

IN THE HIGH COURT OF JUSTICE EDO STATE OF NIGERIA
IN THE AUCHI JUDICIAL DIVISION HOLDEN AT AUCHI
BEFORE HIS LORDSHIP HON. JUSTICE O.M. OBAYUWANA – JUDGE
ON THURSDAY THE 15TH DAY OF MAY, 2025

BETWEEN:

SUIT NO: HAU/32/0S/2025

1. HON. ZIBIRI MUHIZU MARVELOUS.
2. HON. BENJAMIN OJIETU

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}

CLAIMANTS

AND.

1. HON. VALENTINE OKWILAGUE (MEMBER).
2. HON. ABDUL YAMAH (MEMBER)
3. HON. FARUK MUHAMMED (MEMBER)
4. HON. AKIM IKHARO (MEMBER)
5. HON. BONA VENTURE ULOKO (MEMBER)
(SUED AS COUNCILORS OF ETSAKO WEST LOCAL
GOVERNMENT LEGISLATIVE COUNCIL)
6. THE CHAIRMAN OF ETSAKO WEST LOCAL GOVERNMENT COUNCIL
7. THE VICE CHAIRMAN OF ETSAKO WEST LOCAL GOVERNMENT COUNCIL
8. INSPECTOR GENERAL OF POLICE

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DEFENDANTS

JUDGEMENT

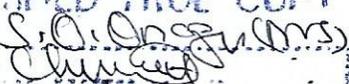
This is a judgment on Originating Summons instituted by the Claimants on 26/2/25, which was subsequently amended pursuant to Order of court made on 28/3/25. The amended Originating Summons was filed on 4/4/25; it seeks the determination of the following questions:

1. Whether upon the proper, correct and dispassionate interpretation of the provisions of Section 19(1-2) of the Edo State Local Government Law 2000, (as Amended 2002), the purported removal/impeachment of the Claimants from office of the Chairman and Vice Chairman of Etsako West Local Government Council, Edo State by the 1st to 5th Defendants, purporting to act on behalf of the

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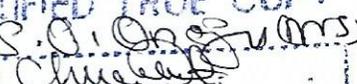
Etsako West Local Government Legislative Council without Notice of any allegation signed by not less than two thirds of the members of the Etsako West Legislative Council of Edo State to the Leader of the Legislative Council, stating that the Claimants are guilty of gross misconduct, or at all, is unconstitutional, illegal, null and void and of no effect whatsoever?

2. Whether upon the proper, correct and dispassionate interpretation of the provisions of Section 19(3-4) of the Edo State Local Government Law 2000, (as Amended 2002), the purported removal/impeachment of the Claimants from the office of Chairman and vice Chairman of Etsako West Local Government Council, Edo State by the 1st – 5th Defendants, purporting to act on behalf of the Etsako West Local Government Legislative Council, 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 Etsako West Local Government Council, Edo State by the 1st to 5th Defendants, purporting to act on behalf of the Etsako West Local Government Legislative Council, without causing a Notice of impeachment to be served on the Claimants and on each members of the Etsako West Local Government Legislative Council, within Seven (7) days of the Etsako West Local Government Legislative Council 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

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

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Constitutional rights of the Claimants and unconstitutional, null and void and of no effect whatsoever.

And upon determination in favour of claimants, they seek 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 Etsako West Local Government Council, Edo State by the 1st to 5th Defendants without Notice of any allegation signed by not less than two thirds of the members of the Etsako West 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 Etsako West Local Government Council, Edo State by the 1st to 5th Defendants, purporting to act on behalf of the Etsako West Local Government Legislative Council, without any motion by the Legislative Council that the allegation (if at all) be investigated, and without setting up seven man panel composed of people of proven integrity to investigate the purported allegation or at all, is unconstitutional, illegal, null and void and of no effect whatsoever.
3. A DECLARATION OF THIS HONOURABLE COURT that the purported removal of the 1st and 2nd Claimants from the office of the Local Government Chairman and Vice Chairman of Etsako West Local Government Council of Edo State by the 1st to 5th Defendants without causing a copy of the Notice of Impeachment (if any) to be served on the Claimants and on each members of the Etsako West Local Government Legislative Council, within Seven (7) days of the 5th Defendant's receipt of the notice) or at all,

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amounts to a violent contravention of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and therefore ultra vires, unconstitutional, illegal, null and void and of no effect whatsoever.

