

IN THE HIGH COURT OF JUSTICE EDO STATE OF NIGERIA
IN THE BENIN CIVIL DIVISION HOLDEN AT BENIN CITY
BEFORE HON. JUSTICE OHIMAI OVBIAGELE – JUDGE
ON MONDAY THE 30TH DAY OF JUNE, 2025

BETWEEN

CHARGE NO: B/29OS/2025

1. DR. TOM OBASEKI
2. PATRICIA ABIMBOLA

- CLAIMANTS

VS

1. PRECIOUS ADOYOGIE JAMES
(CLERK OF THE LOCAL GOVERNMENT
LEGISLATIVE COUNCIL)
2. DR. OSAHENI IGBINIGIE
3. MR. JOHN OSABUOHEN
(NATIONAL UNION OF LOCAL GOVERNMENT
EMPLOYEES, CHAIRMAN)
4. OREDO LOCAL GOVERNMENT LEGISLATIVE
COUNCIL - DEFENDANTS
5. THE CHAIRMAN OF OREDO LOCAL GOVERNMENT
COUNCIL
6. THE VICE CHAIRMAN OF OREDO LOCAL GOVERNMENT
COUNCIL
7. THE INSPECTOR GENERAL OF POLICE

JUDGMENT

The claimants, Dr. Tom Obaseki and Patricia Abimbola Eno, besieged this Court via an originating summons of nine paragraphs dated the 15th of January but filed on the 17th of January, 2025, wherein they tabled against the respondent the following reliefs:

1. "A DECLARATION OF THIS HONOURABLE COURT

that the 1st – 3rd defendants not being members of the 4th defendant lacked the vires or powers to impeach or purport to impeach/remove the claimants from office of the Chairman and Vice Chairman of Oredo Local Government Council, Edo State.

2. A DECLARATION OF THIS HONOURABLE COURT

that only democratically elected members of the legislative arm of the Oredo Local Government Council are clothed with the vires or powers to impeach/remove or purport to impeach or remove from office the claimants who are the democratically elected chairman and vice chairman of Oredo Local Government Council of Edo State for a fixed term of 3 years.

3. A DECLARATION OF THIS HONOURABLE COURT

that the purported removal/impeachment of the claimants from office of the Chairman and Vice Chairman of Oredo Local Government Council of Edo State is a usurpation of the powers of the Government council and therefore ultra vires, null

and void, unconstitutional, illegal and of no effect whatsoever.

4. A DECLARATION OF THIS HONOURABLE COURT

that the purported removal/impeachment of the claimants from office of the Chairman and Vice chairman of Oredo Local Government Council of Edo State by the 1st – 3rd defendants purporting to act on behalf of the 4th defendant, without the Legislative Council member' participation or involvement is unconstitutional, illegal, null and void and of no effect whatsoever.

5. A DECLARATION OF THIS HONOURABLE COURT

that the purported removal/impeachment of the claimants from office of the chairman and vice chairman of Oredo Local Government Council of Edo State by the 1st to 3rd defendants, purporting to act on behalf of the 4th defendant without causing a notice of impeachment to be served on the claimants and on each members of the 4th defendant, within seven (7) days of the 4th defendant's receipt of the

notice or at all, is unconstitutional, illegal, null and void and of no effect whatsoever.

6. A DECLARATION OF THIS HONOURABLE COURT that the claimants have not been found guilty of any misconduct or and no allegations of misconduct has been proved against the claimants to warrant their removal/impeachment from office as the chairman and vice chairman of Oredo Local Government Council of Edo State by the 1st - 3rd defendants purporting to act on behalf of the 4th defendant.

7. A DECLARATION OF THIS HONOURABLE COURT that the removal/alleged impeachment of the claimants who are the democratically elected chairman and vice chairman of Oredo Local Government Council of Edo State by the 1st to 3rd defendant acting in concert with some faceless individuals without affording them fair hearing is 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 11th day of July 2024 and Section 19 of the Edo State Local Government Law 2000 as Amended in 2002 and this amount to a gross misconduct on the part of the 1st to 3rd defendants and an abuse of power, and unconstitutional, null and void and of no effect whatsoever.

8. A DECLARATION OF THIS HONOURABLE COURT that the claimants are still the occupants of the office of the chairman and vice chairman of Oredo Local Government Council of Edo State and that the seats of the chairman and vice chairman of Local Government Council of Edo State have not become vacant.

9. A DECLARATION OF THIS HONOURABLE COURT that the refusal and/or failure of the 6th defendant officers to provide security and guarantee the security of the claimants as occupants of the office of the chairman and vice chairman of Ikpoba Okha

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

10. AN ORDER OF THIS HONOURABLE COURT

restoring or reinstating the claimants to their offices as the chairman and vice chairman of Oredo Local Government Council of Edo State, together with their rights, privileges paraphernalia and perquisites of the said offices.

11. AN ORDER OF THIS HONOURABLE COURT of

perpetual injunction, restraining the defendants either by themselves, their agents, privies, representatives or associates, persons ating for or through them and/or deriving authority from them from preventing the claimants from performing the functions of the office of the Local Government Chairman and Vice Chairman of Oredo Local Government Council of Edo State.

12. AN ORDER OF THIS HONOURABLE COURT

mandating, directing and/or compelling the 8th defendant to provide security and protection for the claimants for the peaceful resumption and discharge

of their duties and functions as bestowed in their offices.

13. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.”

In response, Counsel to the 1st, 2nd, 3rd, 4th, 5th and 6th defendants, filed a notice of preliminary objection on the 21/02/2025 challenging the jurisdiction of this Court and the competency of the suit. It is now an elementary principle of law that a Court proceeding conducted without jurisdiction, no matter the quantum of transparency, industry, dexterity and sophistry injected into it, the proceeding is a nullity. To underscore the magisterial position of the issue of jurisdiction, it can be invoked even for the first time at the Supreme Court. For this reason, the preliminary objection will be considered first before any further step is taken. See the cases of **A. G. Delta State V. OLAYEMI (2024) 3 NWLR (pt.1824) page 124. NGERE V. OKURUKET (2014) 11 NWLR (pt. 1417) page 147; ANACHEBE V. IJEOMA (2014) 14 NWLR (pt. 1426) page 168.”**

In the said preliminary objection, learned applicant urged this Court to strike out this suit on the following grounds.

1. **“The suit is speculative and hypothetical in nature not being one which is supported by facts or very low on facts but very high on guesses because the claimants failed, neglected and/or refused to supply materials capable of establishing that the defendants indeed made an attempt to impeach them or indeed impeached them from office.**
2. **The 5th defendant by virtue of Section 152 of the Edo State Local Government Law 2000 (as amended in 2002) cannot be sued without being given the mandatory 30 days pre-action notice, which the claimants failed, neglected and/or refused to do in this case.**
3. **The suit was commenced by the wrong procedure (an originating summons) which is only available to any person claiming interest under a deed, will or other written instrument whereby he will apply by originating summons for the determination of any question of construction arising under the instrument for a declaration of his interest. It is a procedure where the evidence in the main is by way**

of documents and there is no serious dispute as to their existence in the pleadings of the parties to the suit, which is clearly not the case in the instant suit.

4. Proper parties are not before Court because the 2nd & 3rd defendants are not proper parties in this suit because they can either be sued in their personal capacity or sued in the capacity of the office they occupy and not both. Conversely, the Edo State Government in whose absence the suit cannot be fairly, effectively and effectually determined was not joined as a party. The effect of absence of a proper party is also well known in our law. The law is trite, that for a Court to be competent and have jurisdiction over a matter proper parties must be identified and show to be proper parties to whom rights and obligation arising from the course of action attach. The question as same affects the jurisdiction of the Court and goes to the root of the suit in limine. It is the existence of the proper parties that cloths the Court with jurisdiction.”

In his written address, K. O. Obamogie, SAN, nominated a lone issue for determination to wit:

“Whether upon a calm consideration of the grounds for this notice of preliminary objection, and the arguments canvassed in respect of the grounds, this suit is not incompetent and therefore incapable of clothing this honourable court with the requisite jurisdiction to hear and determine same.”

Learned counsel maintained that the suit is speculative and hypothetical in nature not being one which is supported by facts or very low on facts but very high on guesses because the claimants failed, neglected and/or refused to supply materials capable of establishing that the defendants indeed made an attempt to impeach them or indeed impeached them from office. He referred to the case of; **KAAVE V. IYONKYOH & ANOR (2024) LPELR-61751(CA) (pp. 37-39) and paragraphs 4b,q, r, s, t, u, v, x, y, z, aa, bb, cc, and ee of the originating process:-**

He argued that by the showing of the claimants, the 2nd defendant is a civil servant (the Head of Local Government of the 5th defendant). He was alleged to have conspired with some faceless individuals, declared the claimants impeached in a Gestapo and deployed brute

force to eject the claimants from office. The question; is who are the faceless individuals with whom the 1st – 3rd defendants allegedly connived with to impeach the claimants?

