emergency plenary was held on January 6<sup>th</sup> 2025. I have taken my time to look at Exhibit AK1 attached to the Defendants' Counter Affidavit in opposition to the originating summons sworn to by Hon. Anosile Imashimi (3<sup>rd</sup> Defendant).

The 1<sup>st</sup> Defendant was the only one that signed the notice of allegation instead of the two third majority.

Section 19(5) clearly states that within seven days, the Legislative Council shall set up a seven man committee.

Section 19(7) clearly states the conditions to be met for a panel.

There was no proof of proceedings, no seven man committee formed, report of findings within four weeks, no proof of resolution of the house as per the findings of the seven(7) man panel.

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It is crystal clear that the procedure meant for the removal of local government chairman and Vice Chairman was not followed.

ADUMEIN JSC in the celebrated case of AG OF THE FEDERATION .V. A.G. OF ABIA STATE & ORS (2024) LPELR – 62576 (SC) had this to say on the constitutionality of appointment of unelected persons as members of caretaker/interim/transition committees of Local Government Councils

“The conceptualization and perpetuation of unelected persons as members of caretaker committees, interim committees or transition committees of local government councils in Nigeria, constitute a grievous sin against the constitution of the Federal Republic of Nigeria, 1999 (as amended) if one is permitted to ask: How will the Defendants feel if the Federal Government of Nigeria fails, neglects or refuses to allow the Independent National Electoral Commission to conduct governorship and State Assembly elections and goes about appointing sole administrators or caretaker committees for the states in Nigeria? Anyone can accurately guess an answer. What is good for the states is also good for the Local Government Area of the Federal Republic of Nigeria.

From the totality of the foregoing it is ordered as follows:-

1. **A DECLARATION OF THIS HONOURABLE COURT** that the purported removal/impeachment of the Claimants from the office of Chairman and Vice Chairman of Akoko-Edo Local Government Council, Edo State by the 1<sup>st</sup> – 5<sup>th</sup> Defendants without Notice of any allegation signed by not less than two thirds of the members of the Akoko-Edo Legislative Council to the Leader of the Legislative Council, stating that the Claimants are guilty of gross misconduct, or at all, is unconstitutional, illegal, null and void and of no effect whatsoever.
2. **A DECLARATION OF THIS HONOURABLE COURT** that the purported removal/impeachment of the Claimants from the office of Chairman and Vice Chairman of Akoko-Edo Local Government Council, Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants purporting to act on behalf of the 6<sup>th</sup> Defendant's, without any motion by the Legislative Council that the allegation (if at all) be investigated and without setting up seven man panel composed of people of proven integrity to investigate the purported allegation or at all, is unconstitutional, illegal, null and void and of no effect whatsoever.
3. **A DECLARATION OF THIS HONOURABLE COURT** that the purported removal of the 1<sup>st</sup> and 2<sup>nd</sup> Claimants from the office of the Local

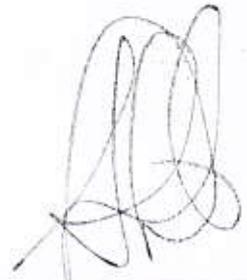
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Government Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants without causing a copy of the Notice of impeachment (if any) no be served on the Claimants and on each members of the 6<sup>th</sup> Defendant, within seven (7) days of the 6<sup>th</sup> Defendant's receipt of the notice) or at all, amount to a violent contravention of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and therefore ultra vires, unconstitutional, illegal, null and void and or no effect whatsoever.

4. **A DECLARATION OF THIS HONOURABLE COURT** that within the meaning and or intendment of the provision of Section 7 and Section 36(1) of the Constitution of the Federal Republic of Nigeria (as amended), read together with Section 19 of the Local Government Laws of Edo State (as amended 2002), the Claimants have not been found guilty or wanting of any gross misconduct for which they can be removed/ impeached from the office of the Local Government Chairman and Vice Chairman of Akoko-Edo Local Government Council, Edo State.
5. **A DECLARATION OF THIS HONOURABLE COURT** that, having regards to Section 7 and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and Section 19 of the Local Government Law of Edo State 2000 (as amended 2002), the purported removal of the Claimants from office as the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State by the 1<sup>st</sup> to 5<sup>th</sup> Defendants on the 6<sup>th</sup> day of January, 2025 is unconstitutional, illegal, null and void and of no effect whatsoever.
6. **A DECLARATION OF THIS HONOURABLE COURT** that the purported swearing in of the 1<sup>st</sup> Defendant as the occupant of the office of the Local Government Chairman of Akoko-Edo Local Government Council of Edo State (8<sup>th</sup> Defendant) is in contravention of Section 7 and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and Sections 10 and 19(1-9) of the Local Government Law of Edo State 2000 (as amended 2002) and therefore illegal, unconstitutional, null and void and of no effect whatsoever.
7. **A DECLARATION OF THIS HONOURABLE COURT** that the Claimants are still the occupants of the office of the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State (8<sup>th</sup> and 9<sup>th</sup> Defendants) and that the seats of the Chairman and Vice Chairman of Akoko-Edo Local Government of Edo State have not become vacant.
8. **A DECLARATION OF THIS HONOURABLE COURT** that the refusal and/or failure of the 10<sup>th</sup> Defendant's Officers to provide security of the Claimants as occupants of the office of the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State is unlawful, null and void and unconstitutional.

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9. **AN ORDER OF THIS HONOURABLE COURT** restoring or reinstating the Claimants to their offices as the Chairman and Vice Chairman of Akoko-Edo Local Government Council of Edo State, the 8<sup>th</sup> and 9<sup>th</sup> Defendants herein, together with the rights, privileges, paraphernalia and perquisites of the said offices.
10. **AN ORDER OF THIS HONOURABLE COURT** of perpetual injunction, restraining the Defendants either by themselves, their agents, privies, representatives or associates, persons acting for or through them and/or deriving authority from them from preventing the Claimants from performing the functions of the office of the Local Government Chairman of Akoko-Edo Local Government Council of Edo State.
11. **AN ORDER OF THIS HONOURABLE COURT** mandating, directing and/or compelling the 10<sup>th</sup> Defendant to provide protection to the Claimants for the peaceful resumption and discharge of their duties and functions as bestowed in their offices.



HONOURABLE JUSTICE E. A. OKOH  
 JUDGE  
 30<sup>TH</sup> DAY OF APRIL, 2025

COUNSEL:

ANDERSON ASEMOTA ESQ FOR THE CLAIMANTS

L. O. OKHIONKPAMWONYI ESQ. FOR THE 1<sup>ST</sup> – 9<sup>TH</sup> DEFENDANTS

CERTIFICATION - ₦2500:-  
 PAID via POINT  
 RECEIVED  
 HIGH COURT OF JUSTICE  
 EDO STATE  
 NIGERIA  
 DATE 5/5/2025  
 IGARRA

**CERTIFIED TRUE COPY**

GARUBA I. (MR.)  
 ASST. CLERK REGISTRAR  
 DATE 5-5-2025