4. A DECLARATION OF THIS HONOURABLE COURT that within the meaning and or intendment of the provision of Section 7 and Section 36(1) of the Constitution of the Federal Republic of Nigeria (as amended), read together with Section 19 of the Local Government Laws of Edo State 2000 (as amended 2002), the Claimants have not been found guilty or wanting of any gross misconduct for which they can be removed/ impeached from the office of the Local Government Chairman and Vice Chairman of Etsako West 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 Etsako West Local Government Council of Edo State by the 1st to 5th Defendants on the 7th and 8th 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 1st Defendant as the occupant of the office of the Local Government Chairman of Etsako West Local Government Council of Edo State is in contravention of Sections 7 and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and Sections 10 and 19(1-9) of the Local Government Law of Edo State 2000 (as amended 2002) and therefore illegal, unconstitutional, null and void and of no effect whatsoever.
7. A DECLARATION OF THIS HONOURABLE COURT that the Claimants are still the occupants of the office of the Chairman and Vice Chairman of Etsako West Local

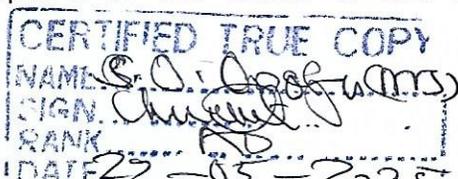


Exhibit EW1, which is a certified true copy of Judgment in SC/CV/343/2024 A.G. Federation V. A.G Abia State & 35 Ors delivered 11/7/24 said to have affirmed the autonomy and independence of Local Government Council occupied by democratically elected officers.

Exhibit EW2, which is a certified true copy of Judgment in B/257/05/2024 Hon. UGIAGBE & 17 Ors V. The Executive Government of Edo State delivered on 11/11/24 said to have reaffirmed the decision of the Supreme Court on the Independence of a democratically elected Local Government Council in Edo State.

Exhibit EW3, which is a certified true copy of Ruling on interim application delivered on 16/12/24 said to have restrained the Edo State Government from removing or suspending the Claimants in the said suit.

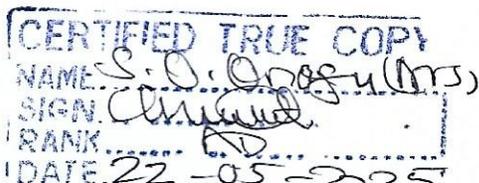
Exhibit EW4, which is a press statement allegedly made by 12 Councilors of Etsako West Local Government Council, warning against plot to impeach the Claimants.

Exhibit EW5, which is another press statement allegedly made by 12 legitimate councilors publicly denouncing an alleged impeachment.

Exhibit EW6, which is a copy of media report on an impeachment allegedly carried out.

Exhibit EW7 (i – vii), which are copies of affidavit of facts allegedly deposed to by 7 councilors of Etsako West Local Government Council dissociating themselves from the impeachment of the claimants.

The said affidavit setting out the facts in support of the Originating Summons was deposed to on the consent of the claimants by one Oshiomah Murtala Umoru a litigation manager in the law firm of Messrs Neplus Ultra Attorneys, counsel to the



Claimants on the information and belief of Hon. Zibiri Muhizu Marvelous, the 1st Claimant. From the facts in the affidavit, the Claimants were duly elected and sworn in respectively as Chairman and Vice-Chairman of Etsako West Local Government Council of Edo State on 4th September 2023, with a fixed tenure for a term of 3 years as determined by law and which is yet to expire; that they were elected on the platform of the People's Democratic Party and have been discharging their duties and exercising their powers diligently and dutifully in substantial compliance with the provision of the 1999 Constitution as amended and the Edo State Local Government Law 2000 as amended in 2002.