He referred to the cases of **AG Federation V. AG Abia State and Ugiagbe Ors V. The Executive Governor of Edo State (supra)** cited by the claimants. He maintained that the claimants are able to establish the existence of a real dispute between the parties. Their case is based on speculations and guesses. The cases cited borders on the powers of the governor of a state to determine either the tenure of office of a Local Government Chairman or to query the finances of the third tier of government, which is not the case in the instant case.

He further contended that the claimants in paragraphs 4 q, r, s, t, bb, dd, accused the Edo State Government of having sponsored the nameless thugs to allegedly impeach them (without proof) but failed to disclose the identities of the thugs/nameless individuals and provide evidence of the procurement of the thugs by the Edo State Government. The claimants also failed, neglected and/or refused to join the Edo State Government as a defendant in this suit, despite the weighty allegations they levelled against the institution which substantially bothers on an imputation of a crime which requires proof beyond reasonable doubt.

The claimants also failed and neglected to provide proof of an attempt or of their impeachment by the 1st – 3rd defendants, beyond placing reliance on a so called video clip which has nothing whatsoever to do with the 1st – 3rd defendants. Learned counsel contended that in the absence of any cogent and compelling evidence of any attempt or an impeachment of the claimants by the 1st – 3rd defendants (who do not have the vires to carry out any form of impeachment of the claimants), the case put forward by the claimants is purely speculative and incompetent, and therefore incapable of invoking the jurisdiction of this Court to hear and determine this suit. He called in aid the case of **KAAVE V. IYONKYOH & ANOR (2024) LPELR-61751 (CA) (pp. 37-39 paras F)** and Section 152 (1) of the Edo State Local Government Law 2000 (as amended in 2002). He further contended that the claimants by their own showing, in paragraph 4d of their supporting affidavit, showed that the 5th defendant is one of the 18 Local Government Councils of Edo State. The provisions of the Edo State Local Government Law 2000 (as amended in 2002) applies to it. He further maintained that the entire depositions in the claimants' affidavit shows that they did not state that they complied with the provisions of Section 152 of the Edo State Local Government Law 2000 (as amended in 2002). He argued that issues of procedural jurisdiction must on the other hand be raised timeously. He

cited the cases of **NDAYAKO V. DANTORO (2004) 13 NWLR (pt. 889) 187, 210 and Mobil Producing (Nig.) Unlimited V. LASEPA (2002) 18 NWLR (pt. 798) 1, 36.**

He further maintained that the 1st, 2nd, 3rd and 5th defendants brought this notice of preliminary objection timeously upon becoming aware of the pendency of this suit, and the failure or refusal of the claimants to serve the 5th defendant with the pre-action notice as required by law. He referred to the cases of:- **ONDO STATE DEV. & PROPERTY CORPORATION V. JIMZEST HOTEL DEV. CO. LTD (2011) LPELR-4782(CA) (pp. 22 paras A).**

He opined that the statutory provisions of Section 152 of the Edo State Local Government Law 2000 (as amended in 2002) for pre-action notice to be served on a Local Government Council which includes the 5th defendant, leave no one in any doubt as to their meaning. Where, as in this case, the provision is mandatory, the claimants have no choice but to comply with it. It is a condition precedent to the commencement of this action and noncompliance renders this action incompetent and robs this Court of any jurisdiction to entertain same. He urged this Court to, strike out this suit for non-compliance with the mandatory need for the service of a pre-action notice on the 5th defendant by the claimants.

On ground three, he argued that the claimant commenced this action by way of an originating summons, and an originating summons by its nature is a civil procedure which is used in cases where the facts are not in dispute or there is no likelihood of being a dispute. Originating summons is reserved for issues like the determination of short questions of construction and not matters of such controversy that justice of the Court demands the setting of pleadings.

The learned S.A.N referred to paragraphs 4b, c, q, r, s, t, u, v, w, x, y, z, aa, bb, cc, dd, and ee of the affidavit in support of this originating summons. He insisted that the facts are certainly going to be in dispute in view of the spurious, speculative specious and criminal allegations of the facts deposed to therein by the deponent. This suit cannot be validly heard and determined on the basis of the originating summons. He urged this Court to direct parties to exchange pleadings in the very unlikely event that this suit is not liable to be struck out on the basis of their arguments above.

Turning to ground 4, the learned SAN posited that the proper parties are not before Court because the 2nd & 3rd defendants are not proper parties in this suit because they can either be sued in their personal capacity or sued in the capacity of the office they occupy and not both. Conversely, the Edo State Government, in whose absence the

suit cannot be fairly, effectively and effectually determined, was not joined as a party. The effect of absence of a proper party is also well known in our law. He further submitted, that for a Court to be competent and have Jurisdiction over a matter, proper parties must be identified, and shown to be proper parties to whom rights and obligations arising from the cause of action. The question of proper parties is an important question as same affects the jurisdiction of the Court. It goes to the root of the suit in limine. It is the existence of the proper parties that cloths the Court with jurisdiction.

He maintained that the affidavit evidence supplied by the claimants in support of the originating summons, made heavy weather of the role allegedly played by the Edo State Government some of which border of allegations of crime, but they failed, neglected to join Edo State Government as a defendant in whose absence the matter cannot be fairly, effectively and effectually determined.

He drew the Court's attention to paragraphs 4 q, r, s, t, bb, dd of the originating summons where the claimants accused the Edo State Government of having sponsored the nameless thugs to allegedly impeach them (without proof), but failed to disclose the identities of the thugs or individuals or provide evidence of the procurement of the thugs by the Edo State Government. The claimants also failed, to join the Edo

State Government as a defendant in this suit, despite the weighty allegations they levelled against the institution, which substantially bothers on an imputation of a crime which requires proof beyond reasonable doubt.

Conversely, the claimants wrongly joined the 2nd and 3rd defendants who are not members of the 4th defendant, neither is there any cogent and compelling evidence that they played any part in the alleged impeachment of the claimants (an assertion the claimants have failed woefully to provide even the minutest evidence in proof of) as defendants.

He further contended that the 1st, 2nd and 3rd defendants can either be validly and properly sued in their natural capacities or in the capacity of the office they occupy and not both as the claimants did in this case, so he urged this Court to so hold and strike out the suit.

He urged this Court to resolve this issue in favour of the 1st, 2nd, 3rd and 5th defendants. Finally, he urged this Court to uphold the preliminary objection and strike out this suit.

In stout opposition, J. P. Aigbe, Esq., on behalf of the claimant, identified one issue for determination thus:

“Whether the defendants/applicants have placed sufficient materials before this Honourable Court to be

entitled to the reliefs sought in their Preliminary Objection.”

He contended that the defendants/applicants have not placed sufficient materials before this Court to be entitled to the reliefs sought.

He further contended that the issues raised by the claimants in the originating processes are live and substantial issues. The 9 paragraphs affidavit in support of the Originating Summons have not been contradicted by the defendants/applicants, hence the facts are deemed admitted. He called in aid the case of; **DASUKI V. FRN & ORS (2018) LPELE-43897 (SC)**.

He argued that from the reliefs sought and facts deposed in the affidavit in support of the originating summons, the Court will find that the issues contained therein bothers on the illegal impeachment of the claimants, albeit without recourse to procedures provided under Section 19(1-8) of the Edo State Local Government Law which is on all fours with the provisions of Section 188(1-9) of the Constitution which provides for the removal/impeachment of the Governor and Deputy Governor. He insisted that nothing can be more live than the issue of illegal impeachment or removal of the claimants from office. He referred to several cases:

- (1) **TRADE BANK PLC V. BENILOX (NIG.) LTD. (2003)9 NWLR;**
- (2) **OLUWABUKOLA V. A.G OF LAGOS STATE (2022)2 NWLR (pt. 1815) 499**

He maintained that the live issues in the present suit are;

1. The fact of the claimants illegal and unlawful removal from office.
2. That the removal was NOT supported by any councilor of the local government.
3. The fact of the defendants' usurpation of the councilors' duty and function to sit in the legislative council of the Oredo Local Government and announced the removal of the claimants from office.
4. The facts of the 8th defendant officers, acting in concert with the 1st – 3rd defendants, refusal to allow the claimants entrance into their offices.

The cause of action crystallized and accrued the moment the 1st – 3rd defendants announced that the claimants have been impeached from office, which is in sharp conflict with the clear provisions of the Local Government Laws of Edo State 2000, as amended. This is even more so

because the 1st – 3rd defendants lack the vires to impeach or remove the claimants from office. He referred to the case of **INEC V. ADP**.

He took the view that the claimants have demonstrated in their 9 paragraphs affidavit that they are entitled to the reliefs sought in the Originating Summons. He went on to say that paragraphs 2, 3, 4, 5, 6, 7 and 8 of the affidavit in support of the Originating summons are specifically pleaded and annexed with exhibits, hence the argument of the defendants/applicant on this point is a non-starter and with intent to knock askew the facts of the case. With a view to misleading this Court.