That in a gestapo manner, the 1st Defendant a Councilor of Ward 11 in connivance with the 2nd to 5th Defendants other 4 councilors of the Etsako West Local Government Legislative Council declared the Claimants impeached and announced 1st Defendant as the new occupant of the office of the 6th Defendant in an acting capacity as Chairman of Etsako West Local Government Council. That this incidence of impeachment happened on 8th day of January 2025 while the councilors were still on recess and with the aid of a group of thugs who stormed the Etsako West Legislative Chambers and claimed to have allegedly and without due process impeached the Claimants.

That the 1st – 5th Defendants, five out of the 12 Councilors of Etsako West Local Government Legislative Council were said to have impeached the Claimants and the 1st Defendant announced as acting chairman and in a ceremony carried out on 13th January 2025, sworn in as Chairman of the Council in acting capacity.

The Claimants in their affidavit states that no Notice of impeachment was ever served on them by the Legislative Council now being run by 1st – 5th Defendants; that they were never invited to respond to any allegation of gross misconduct and no committee was constituted to investigate the accusation, as required by law. That they

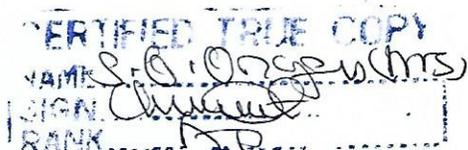
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learnt of their said impeachments vide an announcement circulated through various news media and social media handles.

That on hearing of this, they reached out to the leaders and majority of the members of Etsako West Local Government Legislative Council who told them that they were equally as shocked and surprised that there was no sitting on the said date the alleged impeachment took place; that this was orchestrated by the 1st – 5th Defendants without the knowledge of the other 7 councilors and so the seven councilors deposed to an affidavit to disassociate them from the said impeachment carried out without due process.

That immediately the impeachment was announced, the 8th Defendant began to aid the 1st to 5th Defendants to gain control over the Etsako West Local Government Council and preventing the Claimants from gaining access to their offices, and all efforts by the claimants to access their offices since then proved abortive. That since this incidence, the salaries and entitlements of the claimants, for the preceding months and uptill now has been stopped.

Claimant states that the procedure prescribed by section 19(1-9) of the Edo State Local Government Law 2000 as amended in 2002 for the removal of elected Local Government Chairman and Vice-Chairman was not followed in this case. That they could only be removed upon proven grounds of gross misconduct after relevant notices of allegation of gross misconduct has been issued and served on them and the allegation approved to be investigated by a 7 man investigative panel. If found guilty of gross misconduct, the report of the said investigative panel would have been adopted and sent to the Edo State House of Assembly for review and approval by a resolution of not less than 2/3rd majority of all members of the House of Assembly. It is then the claimants can be impeached. The Claimants alleged that these statutory steps were not taken; they alleged that their impeachment is illegal.



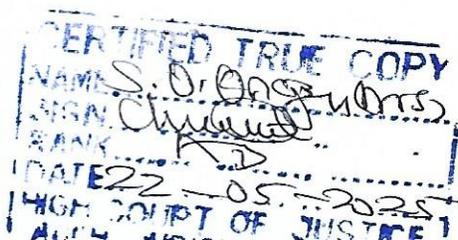
The Claimant's counsel Anderson Asemota Esq. filed a written Address in support of the Originating Summons raising three salient issues for determination.

The Defendants were served with the Amended Originating Summons, the 8th Defendant was served on 8/4/25 by substituted means through the office of the Commissioner of Police, Edo State; the 1st – 7th Defendants were served on 8/4/25, through their Counsel Evans Ogbeifun Esq., they having been originally served with the initiating Originating Summons through substituted means on 7/3/25 by pasting at the Etsako West Local Government Area Council secretariat, subsequent to which a memorandum of appearance was filed on 18/3/25 for all the Defendants except the now 8th Defendant.