He urged this Court to come to the conclusion that there are live and substantial issues. On the issue that the suit was commenced by a wrong procedure, he argued that the claimants' case primarily revolves and rotates around the interpretation of the provisions of the Local Government Law of Edo State, 2000 as amended, more particularly, Section 19(1-9) of the said law that stipulates the procedures for the removal of the elected chairman and Vice Chairman of the Council.

The contention of the claimants, simpliciter in the originating summons, that the procedures laid down by the Edo State Local government Law, 2000 (as amended in 2002) for the removal of democratically elected chairman and vice chairman of the Oredo Local Government has not been complied with, hence the Court should

determine whether the said highlighted procedures has been complied with. The claimant's case falls squarely within the ambit and precinct of suits to be commenced by originating summons. He placed reliance on the following cases:

(1) **IKPEAZU V. OGAH (2017) 6 NWLR (pt. 1562) 439.**

(2) **GOV. KANO STATE V. E.F.C.C (2016) 17 NWLR (pt. 1540)**

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He insisted that the defendants have the onus to show the irreconcilable differences.

He referred this Court to the former Deputy Governor of Edo State, Rt. Hon. Philip Shaibu, who was impeached by the Edo State House of Assembly. He instituted an action at the Federal High court against his impeachment vide an Originating Summons in Suit No. FHC/ABJ/CS478/2024 and the Federal High Court, in its full glory, determined the matter on the basis of Originating summons. It set aside the impeachment. The judgment of the Federal High Court was subsequently upheld by the Court of Appeal.

He urged this Court to hold that there is no irreconcilable differences/material contradiction that cannot be resolved by affidavit evidence, moreso, the plank of the claimants' case is the construction

and interpretation of statute that can only be competently done by Originating summons.

On whether the proper parties are before the court, he posited that the defendants have failed to show any immunity clause that bars the claimant from suing the 1st to 3rd defendants in their personal or official capacity. Learned Counsel went further to say that the Edo State Government was not sued as party because the Edo State Government has no statutory role to perform in the removal of the Local Government Chairmen and Vice. They were not joined as party. It does not lie in the mouth of the defendants to dictate to the claimants who they should prosecute against and how the claimants should conduct its case. He cited the case of **P. P. (NIG.) LTD. V. OLAGHERE (2019)2 NWLR (pt. 1657) 541.**

On the issue of pre-action notice, he argued that the joinder of the 5th defendant in the instant suit has no effect on the competence or otherwise of the instant case. This is more so because no reliefs were sought against the 5th defendant in the suit. At best, the presence of the 5th defendant in this suit can be described as misjoinder which this Court is empowered to strike out. **NDAKENE V. ADAMU (2023) 9 NWLR (pt. 1889) 389.**

“No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties. The Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interest of the parties actually before it. It is the undisputed right of a plaintiff to choose the person or persons against whom he wishes to proceed against. (p. 409), paras. D-E) on this issue, he urged this Court to strike out the suit against the 5th defendant and determine the suit on its merit.

Finally, he urged this Court to dismiss the defendants' Notice of Preliminary Objection as same is predicated on frivolous grounds, gold digging and a waste of the judicial time of this Court.

Replying on points of law, the learned SAN drew the Court's attention to the following cases. JAMES V. I.N.E.C (2015)3 MJSC (PTII) page 1 particularly at page 50 para A where it held as follows:

“Where the originating process is an originating summons, jurisdiction of the Court is resolved by examining the originating summons, the reliefs therein and the affidavit filed in support. Thus, the issue of jurisdiction is determined on the plaintiff's demand and not on the defendant's answer.”

He went on to maintain that the above Supreme Court decision to submit that the claimants' contention that the 1st, 2nd, 3rd & 5th defendants

are deemed to have admitted the depositions in their affidavit is misplaced and therefore cannot find support in law.

Further reliance was placed on the case of Trade Bank Plc V. Benilux Nigeria Ltd (Supra). The claimants also for some strange reasons did not supply the reasoning of the apex court on this issue in full, which we therefore reproduce hereunder as follows;

“An issue in dispute is the subject of litigation. It is a matter for which a suit is brought and parties join issues for the determination of the dispute. Courts will only consider a justifiable controversy upon existing state of facts and not upon hypothetical dispute or academic moot.”

The learned SAN went on to maintain that this suit as constituted is speculative and hypothetical in nature. He also called in aid the decision of the Court of Appeal in per KEKERE-EKUN, JCA (p. 28. Paras C-D) in **AGORO V. AROMOLARAN & ANOR (2011) LPELR-8906(CA) (pp. 28 paras. C)** That the legal profession is an honourable and noble one. As officers in the hallowed temple of justice, it is the duty of counsels to conduct their affairs with integrity and in the best traditions of the Bar. Their role is to assist the Court in reaching a just resolution of any matter before it.

On commencing a suit through the right procedure, he relied on the decision of the Court of appeal per **IKYEGH JCA pp. 13-18, paras. B-C) in the case of ADP & ANOR V. INEC & ORS (2023) LPELR-60934(CA) (PP. 13-18 PARAS. B).**

He also relied on the case of **OGHENEGUEKE & ORS V. IGP & ORS (2023) LPELR-60233(CA) (pp. 13-14 paras. F).**

The learned silk canvassed the view that the nature of criminal allegations leveled against the 1st, 2nd and 3rd defendants by the claimants in paragraphs 4q, r, s, t, u & y contain imputations of fraud and criminality and can therefore be resolved by way of an action commenced by a writ of summons and not an originating summons. He argued that Order 3 rule 2 sub rule b of the rules of this Court carries a mandatory obligation by the use of the word, shall the claimants have no discretion on which of the originating procedures to be adopted in bringing this suit.

In further response to claimant's address, he argued that the 5th defendant is a necessary party in whose absence this suit cannot be fairly and effectively determined because the question to be determined is whether the claimants' claim to its headship has been determined by way of an attempted impeachment or an impeachment. He relied on the Court of Appeal in **OKAFOR V. JATAU (pp-26 paras. B-B).**

He insisted that the failure of the claimants to serve a pre-action notice on the 5th defendant cannot be waived off as a case of misjoinder or non-joinder as wrongly argued by the claimants in view of the fact that the 5th defendant is a necessary party. In conclusion, he urged this Court to decline its jurisdiction to hear the suit.

I have given a most careful consideration to the written addresses of both counsel. It is trite law that where a statute prescribes that there should be a pre-action notice before an action can be commenced in Court against a certain defendant, there ought to be compliance with that statutory provision for the Court to assume jurisdiction over the matter. It should however be noted that non-compliance with the requirement of a pre-action notice does not abrogate the right of a claimant to approach the Court or defeat the action. This is so because, where the subject matter of the suit (as in the instant case) is within the jurisdiction of the Court, the failure to serve a pre-action notice on the defendant, only gives such a defendant a private right to insist on such notice before the claimant can activate his own right to sue the defendant on the issue.

Accordingly, non-service of pre-action notice merely puts the jurisdiction of the Court at abeyance or on hold. **I am fortified by the cases of UGUANYI V. N.I.C.ON PLC (2004)15 NWLR (pt. 897) page**

612; BARCLAYS BANK LTD. V. CBN (1976) 6 SC page 176; EZE V. IKECHUCKWU (2002) 18 NWLR (pt. 799) page 348; NONYE V. ANYIGHIE (2005) 2 NWLR (pt. 910) page 623. ETI-OSA LOCAL GOVERNMENT V. JEGEDE (2007) 10 NWLR (pt. 1043) page 537; NWAIWU & ORS V. IMO STATE & ORS (2013) LPELR – 20690 (CA).

However, a distinction must be drawn between jurisdiction as a matter of procedural law and jurisdiction as a matter of substantive law. Procedural law is waiveable while substantive law is not. In the instant case, the claimants have withdrawn this suit against Oredo Local Government Council. The name of the aforesaid 5th defendant was struck out. The contention whether or not pre-trial notice was sent to Oredo Local Government Council pails into insignificance. It has become academic. I so hold.

Another ground upon which this preliminary objection rests is that this suit cannot be determined in the absence of the 1st and 2nd defendant and Edo State Government. Let me say straightaway that the Courts have held, again and again, that there is no distinction between an action against the Chairman of a Local Government Area (who is now the 5th defendant) or the Local Government council and in the instant case, the Oredo Local Government Legislative Council. It is differentiating between six and half a dozen.

Snippets of the Court of Appeal will shed some light into the reasoning of this Court. In the case of **NWAIWU & ORS V. GOV. IMO STATE & ORS (2013) LPELR – 20690 (CA)** where Tsammani, JCA (as he then was) very instructively intoned thus:-

“It would be clear to any discerning mind that, the Chairman is the administrative head of the Local government Council. It is through the chairman that most actions of the Council are taken. The chairman and other members of the Council (if any) take decisions for the Local Government. The Chairman is the head and therefore the source of authority of the Local Government Council. Thus, if the chairman is sued or sues, the action would be deemed to be that of the Local Government, provided he acted within the ambit of his authority, wither apparent or ostensible.”

What is more, a suit cannot be defeated by reason of misjoinder of a party. See Order 13 Rules 18 of the Edo State High Court Civil Procedure Rules, 2018. The defendant is at liberty to join the Local Government Council if in their view the Local government council or legislative Council is a necessary party. See the case of **IDANRE LOCAL GOVERNMENT COUNCIL V. DEJI OF AKURE LAND (2025) 4**

NWLR (PT. 1982) 213 (SC). Under Section 19 of the Edo State Local Government Law 2000 (as amended in 2002) there is no role or function or duty assigned to the government of Edo State in the impeachment of a Local government chairman. I endorse the contention of claimant's counsel that the absence of the Government of Edo State or the Governor will not vitiate the trial of this suit. The view that the Government of Edo State should have been joined as a necessary party is not grounded in law. I so hold.

Nothing stops the defendants from joining the aforesaid Edo State Government and Governor of Edo State in their official capacities if in their view they cannot effectually set up a defence in their absence.

Flowing from the above, I am bound to hold that the objection that this suit is incompetent because the Government of Edo State or that the 2nd and 3rd defendants in their official capacities were not joined as parties to this suit is unmeritorious. This point is not valid because this suit as constituted can be fairly, effectually and conclusively tried and determined in respect of the rights and interest of the parties before it without the joinder of the aforesaid bodies. The law is settled that the non-joinder of a person who can be a party to an action, as a party to the action, would not defeat it if the action as constituted and the issues raised or arising for determination can be fairly, effectually and

conclusively tried and determined without joining such a person as a party to the action. See the cases of; **SPDCN LTD. V. ORUAMBO (2023) 1 NWLR (pt. 1866) 433 at 460; A. G. RIVERS V. AG AKWA-IBOM (2011) 8 NWLR (pt. 1248) 31 (SC); OKOYE V. NCF CO. LTD & ORS (1991) ANLR 326, GREEN V. GREEN (1987) LPELR – 1335 (SC).**

This ground raised by the defendants is patently impotent as it does not deserve further attention of the Court. Defendants' counsel vigorously canvassed the view that this suit cannot be entertained due to the presence of substantial factual disputes requiring oral evidence.

By way of prefatory remarks, originating summons is one of the four major modes of commencement of civil actions as prescribed by the extant law of this Court. The procedure is employed by an aggrieved party when the sole or principal question is one or likely to be one of interpretation of a written law or any instrument, deed, will, contract or other written documents. It is a procedure which is friendly to non-contentions case where there are no substantial disputes as to the facts. It is not utilizable in situations where the justice of the case demands settlements of the pleadings or where the proceedings exhibit riotous facts.

The *raison d'être* for this procedure, decipherable from its simplicity, is to fast track and expedite cases that do not exhibit friction

in facts. The aim is to conserve scarce judicial time. It is a procedure that has received the blessing of the Supreme Court in a plethora of cases:-

- (1) **INAKOJU V. ADELEKE (2007) 4 NWLR (pt. 1025)1**
- (2) **DAPIALONG V. DARIYE (2007) 8 NWLR (pt. 1036) 332.**
- (3) **EJEIGWE V. NAWWULU (2010) 4 NWLR (pt. 1183) 159.**
- (4) **ANYANWOKO V. OKOYE (2010) 5 NWLR (pt. 1188) 407.**
- (5) **OGUEBEGO V. PDP (2016) 4 NWLR (PT. 1503) 446**
- (6) **BRAITHWAITE V. SKYE BANK PLC (2013) 7 NWLR (PT. 1353) 207.**
- (7) **OPIA V/. INEC (2014) 7 NWLR (pt. 1407) 431.**
- (8) **DANLADI V. DANGIRI (2015) 2 NWLR (pt. 1442) 124**
- (9) **OGAH V. IKPEAZU (2017) NWLR (pt. 1594)**

In the instant case, the core facts are not in dispute, the 1st and 3rd defendants in their counter-affidavit in paragraph 7 said that the Edo State House of Assembly suspended the chairman of Oredo Local Government. They also concede that consequent upon the vacancy, the (leader of the Legislative Council refused to make himself available. The claimants in paragraph 4 (t)(u)(v)(x) 4(aa) aver that on Tuesday, January 10th, 2025, while the councilors were still on recess and out of Edo State, a group of thugs, allegedly sponsored by the Edo State government

stormed the Oredo legislative chamber and they ushered in impersonators, who then announced to have removed/impeached the claimants albeit illegally and without vires or locus.

That in response to this unlawful act, the 12 legitimate councilors immediately released a press statement and held a press briefing to publicly denounce the purported impeachment. Evidence of the said press Statement is hereby attached and marked as exhibit OR6.

That the 1st to 3rd defendants are not members of the legislative arm of the Oredo Local Government Council and have no power to remove or impeach the claimants, who are the democratically elected chairman or vice chairman of the Oredo Local Government Council, Edo State.

That no Notice of impeachment was ever served on them, that they were not invited to respond to any allegations or allegation of gross misconduct and No committee was constituted to investigate the accusations, as required by law.

The twelve (12) councilors representing the 12 wards of the Oredo Local Government council of Edo State are not aware of the purported impeachment as they have since dissociated themselves from the said removal/impeachment allegedly conducted without due process by issuing a press statement and deposing to affidavit of facts to that effect.

For the avoidance of doubt, the affidavits of facts deposed to by the 12 councilors who did not participate in the impeachment are attached herewith and marked Exhibits OR8 (i-xii).

These facts were not denied, challenged or controverted by the 1 – 7 respondents (the name of 5th Defendant Oredo Local Government council was struck out).

It is not also in dispute that the suspension of the aforesaid chairman and his vice has been nullified in a judgement delivered by the Chief Judge delivered on the 11/11/2024 Exhibit OR3. This fact was not denied by the aforesaid respondents. More importantly, in paragraph 17 of their Counter-affidavit, the respondent did not deny that there was an impeachment but that they did not participate in the alleged impeachment. In the circumstance, I hold that the substantial facts are not in dispute. In the circumstance, the claimants are on a firm footing if they decide to ventilate their grievances via an originating summons. I so hold.

Applicant's counsel further argued that this suit is an abuse of the Court's process. Curiously, he failed to show how a similar suit with the same parties have been tried or presently pending in other Courts. There may be several actions pending in a court but it must be shown and demonstrated that the party guilty of this vice has instituted several

similar actions, between the same parties, same facts and the same grievances. See the case of **OYEMYEMI V. OWOEYE (2017) 12 NWLR (pt. 1580) page 362**. I think counsel to the applicant cannot with the greatest respect be right in his submission when he insisted that this suit is an abuse of Court process.

Defendant's Counsel also forcefully urged that the affidavit in support of the originating summons is grossly defective because it was deposed to by a staff of the claimant's counsel. It amounts to hearsay. It is inadmissible. He argued vigorously that one Oshomah Murtata Umoru, litigation manager of the claimant's counsel lacks the credibility and reliability of and I so do.

Let me say straightaway that it is not ordinarily wrong for a counsel to depose to affidavit on behalf of his client in very routine and non-contentious application before the Court. It is not however advisable for counsel to do so on matters of facts which are purely within the personal knowledge. However, it is not forbidden in law if the counsel diligently and carefully state the source of his information and belief and the circumstances of the facts deposed to by him and the source of his information. See the cases of **ALHAJI KACHALLA MUSA V. ATTORNEY GENERAL OF TARABA STATE & ANOR (2014) LPELR-24183; GUMAU**

V. ABDULAHI (2017) LPELR – 43421 (CA) Section 115(1)(2)(3) and (4)

of the Evidence Act, 2011, ipsisimaverba reads

- (1) “Every affidavit used in the court shall contain only a statement of fact and the circumstances to which the witness deposes either of his own personal knowledge from information which he believes to be true.
- (2) An affidavit shall not contain extraneous matter by way of objection, prayer or legal argument or conclusion.
- (3) When a person deposes to his belief in any matter of fact and his belief is derived from any source other than his own personal knowledge, he shall set forth the explicitly the facts and circumstances forming the ground of his belief.
- (4) When such belief is derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given in respect of the informant and the time, place and circumstances of the information.”