The now 1st – 7th Defendants filed a counter affidavit of 21 paragraphs in opposition to the Originating Summons and accompanied it with a Written Address in opposition on 11/4/25. The said processes were deemed as properly filed and served by order of court of 17/4/25.

The 1st – 7th Defendants also on 11/4/25 filed a Notice of Preliminary Objections seeking to strike out the suit for lack of jurisdiction on four grounds viz:

- a. That section 19 (10) of Edo State Local Government Law 2000 as amended in 2002 prohibits this court from hearing and or determining matters related to the impeachment of Local Government Chairman and Vice-Chairman in Edo State.
- b. That Etsako West Local Government Council is a necessary party to this suit and failure to join it renders this suit incompetent.
- c. That Order 3 Rule 2 of the Civil Procedure Rules mandates a litigant seeking 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 and not Originating Summons.



respond to the petition and or impeachment notice and failing to cooperate with disciplinary procedure.

The Claimants on receipt of the counter affidavit in opposition to the Originating Summons as well as Notice of Preliminary Objection filed two processes. One, a further affidavit and reply on point of law to the Originating Summons; and two, a counter affidavit and Written Address in opposition to the Notice of Preliminary Objection.

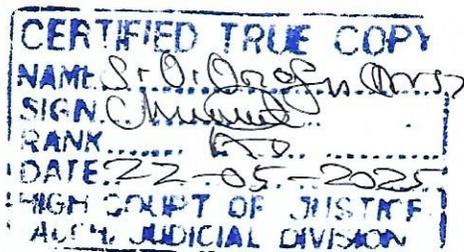
The said Claimants' further affidavit to the Originating Summons was filed on 16/4/2025. It is of 28 paragraphs deposed to by the 1st Claimant himself and on behalf of 2nd Claimant. In it the Claimants deposed that the 1st – 7th Defendants have failed to show how they fulfilled the prescribed mode of their removal as Chairman and Vice-Chairman from office; the Claimants stated that the deposition in the counter affidavit of the defendants as to compliance with the local government laws to warrant their impeachment are false.

The Claimants filed a counter affidavit to the preliminary objection on 15/4/25, essentially in the 8 paragraph counter affidavit; they denied the allegation of facts in the preliminary objections and stated that this suit is competent.

The 1st -7th Defendants filed a reply on point of law to the preliminary objection dated 16/4/25 but filed 17/4/25.

Counsel for the parties adopted their respective written addresses urging on the court to accede to their prayers.

When a defendant raises a preliminary objection to proceedings conducted by affidavit evidence, such as in suits commenced by Originating Summons or Originating Motion, what is legally expedient to do is to take the objection along with the substantive suit, and a resolution first made on the preliminary objection, before



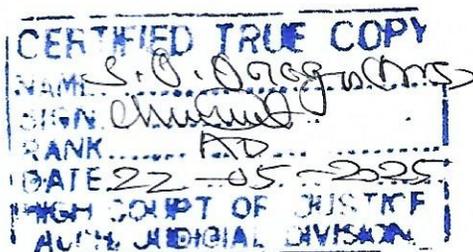
proceeding with the substantive suit. Where the preliminary objection succeeds, the need to determine the substantive suit does not now arise. See

RMAFC Vs. AG RIVERS STATE & ANOR (2021) LPELR-56454(CA) (PP. 51-55 PARAS. E)

here the court held thus:

"The procedure in action commenced with Originating Summons as laid down and established by the apex Court decisions is that a Defendant to an Originating Summons who wishes to challenge the jurisdiction of the Court to entertain the Originating Summons or to have set aside the processes served on the Defendant, must file along with Notice of Preliminary Objection his or her Counter-Affidavit against the facts deposed in the Affidavit in Support of the Originating Summons so that if the Objection fails, the trial Court can proceed to decide the Originating Summons on the Affidavits evidence of the parties on the merit in order to save time in litigation initiated vide Originating Summons. See HON. (MRS) DORATHY MATO VS. HON. IORWASE H. HEMBER & ORS (2018) 5 NWLR (PART 1612) 258 at 289 A-D per ONNOGHEN, CJN (RTD)..."