In the instant case, one Oshiomah Murtala Umoru, litigation manager in the law firm of claimants' Counsel avers thus:

1. **“That I am the litigation manager in the law firm of Messrs Neplus Ultra Attorneys’ counsel retained by the claimants in this suit.**
2. **That by virtue of my position above, I am fully inundated with the facts culminating in this suit.**
3. **That the facts deposed to herein are within my personal knowledge except where otherwise stated.**
4. **That the following information was supplied to me by Dr. TOM OBASEKI, the 1st claimant in our office at No. 50 Adesuwa Road, G.R.A., Benin City on Monday 15th January, 2025 at about 12pm in the forenoon and I verily believe him as follows....”**

What is more, once these pre-conditions are fulfilled substantially (as enshrined in Section 115) every other defect is a mere irregularly and it is waiveable. See the decision of the apex Court in **SA’IDU H. AHMED & ANOR V. CENTRAL BANK OF NIGERIA (2013) LPELR-20744.**

It is however advisable for counsel qua counsel to refrain from deposing to affidavit since they are only masters of the law while the facts, which are sacred, belong rightly to their clients. This is not a rule of law. It is only a rule of practice to avoid a situation where counsel may

have to be put in the witness stand to be cross-examined in order to resolve conflicts in an affidavit in a matter he is acting as counsel and not a party. See the case of **DR. MAJA V. SAMORIS (2002)7 NWLR (part 765)**

This Court will return to this issue later for good reasons. Grounds B of the preliminary objection is prolix. It is a repetition of Ground A.

Learned defence counsel argued forcefully that the suit is speculative and hypothetical. It is settled law that the Court should not indulge in conjecture or speculation set **OGUNYE V. THE STATE (1999) 5 NWLR (pt. 604) 548.**

Parties are adidem that the claimants were suspended. There is uncontroverted evidence that the suspension has been nullified. There is uncontroverted evidence that 12 councilors have dissociated themselves from the removal of the claimants. In the circumstance, I hold that this suit is not speculative.

In the light of the foregoing, I cannot situate the angle of the preliminary objection to both the law and the facts before this Court. The preliminary objection of the defendants are unmeritorious and lacking in substance. They are hereby dismissed.

Let me now determine the merits of this suit. In his address in support of the application, Asemota, Esq., on behalf of the claimants, nominated two issues for determination to wit:-

- a. **"Whether the purported impeachment of the claimants from office as the chairman and vice chairman of Oredo Local government council of Edo State by the 1st - 3rd defendants on 10th day of January, 2025 was in accordance with the provisions of Section 19 of the Local government laws of Edo State, 2000 as amended 2002.**
- b. **Whether the 1st to 3rd defendants have or can exercise the power to remove/impeach the claimants who were democratically elected and had secured a tenure of three (3) years from the 4th day of September, 2024 when they were sworn into office, in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) to 4th September, 2027 without fair hearing."**

In his opening address, learned counsel referred to the Supreme Court in the case of **I.S.I.E.C V. EHIRIM (2013) 3 NWLR (pt. 1340) 169** at pages 172 to 174 held as follows:

“Where the words used in a statute are plain, ordinary, straight-forward and unambiguous, the law enjoins the court in interpreting such legislation to give the provisions their plain meaning by restricting itself to the intendment of the legislator.”

He referred to the provision of Section 23(1)-(3) of the Imo State Local Government Administration Law, 2000 and the cases **TEXA CO PANAMA INC. V. SHELL P.D.C.N. LTD (2002) 5 NWLR (pt. 759) 209; ADEJUMO V. MIL. GOV. , LAGOS STATE (1972) 3 S.C. 46; OWENA BANK (NIG) PLC. V. NSE LTD. (1997) 8 NWLR (pt. 515)1** referred to (p. 182, paras C-D).

He argued that the provisions of the Imo State Law is similar to the Edo State Law.

He contended that for a Local Government Chairman/vice chairman to be removed from office, the procedure set out in the Law that regulates such removal must be strictly complied with and where such is not followed, the Court can intervene to nullify the purported removal like in this case, where the claimants were illegally and arbitrarily removed from office without due process of law or even according them fair hearing. He called in aid case of **EKEKEUGBO V. FIBERESIMA (1994) 3 NWLR (pt. 335) 707 at page 713 – 714.**

He maintained that the procedure in the 1979 Constitution of Nigeria is similar to Section 188 of the 1999 constitution of the Federal Republic of Nigeria (as amended). It is similar to the procedure stipulated in the Edo State Local Government Law 2000 (as amended 2002).

He placed reliance in the case of **ORHIONMWON LOCAL GOVT. V. OGIEV (1993) 4 NWLR (pt. 288) 469 at page 473 – 474.**

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 according 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. He urged this Court to restore them to their offices with all their rights, entitlements and privileges forthwith and restrain the defendants whether by themselves, or 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 drew the attention of this Court to the case of **AKINMADE V. AJAYI (2008) 12 NWLR (pt. 1101) 498.**

Learned counsel insisted that there must be compliance with the procedure for the removal of a Chairman or Vice-Chairman before an

impeachment would be allowed to stand. He called in aid **EKPO V. CALABAR LOCAL GOVERNMENT COUNCIL (1993) 3NWLR (pt. 281) 324; EKEKEUGBO V. FIBERESIMA (1994) 3 NWLR (pt. 335) 707; JIMOH V. OLAWOYE (2003) 10 NWLR (pt. 828) 307** referred to (P. 513, paras F-H).

On effect of failure to comply with constitutional or statutory pre-conditions for doing an act – the court of Appeal held that “Where the constitution or a law requires a pre-condition before a particular act or substantive or main act or action is to be done, non fulfillment of the pre-condition will be prejudicial to the party in default. (**EKPO V. CALABAR LOCAL GOVERNMENT COUNCIL (1993) 3 NWLR (pt. 281) 324; JIMOH V. OLAWOYE (2003) 10 NWLR (pt. 828) 307; ADELEKE V. OYO STATEHOUSE OF ASSEMBLY 92006) 16 NWLR (pt. 1006) 608; ABARIBE V. ABIA STATE HOUSE OF ASSEMBLY (2002) 13 NWLR (pt. 788) 466; AINA V. JINADU (1992) 4 NWLR (pt. 233) 91** referred to (pp 512, paras B-E; 517, paras E-G)

He posited that “it is within the province of the court to ensure strict adherence to the spirit of the Constitution for the endurance of a democratic regime. He cited the cases of **ADELEKE V. OYO STATE HOUSE OF ASSEMBLY (2006) 16 NWLR (pt. 1006) 608** **INAKOJU V.**

ADELEKE (2007) 4 NWLR (pt. 1025) 423 referred to (p. 512, paras. B-

C)

Learned counsel went on to say that the failure of the 1st to 3rd 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. The claimants deposed in paragraphs 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 that they were not informed of any alleged misconduct or gross misconduct, they were not served with any impeachment notice and were also not given opportunity to make representation before the decision to impeach them was reached and that after the impeachment announcement, all efforts to gain access into their offices proved abortive as all their securities detailed were withdrawn by the 8th defendant whose men deliberately aided and enabled the 1st to 3rd defendants to gain access into the 6th and 7th defendants' offices. He argued that failure on the part of the defendants to afford the claimants opportunity to defend themselves or answer to the allegations made against them before reaching the decision to impeach/remove them

from office, constitutes a fundamental breach of their rights to fair hearing.

Learned counsel postulated that the right to fair hearing is well entrenched in our jurisprudence. He placed reliance on Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered). Counsel further maintained that the defendants were duty bound to properly inform the claimants of the offence committed by them and give them a reasonable time to defend themselves, the absence of which renders the said suspension a nullity. He cited the case of **DESTRA INVESTMENT LTD. V. FRN & ANOR (2020) LPELR 52293 (CA)**.

Finally, he urged this Court to grant the reliefs of the claimant.

Conversely, counsel to the 1st, 2nd, 3rd defendants identified a lone issue for determination to wit:

“Whether from the nature and depositions in the two affidavits filed in support of the originating summons, the claimants have made out a case sufficient to warrant the intervention of this honourable Court to entertain and grant the reliefs claimed by the claimants in their originating summons.”

Learned counsel quoted copiously Order 3 Rule 9 of the High court (Civil Procedure) Rules 2018 which provides as follows:

“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 rights of the persons interested.”

And order 3, Rule 12 (2) provides as follows:

“An originating summons shall be accompanied by:

- (a) An affidavit setting out the facts relied upon;**
- (b) All the exhibits to be relied upon; and**
- (c) A written address in support of the application**
- (d) Certificate of pre-action counseling; as in Form 6.**

He also called in aid the cases of: **FARAN V. KANO (2017) LPELR-43622 (CA) (pp. 13) paras. B) UGWU V. ARARUME (2007) 12 NWLR 12 NWLR (pt. 1048) 365 at page 412.**

On the legal status of an affidavit sworn to by a litigation secretary, learned counsel argued that the effect of a litigation secretary deposing to an affidavit in support of an originating summons is that it amounts to inadmissible hearsay evidence, which attracts no weight. He referred to the Court of Appeal decision in **MAIRAMI & ANOR V. GOINDINARI (2025) LPELR-80093 (CA).**

He went on to argue that, one Oshiomah Murtala Umoru of No. 50, Adesuwa Road, GRA, Benin City, the litigation manager of the office of the counsel retained by the claimants to conduct this case on their behalf, deposed to both the affidavit setting out the facts relied upon in support of the originating summons filed along with the originating summons on 17th January, 2025 and the further affidavit in support of the originating summons filed on 10th February, 2025 and for ease of reference. He reproduced the relevant paragraphs of both affidavits:

He noted that Oshiomah Murtala Umoru, in paragraphs 4a-4ee of the affidavit setting out the facts relied upon in support of the originating summons, deposed to the essential facts/evidence on which the claimants' case rest.