Quite commendably, the 1st – 7th Defendants as well as the Claimants in this suit filed and exchanged all necessary processes within the timeline given by the Court in compliance with the order of accelerated hearing made in this suit as a mark of their readiness to cooperate with the court to have this suit determined expeditiously. Having said this and in line with the law, this court shall proceed to first determine the preliminary objection raised by the 1st – 7th Defendants.



The said objection is on four grounds. On the first ground, the 1st – 7th Defendants object to the jurisdiction of the court on the grounds that section 19(10) of the Edo State Local Government Law 2000 expressly prohibits this court from hearing and or determining matters related to the impeachment of Local Government Chairmen and Vice-Chairmen in Edo State.

In the written address in support of the preliminary objection filed by the learned Counsel for the 1st – 7th Defendants, Evans Ogbeifun Esq., he seems to have glossed over this ground of objection as no submission was made on it.

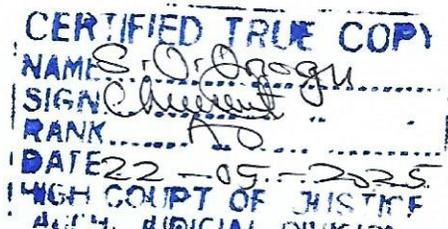
However, counsel generally submitted that this suit was not properly constituted as a necessary party was not joined in the suit, which is the Etsako West Local Government Council, which essentially constitutes ground 2 of the objection and also that the suit ought to have been commenced by way of Writ of Summons and not Originating Summons, which constitutes another ground of objection. Learned counsel submitted also that the affidavit in support of the Originating Summons was deposed to by a litigation manager who is not a person that can positively assert the truth of the facts to which he deposed.

In the seamless argument of counsel on these grounds, he submitted that in initiating action that seeks declaration and contain false allegations, the matter is bound to be contentious in nature and best suited for writ of summons. Counsel submitted that to activate the jurisdiction of the court over a claim there must be a competent originating process before the court. Counsel relied on

Madukolu Vs. Nkemdilim (1962) All NLR (Pt 2) 581 @ 589

as well as

Obaro Vs. Hassan (2013) 8 NWLR (Pt. 1375) at 425.



Counsel submitted that this suit can only proceed if the claimants amend the originating summons in line with Order 5 Rule 2 of the rules of court as the matter is a contentious one and can only be resolved by calling oral evidence from witnesses.

Counsel submitted also that deponent to the originating summons in this suit is a litigation manager and it is likely the claimants would narrate their story to a counsel and not a litigation officer of whatever caliber and it is more likely they told counsel who then related same to his employee to depose to it in an affidavit. Counsel submitted that it is a wrong procedure to have the litigation manager of counsel depose to affidavit wherein he narrated proceedings he did not take part in, event he did not witness himself, and opinions of some other persons. That the said pieces of evidence essentially amount to inadmissible hearsay. Counsel submitted that paragraphs 5 and 6 of the claimant's Affidavit in Support of the Originating Summons are inadmissible hearsay and even if admitted, they have no probative value. Counsel relied on

Mairami Vs. Anor Vs. Gonidinari (2025) LPELR 80093 (CA).

Counsel urged court not to therefore rely on the affidavit in support of the claimants' Originating Summons.

Learned Counsel submitted on the issue of non-joinder that the failure of the claimant to join Etsako West Local Government Council as a party in this suit is fatal. Counsel relied on

Edet Vs. CBN (2015) AFWLR (Pt 769) 1126 – 1127,

Utoro Vs. Lawal (2018) ALL FWLR (Pt 938) 1823 para D.