Similarly in the further affidavit in support of the originating summons filed on 10th January, 2025, the same Oshiomah Murtala Umoru deposed to the supporting affidavit. He urged this Court to hold and declare them inadmissible, and/or refuse to attach any evidential weight to the affected paragraphs of both affidavits.

He further contended that if the affected paragraphs of the affidavit in support of the originating summons are rendered inadmissible, or have very little or no evidential weight, the originating summons is bound to collapse because it would have nothing to stand on by way of

evidence as provided for in Order 3, Rule 12(2)(a) which mandatorily provides for an affidavit to accompany an originating summons because one cannot put something on nothing and expect it to stand as enunciated in **UAC V. MCFOY**. Learned counsel referred this Court to paragraphs 5a-k of the affidavit setting out the facts relied upon in the originating summons which contain legal arguments and conclusions based on what was supplied to the deponent by one Anderson U. Asemota Esq, a legal practitioner.

Section 115 (2) of the Evidence Act (as amended in 2023) provides as follows;

“An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion.”

On the effect of an affidavit deposed to in breach of the mandatory provision of Section 115(2) of the Evidence Act (as amended in 2023) Counsel argued that the answer can be found in the case of **NOVARTIS PHARMA SERVICES INC & ANOR V. SWISSCO (NIG.) LTD & ANOR** (pp. 25 paras. D) where the Court of Appeal per **CHUKWUMA-ENEH** on whether affidavit can contain legal argument and/or conclusion held as follows:

“I have perused the averments contained in the aforesaid paragraphs of the further counter affidavit. I am satisfied that they are replete with legal arguments and conclusions. The said paragraphs I have already set out above. They won’t bear close inspection for the conclusion that they offend /section 87. Therefore, the court below has acted rightly in holding them as offending Section 87 and I couldn’t agree more to strike them out. And I so order.”

He maintained that Section 87 of the old Evidence Act is the same as Section 115(2) of the extant Evidence Act. He urged the Court to strike out paragraphs 5a-k of the affidavit setting out the facts relied upon in the originating summons, on the ground that they contain legal arguments and conclusions.

On the issue of burden of proof, he referred this Court to the case of **NDUUL V. WAYO & ORS (2018) LPELR-45151 (SC) (pp. 51-53) paras.**

A) where it was held as follows:

“The first question to consider in resolving this issue is on whom does the burden of proof lie? Section 133 (1) and (2) of the Evidence Act 2011 provides: 133 (1). In civil cases, the burden of first proving the

existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to presumptions that may arise on the pleadings. (2) If the party referred to in Subsection (1) of this Section adduces evidence which ought reasonably to satisfy the Court that the fact to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced and so on successively until all the issues in the pleadings have been dealt with."

Counsel further insisted that the sections of the Evidence act, 2011 relied upon by the apex Court are the same as Sections 132 and 133 of the Evidence Act (as amended in 2023). He relied on Sections 132 and 133 of the Evidence Act (as amended in 2023).

He maintained that paragraphs 4b, 4q, 4r, 4t, 4u of the affidavit setting out the facts relied on by the claimants in the originating summons which by their nature are allegations of crime. He submitted that it is trite law that allegations of crime in civil proceedings (as in this case) requires proof beyond reasonable doubt. This is even more so when the deponent continuously used the word "alleged" in the

referenced paragraphs, which shows clearly that the facts deposed to therein remain in the realm of allegations devoid of any form of proof, let alone proof beyond reasonable doubt as required by law.

He placed reliance on the case of **ADEYEMI V. APC & ORS (2023) LPELR-60971(CA) (pp. 23 paras. C)**.

He went on to maintain that the claimants failed woefully in meeting the standard of proof required in proof of the commission of a crime in a civil case as alleged in paragraphs 4b, 4q, 4r, 4t, 4u of the affidavit setting out the facts relied on by the claimants in the originating summons.

He further argued that the claimants in paragraph 4a of the affidavit setting out the facts relied upon in the originating summons referred to the following documents;

1. Their purported membership cards of the PDP.
2. The evidence that they conducted elections and won the elections into the 6th & 7th defendants.
3. Certificate of return purportedly issued to them by the Edo State Independent Electoral Commission (EDOSIEC) and that they were purportedly sworn into office, but failed woefully to discharge the burden of proof placed on them to prove the above assertions by the production of the relevant documents.

He posited that failure of the claimants to attach the above referenced documents as exhibits to either of their affidavits is fatal to their case as oral evidence cannot take the place of documentary evidence especially when the claimants swore on oath to provide the said documents, which they did not do.

It was advanced by the learned SAN that the Supreme Court judgment and the judgment of His Lordship, Hon. Justice D. I. Okungbowa, Chief Judge of Edo State, attached to the earlier affidavit of the claimants as exhibits or2 & or3, are not in doubt, but maintained that they are irrelevant to this case because the claimants failed woefully to discharge the burden of proof on the balance of probabilities that they were actually impeached by the 1st – 3rd defendants acting in concert with some nameless and faceless thugs.

He noted that exhibits OR7 and OR8i-xii are by their nature computer generated documents. They must comply with the mandatory provisions of Section 84 of the Evidence Act. He also referred to the case of **DR. IMORO KUBOR & ANOR v. HON. SERIAKE HENRY DICKSON & ORS (2012) LPELR-9817(SC)**.

It was the contention of counsel that exhibits OR8i-xii, are marked "Scanned by TapScanner" and a TapScanner is a mobile app used for scanning documents. Furthermore, the signatures of the deponents

therein are not original. This raises a very strong presumption that the deponents signed the affidavits, scanned and sent them back to their counsel who printed them out before filing. The seal of the Notary Public before whom the exhibits OR8i-xii were sworn to cannot take them away from their status as computer generated documents.

He urged this Court to hold that the documents are inadmissible in the circumstance because they are worthless pieces of papers, being inadmissible by virtue of the Supreme Court decision in **DR. IMORO KUBOR & ANOR V. HON. SERIAKE HENRY DICKSON & ORS (SUPRA)**. He insisted that exhibits OR6 & OR9 attached to the claimants' further affidavit are public documents by their very nature and that being so, only the original copies or certified true copies thereof are admissible.

Copious reference was made to Sections 102 & 104 of the Evidence Act and the Supreme Court decision in **FAAN V. WAMAL EXPRESS SERVICES (NIG.) LTD. (2011) LPELR-1261(SC) (pp. 15-16 paras. A-A)** where the apex Court per **MUHAMMAD, JSC** (as he then was).

Canvassing his view, he further submitted that oral evidence cannot be used to vary the contents of a document(s). Exhibits OR6 & OR7 which the claimants seek to rely on in proof of their allegation that they were impeached by the 1st-3rd defendants and other faceless or

unknown thugs, do not contain any details such as the date, names of the persons who carried out the purported impeachment, venue and all other relevant details of the impeachment, and that being so, the content of the above documents cannot be varied by the oral evidence of the deponent whose testimony is at best hearsay evidence.

He referred to the Court of Appeal's decision in **IHEKWOABA V. MBANEFO & ANOR (2017) LPELR-42747(CA) (pp. 73 paras. B).**

He noted that the claimants' counsel in paragraph 1.2 submitted thus: "... the 1st - 2nd defendants, acting in concert with other elements within the state announced that they have impeached the claimants from office as chairman and vice chairman of their respective Local Government Councils..."

This is not contained in the affidavit evidence of the claimants, so it is a product of the claimants' imagination. It is settled law that counsel's submission no matter how brilliant cannot take the place of evidence. He cited the cases of **BABA & ANOR V. INEC * ORS (2024) LPELR-62230 (SC) (pp 29 paras. C).**

He asserted that the authority of **KEYAMO V. LAGOS STATE HOUSE OF ASSEMBLY (SUPRA)** is distinguishable because the counter affidavit of the 1st - 3rd & 5th defendants reveal clearly that the facts of this matter are substantially and seriously in dispute, and that being so, an

originating summons is not the appropriate means of commencing this action, and we respectfully urge this Court to so hold.

Learned counsel went on to say that the suit is speculative and hypothetical in nature not being one which is supported by facts or very low on facts but very high on guesses because the claimants failed to supply materials capable of establishing that the 1st – 3rd defendants or any other person or persons indeed made an attempt to impeach them or indeed impeached them from office. He referred to the case of **KAAVE V. IYONKYOH & ANOR (2024) LPELR -61751 (CA) (pp 37-39 paras. F).**

He maintained that the claimants have not been able to prove that they were impeached by cogent, credible and compelling evidence that the 1st – 3rd defendants were responsible for the purported impeachment or participated in the process.

Furthermore, the jurisdictional question raised by the defendant in that case was whether the jurisdiction of the Court was ousted by the constitution which is not the case in the instant proceedings. He insisted that the claimants must first surmount the legal hurdle of proving that they were indeed impeached, and that the 1st – 3rd defendants participated.