Counsel submitted that having not joined Etsako West Local Government Council, this suit is incompetent. Counsel relied on

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Dwana Vs. Ibrahim & Ors (2014) LPELR 24165 (CA).

Counsel submitted that the 1st – 7th Defendants all carried out their responsibilities for Etsako West Local Government Council, which must be a party to the action. And having not been joined, counsel urged court to strike out this suit as it lacks the jurisdiction to entertain this suit.

The Claimants in their Written Address in opposition to the preliminary objection settled by Anderson Asemota Esq. submitted on the issue of commencing suit by wrong procedure that in this suit the claimants case primarily revolves and rotates around the interpretation of the provisions of the Local Government Law of Edo State 2000 as amended in 2002, more specifically section 19(1-9) that stipulates the procedure for the removal of the elected Chairman and Vice-Chairman of the Council. That it is the Claimants' case that the Defendants did not comply with statutory procedure to impeach them. That all the Claimants seek is interpretation of the relevant provisions of the law and determination of whether the claimants were rightly impeached by the steps taken by the defendants. Claimants' counsel relied on

Ikpeazu Vs. Ojah (2017) NWLR (Pt 1562)439

and submitted that the essence of originating summons is to make things simpler and it is available to any claimant claiming interest under any written instrument. Counsel relied also on

Govt. Kano State Vs. EFCC (2016) 17 NWLR (Pt 1540) 149.

Counsel submitted that this action was properly constituted under the originating summons proceedings.

On the issue of whether the deposition in the affidavit in support of the originating summons by the litigation manager rather than the claimant himself

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amounts to documentary hearsay, counsel submitted that the Supreme Court has held that affidavit evidence formidably constitutes an exemption to the general rule against hearsay. That it is trite that a party in a suit can dispense with the requirement of calling a witness through the use of an affidavit. That section 115(3) of the Evidence Act provides that when a person deposes to his belief in any matter of facts and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly that facts and circumstances forming the grounds of his belief. He should state the name of his informant, date and circumstance in which the information was made and also state that he believes the statement to be true. That in such a situation the evidence does not amount to hearsay. Learned counsel relied on

Aladum Vs. Ogbu & Ors. (2023)LPELR-59995 (SC),

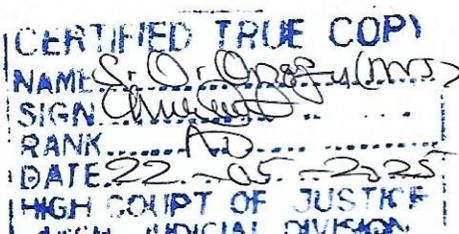
A.G Fed Vs. A.G Abia State (2024) 17NWLR (pt 1966) 1 (SC),

where the Supreme Court consistently held that affidavit evidence which complied with section 115 of the Evidence Act is not inadmissible hearsay. Counsel submitted that the latest authority of the court of Appeal cited in

Mairami & Anor Vs. Gonidinari

(supra) by counsel to 1st – 7th Defendants on this same point is on a collision with age long Supreme Court authorities and so urged court to follow the Supreme Court decisions on this point and resolve the objections in favour of the Claimants.

Finally the counsel to claimants did not address the issue of joinder, but rather addressed the issue of ouster of the jurisdiction of the court over impeachment proceedings under section 19 (10) of the Edo State Local Government Law, which 1st – 7th Defendants failed to address or submit on in their written address.



On the issue of ouster clauses in statutes, claimants' counsel submitted that the trial court will lack jurisdiction only when then the procedural steps laid down by law for impeachment were followed. If not, the ouster clause will not prevent the court from inquiring into issue of non-compliance with the statutory procedure. Counsel submitted that it is the proceedings that the court is ousted from adjudicating on but not on the determination of whether the statutory procedure was followed in carrying out the said impeachment. Counsel relied on

Inakoja Vs. Adeleke (2007) 4 NWLR (Pt 1025) 427,

Ekpeyong Vs. Umana (2009) 14 NWLR (Pt1162) 509 CA, (2010) LPELR 8653 (CA),

Dapionlong & Ors Vs. Dariye & Anor (2007) LPELR 8241 (CA),

Agbaso Vs. Speaker Imo State House of Assembly &Ors (2014) LPELR – 24298 (CA).

in all counsel submitted that the jurisdiction of this court is not ousted. Counsel urged on court to dismiss the objection.