The learned SAN maintained that relief 9 is not one the Court can grant because it is sought against the 6th defendant. The Chairman of Oredo Local Government Council, which is not a security agency, either in Law or in fact, cannot provide security for the claimant. It is trite law that the law does not command the impossible and Court orders are not made in vain. He relied on the cases of **MASU V. AMINU & ORS (2023) LPELR-60064(CA) (pp 23-24 paras. F); OLADIPO V. OYELAMI (1989) 5 NWLR (pt. 120) 221.**

He postulated that an abuse of Court process occurs when a party employs the judicial process, not only to the irritation, oppression, and annoyance of his opponent(s), but also to impede the efficient and effective administration of justice. He referred to the cases of **SARAKI V. KOTOYE (1992)(9 NWLR (part 264) 156; ATTAHIRU V. BAUDU (1998) 3 NWLR (Part 543) 656 at pg. 666, paras. D-E; AMAEFULE V. THE STATE (1988) 2 NWLR (Part 75) pg. 156 at 177.** Finally, he urged this Court to dismiss the defendant's submissions.

Replying on points of law, claimants' counsel maintained that the defendants in paragraphs 1.07 – 1.15 have mad heavy weather out of the depositions made by the litigation clerk of one of the counsel to the claimants. He argued that the dispositions are hearsay evidence. He referred to the Supreme Court in the recent case of **ALADUM V. OGBU**

& ORS (2023) LPELP-59995 (SC) and the recent Supreme Court case of A.G. FED V. ABIA STATE (2024) 17 NWLR (pt. 1966).

On the issue that the affidavit evidence in support of the Originating summons offends the provision of Section 87 of the evidence Act, he insisted that there is no paragraph in the affidavit that so offend the evidence act as the defendants have not been able to point out any to my lord. We urge my Lord to discontinuance that submission.

He noted the defendants have equally made heavy weather out of issue of the membership of the claimants. It is submitted that in view of the further affidavit in support of the Originating summons, dated and filed on the 10th of Feb, 2025, that issue have been overtaken by event, and we therefore urge my Lord to discountenance with the argument canvassed therein.

Learned counsel canvassed the view that the Exhibit OR7 and OR8 is admissible being a computer generated evidence. He submitted that this position does apply to document attached to an affidavit. He referred to two cases; (1) **ALADUM V. OGBU & ORS (2023) LPELP-59995 (SC)**; (2) **EFCC V. ROSEWOOD INVESTMENTS LTD & ORS (2022) LPELR-57792 (pp 54-57 paras. B).**

Learned counsel further insisted that the issues erected by the claimants in the originating processes are live and substantial issues, this

is all more so, as the claimants' facts as presented in paragraphs affidavit in support of the Originating summons have not been contradicted by the defendants/applicants herein, hence the facts are deemed admissible for this Honourable Court to adjudicate upon.

Counsel alluded to the fact that defendants/applicants' generally attempt to demonstrate speculation in paragraphs 1.44 of their written address cannot avail the defendants as they failed to show the hypotheticalness of the claimants' suit, hence the defendants have failed to prove their assertion. He placed reliance on **TRADE BANK PLC. V. BENILOX (NIG) LTD. (2003) 9 NWLR, the Apex; OLUWABUKOLA V. A.G. OF LAGOS STATE (2022) 2 NWLR (pt. 1815) 499.**

Cementing his address, he urged this Court to discountenance, the defendants,' counter affidavit.

I have carefully considered the affidavit in support and against the application together with the exhibits attached thereto. I soberly and painstakingly perused the written addresses of counsel on both sides. The path taken in crafting the issue for determination, on either side, though different, came to the same question. Since the claimant's issue for determination can be subsumed under the defendant's, which is more commodious and comprehension friendly, I will adopt the issues as crafted by the claimant. They were framed thus;

“Whether from the nature and deposition in the two affidavits filed on support of the originating summons, the claimants have mad out a case sufficient to warrant the intervention of this Honourable Court to entertain and grant the reliefs claimed by the claimants in the originating summons.”

It behoves this Court at this juncture to take a closer look at the law. Section 19 of the Edo State Local Government Law 2000 as amended in 2002 provides thus:-

- (1) The Local Government chairman and his Vice can be removed from office in accordance with the provisions of this Section if they commit misconduct.
- (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.
 - (b) Stating that the holder of such office is guilty of gross misconduct in the performance of the function of his or her office detailed particulars of which shall be specified.

- (3) Within 14 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(s) contained in the notice), the Legislative Council shall have resolved by motion without any debate whether or not the allegation(s) shall be investigated.
- (4) A motion of the Legislative Council that the allegation be investigated shall not be the allegation as provided in this Section.
- (5) The holder of an office whose conduct is being investigated under this Section shall have right to defend himself in person or be represented before the panel by a Legal practitioner of his own choice.
- (6) The panel appointed under this Section shall;
 - (a) Within four weeks of its appointment reports its findings to the Legislative Council.
 - (b) Where the panel report to the Legislative Council that the allegations(s) against the claimant 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, the Legislative Council shall consider the report and if by resolution supported by not less than two-thirds of all members of the Legislative council the report of the panel are adopted, such resolution shall be forwarded to the State House of Assembly that may re-examine the findings of the panel and assess the merits of the resolutions of the Legislative Council.
- (7) The House of Assembly shall within four weeks return same to such Legislative council with approval or disapproval by a resolution supported by not less than two-thirds of majority of all the members of the House.
- (8) The holder of the office under investigation shall not be suspended from office within the period of investigation 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.
- (9) Within seven days of the passing of a motion under the foregoing provisions of the Section, the Legislative Council

shall set up a seven-man panel which shall be composed of people of proven integrity from outside the Council and not being members of any public service, Legislative Council or political party to investigate.

A close inspection of the affidavit and counter-affidavit clearly reveals that the facts here-understated are not in dispute:-

- (1) The 1st and 2nd claimants, DR. TOM OBASEKI and PATRICIA ABIMBOLA ERO were duly elected under the platform of the People's Democratic Party (PDP) and sworn-in as chairman and Vice-chairman respectively of Ikpoba-okha Local Government Council of Edo State on the 4/9/2023.
- (2) Their tenure in office is for a fixed term of three years.
- (3) Thereafter they were issued with a certificate of return as clearly shown in exhibit OR1

The main grouse and chief grievance of the claimant is their assertion that they were illegally removed from office by the 1st, 2nd and 3rd defendants.

These grievances are encapsulated in paragraphs 4(p), 4(q), 4(r), 4(s), 4(t), 4(u), 4(v), 4(x), 4(4), (7) of the nine paragraph supporting affidavit.

It apposite at this juncture to reproduce ipsisimaverba the aforesaid paragraphs.

“That the claimants have since been discharging the functions of their offices in substantial compliance with the provisions of the Constitution and the Edo State Government Law, 2000 (as amended 2002) and have never been found wanting of any misconduct.

That the 1st defendant in connivance with the 2nd and 3rd defendants, aided and enabled by some thugs and impostors orchestrated the purported impeachment of the claimants who are the duly elected chairman and vice chairman of Oredo Local Government Council. The thugs and the impostors were alleged to have been procured and sponsored by the Edo State Government.

That on Sunday, January 9, 2025 it was discovered that some unscrupulous elements, sponsored by the Edo State Government had finalized plans to impersonate duly elected Councilors and orchestrate an illegal impeachment of the claimants who are the duly elected Executive Chairman and Vice Chairman respectively of Oredo Local Government appoint an impostor as the

acting Executive Chairman of Oredo Local Government.

That in anticipation of this, the 12 councilors convened and issued a press statement warning against such a plot. Evidence of the said Press Statement is hereby attached and marked as Exhibit OR5.

That on Tuesday, January 10th, 2025, while the councilors were still on recess and out of Edo State, a group of thugs, allegedly sponsored by the Edo State Government stormed the Oredo legislative chamber and they ushered in impersonators, who then announced to have removed/impeached the claimants albeit illegally and without vires or locus.

That in response to this unlawful act, the 12 legitimate councilors immediately released a press statement and held a press briefing to publicly denounce the purported impeachment. Evidence of the said Press Statement is hereby attached and marked as exhibit OR6.

That the 1st to 3rd defendants are not members of the legislative arm of the Oredo Local government Council

and have no power to remove or impeach the claimants, who are the democratically elected chairman or vice chairman of the Oredo Local Government Council, Edo State.

That the claimants have challenged their alleged removal/impeachment from office as the Executive Chairman and vice chairman of Oredo Local Government Council of Edo State.

That No Notice of impeachment was ever served on them, that they were not invited to respond to any allegations or allegation of gross misconduct and No committee was constituted to investigate the accusations, as required by law.

That if the 1st to 3rd defendants are not restrained, they will continue to usurp the duties and powers of the claimants as the Chairman and Vice Chairman of Oredo Local Government Council of Edo State and cascade the state into the Hobbesian state of nature where life is for the survival of the fittest.”

The disaggregative facts from the above are as follows.

- (1) The claimants were impeached by the 1st, 2nd and 3rd defendants, with the aid of thugs.
- (2) The 1st defendant who is the clerk of the House of Oredo Local Government Legislative council and the 3rd defendant declared the claimants impeached.
- (3) This was at a time the Legislative Council was on recess on Tuesday the 10/1/2025.
- (4) No notice of impeachment was ever served on them. They were not invited to defend any allegation.
- (5) There is uncontradicted evidence from the 12 councilors, who deposed to affidavits, to show that they were not part of the impeachment.
- (6) The claimants were not given any opportunity to be heard before a resolution was reached removing them from office.

Amazingly, all these pointed facts were glossed by the defendants (1st and 3rd). Hear them:-

“Curiously, the leader of the 4th defendant refused to make himself available to assume the role of the acting Chairman of the 5th defendant, and in order to avoid any vacuum in the administration of the 5th defendant, I

was directed to assume the role of the acting chairman of the 5th defendant as the most senior civil servant.

In response to the false claims in paragraph 4p, the claimants along with the other seventeen (17) Chairmen of the other Local Government Areas of Edo State were alleged to have misappropriated funds belonging to the respective Local Government Councils, including the 5th defendant upon which they were suspended from office, and panels set us to investigate the allegations.

In response to paragraph 4q, I am a doctorate degree holder in Business Administration, a certified chartered accountant, accomplished civil servant and presently on grade level 17 and an appointed permanent secretary. I have served in different capacities without blemish, including in my present capacity as the Head of local Government Administration of the 5th defendant. I, the 1st and 3rd defendants are not politicians, so we are not elected officials of the 5th defendant, and did not at any time conspire with the 2nd and 3rd defendants or any other

person or persons to attempt to impeach, or actually impeach anyone, including the claimants assuming without conceding that they were duly elected as Chairman and Vice Chairman respectively of the 5th defendant.

In specific response to paragraph 4, on Sunday 9th January, 2025 I was at my usual place of worship with my family and we did not close from church until sometime at about 3pm, after which I returned home to spend the rest of the day with my family. In essence, I did not step anywhere close to the premises of the 5th defendant on the day the claimants alleged without proof that myself, the 1st & 3rd defendants conspired with some faceless thugs to carry out an impeachment.

In specific response to paragraph 4t, the claimants did not state therein that I, the 1st and 3rd defendants participate in the impeachment which clearly exists in their imagination.

In answer to paragraph 4bb, I am not aware of any announcement of the impeachment of the claimants or any other person in the circumstance, the Edo State

Government did not order or direct the 8th defendant or any other person or authority to aid I and/or the 1st & 3rd defendants “in gaining control over the 4th chamber” (whatever that means because there is no office in the 5th defendant known as the 4th chamber) or into the offices of the 6th & 7th defendants. Furthermore, the claimants chase to stay away from the premises of the 5th defendant as the premises were never at any time barricaded or condoned off by security agents.

The premises of the 5th defendant was never at any time barricaded or cordoned off as both workers of the 5th defendant and members of the public have unhindered access to the premises during official hours.

In further response to paragraph 4cc thereof, neither I nor the 1st & 3rd defendants participated in the alleged impeachment referred to therein, did not pass any declaration or resolution of impeachment of the claimants or anyone else, and were therefore not in positions to afford the claimants any right to fair hearing in the circumstance.

In answer to paragraph 4dd, the Governor of Edo State did not issue any press statement wherein he endorsed the unproven claim of impeachment of the claimants, and did not forcefully use his power to expel the claimants from office. Furthermore, the Governor of Edo State did not direct that the claimants or anyone else should not be paid entitlements for any month, as these allegations are figments of the claimants' imaginations.

The Honourable Commissioner for Local Government & Chieftaincy Affairs issued another letter reference No. F/MLG/170/12/TA/VOL.II/5 dated 7th February, 2025 withdrawing exhibit OR9 attached to the claimants' further affidavit and a certified true copy of same is attached herewith and marked exhibit 5.

In answer to paragraph 4ee, neither I, nor the 1st & 3rd defendant acted in concert with the 4th defendant (who is a juristic person) to remove the claimants or anyone else from office.

In response to paragraphs 7 & 8 thereof, I, the 1st & 3rd defendants did not usurp the powers of the office of the

6th & 7th defendants, as we are responsible law abiding civil servants and citizens of Nigeria.

The claimants had in a similar matter in an originating summons in Suit No. B/3070S/2024 Between Orhionmwon Local Government Council & 17 Ors V. The Edo State Government & 6 Ors claimed essentially the same reliefs as sought in the instant suit. A copy of a certified true copy of the originating summons is attached herewith and marked exhibit 6."

On the 11/11/2024, this (the Chief Judge) nullified the suspension of the claimants. Brazenly, the 1st, 2nd and 3rd defendants, in their supporting affidavit filed on the 10/03/2025 still had the audacity to refer to the claimants as having been suspended and wondered why the 4th defendant the head of Oredo Local Government Legislative Council refused to make himself available to fill the office of acting chairman even after the removal of the claimants had been nullified. This, without more, has rendered the entire counter-affidavit worthless with little or no evidential valid.

The same defendants completely glossed over exhibits OR8, the affidavits wherein the 12 councilors dissociated themselves from the so called impeachment. If the suspension of the claimants has been

nullified and the 12 councilors absolved themselves from any impeachment, why is the 1st and 3rd defendant struggling to justify the absence of the claimants? I have not attached any weight to the counter-affidavit. In the circumstance, the claimant's supporting affidavit is uncontradicted and unchallenged.

For Local Government areas, specific provision for their governance is made in section 7(1) of the 1999 Constitution (Supra) which provides that the Local Government shall be by democratically elected Local Government council. The Constitution having prescribed that its government shall be by democratically elected Local Government Councils, it cannot be governed by any other body or means. Therefore it cannot be governed or administered by the State government, State Governor or any contraption under the guise of a jaundiced or flawed impeachment process. See the cases of **AG Federation V. A. G. ABIA & 35 OTHERS SC/CV/343/2024** at page 44 **AJUWON V. GOV OF OYO STATE (2021) LPELR-55339 (SC); GOV. OF EKITI STATE V. OLUBUNMO (2017) 13 NWLR (pt. 1551)7.**

After prescribing that Local Government shall be by democratically elected Local Government Council, Section 7(1) of the same constitution imposes a constitutional duty on the Government of every State to enact law that will guarantee their tenure, their existence,

structure and function. A law made by the Government of a State to ensure the existence of a Local Government Council in accordance with Section 7(1) of the 1999 constitution must not contain any provision that undermines its existence. See the case of **FRIDAY V. GOVERNOR OF ONDO STATE (2022) 16 NWLR (pt. 1857) page 585 at 648 SC**. From all I have said I am bound to believe claimant's averment (affidavit) in the absence of any credible counter-affidavit.

The conduct of the aforesaid 1st defendant and 3rd defendant is the very mischief Section 7(1) of the Constitution has set out to address and it must be so read and construed purposefully.

The disdainful disregard for due process by the defendants is most dangerous and disruptive to democracy at the Local Government Council. In the celebrated case of **ABIA STATE V. AG OF FEDERATION (2006) LPELR 6134(SC)** the apex Court emphatically held "where the rule of law reigns, political expediency ought to be sacrificed on the altar of the rule of law so as to guarantee the continued existence of institutions fashioned to promote social values of liberty, orderly conduct and development, particularly in a republic founded on the principles of Federalism where power is not only apportioned between the Federal and State Governments but also to the Local Governments.

Before I conclude, let me say straightaway the facts in **MAIRAMI & ANOR V. GONIDINARI (2025) LPELR-80093 (CA)** referred to by counsel is clearly distinguishable in this case. In this case the said Muritala Umoru is a litigation manager not a secretary. He also clearly complied with the provisions of the Section 115 of the Evidence Act clearly spelt out.

Let me quickly add, that the exhibits attached to affidavit do not have to comply with the provisions of the Evidence Act. The law is trite.

There is enough basis for this Court to grant the reliefs of the applicant.

All in all, I find sufficient merit in this originating summons and the submissions of the claimant's counsel can hardly be faulted. I have given and demonstrated my reasons.

The three issues for determination are all resolved in favour of the claimants.

In the light of the foregoing, I hold that the claimants' claim succeeds as it has merit. Accordingly the following reliefs are hereby granted.

- (1) Granted.
- (2) Granted
- (3) Granted.

- (4) Granted.
- (5) Granted.
- (6) Granted.
- (7) Granted.
- (8) Granted.
- (9) Granted.
- (10) Granted.
- (11) Granted.
- (12) Not granted

The parties shall bear their respective cost.



HON. JUSTICE OHIMAI OVBIAGELE
JUDGE
30/06/2025

COUNSEL

- I. P. Aigbe, Esq., - for the claimants
- K. O. Obamogie, Esq., - for the defendants.