In the reply on point of law the 1st – 7th Defendants submitted that when the proceedings are hostile and possess facts likely to be contentious, originating summons should not be used. Counsel relied on

Jev Vs. Iyortom (2014) 14 NWLR (Pt 1428) 5750 615 para F.

Wakwah Vs. Ossai (2022) 2NWLR (pt 752) 561,

Keyamo Vs. House of Assembly, Lagos State (2002) 18 NWLR (Pt 799) 605,

Oguebego Vs. PDP (2016) 4NWLR (Pt 1503) 446.

Counsel submitted that facts in the instant case are very contentious; there are conflicts in the affidavit evidence as to compliance with proper procedure for impeachment; that such conflict is not ideal for originating summons proceedings but writ of summons.

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On the issue of ouster clause otherwise abandoned by Defendants but submitted on by the Claimants, the 1st – 7th Defendants submitted in the reply on point of law that several courts have countenanced such ouster clause and upheld it, counsel relied on

Fawehinmi Vs. Abacha (2000) 4NWLR (pt 654) 416,

The State Vs. Akinpelu (2000) 12NWLR (Pt 682) 685,

Nigerian Army Vs. Sgt Anthony Egbuonu (2000) 2 NWLR (Pt 646) 542,

The State Vs. Alhaji Mohammed Lawal. (2000) 1NWLR (Pt 640) 417

amidst plethora of authorities.

Counsel submitted that there are guiding principles on whether a court will enforce a clause ousting its jurisdiction to entertain a matter; which guiding principles includes: clear and unambiguous language of the ouster clause, constitutional validity of the ouster clause, legislative intent on the ouster clause, no ultra vires or bad faith, no dispute as to interpretation, compliance with natural justice and no breach of fundamental rights. Counsel submitted that depending on the situation, ouster clauses may be applied. Counsel relied on

Adesanya Vs. President (1981) 2 NCLR 358,

Uwaifo Vs. A.G Bendel State (1982) 7 SC. 124,

A.G Lagos State Vs. Eko Hotels LTD LPELR 42543 CA.

Counsel urged court to hold that the ouster clause in section 19 (10) of the Local Government Law of Edo State applies and robs this court of jurisdiction to entertain this suit.

Resolution of preliminary objection:

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I have considered the grounds of the Preliminary objection and the arguments canvassed on same by the 1st – 7th Defendants as well as the Claimants. I find the issue for determination to be whether this Honourable Court has the Jurisdiction to adjudicate and determine this suit as constituted.

In determining issues of jurisdiction, what the court looks at is the claim before it as presented by the claimant; in this case the Originating Summons. Here the Claimants seek the intervention of this court upon the interpretation of section 19 (1-9) of the Edo State Local Government Law 2000 as amended in 2002 vis-à-vis sections 7 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) as to whether the impeachment from their elected offices of Chairman and Vice-Chairman of Etsako West Local Government Council was according to the procedure prescribed by law.

From my scrutiny of the questions for determination set down in this Originating Summons and the reliefs sought in this suit, I find that the claimants quarrel is with side stepping statutory procedure, which guarantees fair hearing in the process of their impeachment, thereby violating their constitutional right to fair hearing.

In the said suit the claimants sued the 1st – 8th Defendants; from the affidavit deposition in support of the Originating Summons, 1st – 5th Defendants who are Councilors in the Legislative Council are alleged to be those who carried out the said impeachment, having taken over control of the Etsako West Local Government Legislative Council without the participation of majority of the legislators, 7 councilors out of 12 in the said Etsako West Local Government Legislative Council. The said councilors filed separate affidavit of fact disassociating them from the said impeachment stating that they never participated in any of the stages.

The claimants sued also the 8th Defendant who they alleged used its personnel to aid the 1st Defendant to take control of the Etsako West Local Government Council

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while preventing the claimants from accessing the Council secretariat as well as the offices of the 6th and 7th Defendants, which they have been allegedly impeached from.

The state of the claims of the claimants reveal a cause of action against the 1st – 5th Defendants, who masterminded the alleged impeachment, with 1st Defendant now acting as chairman and running the offices of the 6th – 7th Defendants, which are the statutory offices in question.

The objection of the 1st – 7th Defendants that a necessary party is not before the court, in that the Etsako West Local Government Council is not a party appears to pale into insignificance as the claimants in this case clearly defined the parameters of persons they are aggrieved with, and Etsako West Local Government Council is not one of them.

In determining whether a party is a necessary party in a suit, the court considers whether the suit cannot be effectively and efficiently determined without the inclusion of that party. See

GREEN Vs. GREEN (1987) LPELR-1338(SC) (PP. 28-29 PARAS. A),

where the Supreme Court per Per OPUTA, J.S.C held thus:

"Now to the final and most relevant question - What happens where parties who should have been joined under Order IV Rule 5(1) above were not joined, and the case proceeded to judgment with the parties on record as the only parties? In other words what is the legal effect of non-joinder of parties?"

Under R.S.C. (England, 1979) Order 15 r 6: 1 No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of any party; and the Court may in any cause or matter determine the issues or

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questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

In other words where there has been a non-joinder either by failure of the parties or an intervener to apply for such joinder or failure of the Court to join suomotu; this non-joinder will not be taken as a ground for defeating the action. The above rule is thus designed to save rather than destroy, to cure rather than to kill the action or suit. Failure to join a party will thus under this Order (R.S.C. Order 15 r. 6) not be fatal to the proceeding and the Court may determine the issues or questions so far as those issues or questions relate to and affect the rights and interests of the parties actually before the Court in this case Chief Abusi Green and Chief E. T. Dublin Green.

This Court in Uku & Ors. v. Okumagba & Ors. (1974) 1 All. N. L. R. G 475 at p. 495 considered, approved and adopted the construction put on the English Order 16 Rule II (which is the same as the present Order 15 Rule 6 R.S.C. 1979) and which is also in pari materia with Order VII Rules 9-11 of the High Court of the Mid-Western State (now Bendel State) and held at p.495 thus:-

"It seems to us quite plain that without the respondent being joined as a co-defendant, the present suit is not liable to be defeated as it is possible for the Court to adjudicate upon the cause or matter without the presence of the respondent...."

From the facts of this case denoted by the affidavit in support of the Originating Summons and the questions posed for determination and reliefs sought herein, I do not find how the absence of the Etsako West Local Government Council will hamper

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effective determination of the issues in this case. I hold therefore that the Etsako West Local Government Council though an important party, being the council whose affairs the claimants seek to be restored to continue in service to the people of Etsako West Local Government Area as elected Chairman and Vice-chairman; it is not a party without whose presence this case cannot be effectively determined. I hold that the parties before court are the principal actors directly affected by the dispute presented for adjudication with whose presence this suit can be effectively and efficiently determined. The Claimants cannot be compelled to sue a party against whom they have no grievance directly. See

Okesade Vs. Ogunkayode (1994) 1NWLR (Pt 318) 36-37.

On the other hand, if the 1st – 7th Defendants feel their defence to this suit will not be complete without joining the Etsako West Local Government Council as a Defendant, they are at liberty to apply to join it as a party to this suit, which they failed to do. A suit therefore will not be defeated by reason of non-joinder. See

C.R.S.N Corp. Vs. Oni (1995)1 NWLR (Pt 371) 270 SC,

see also

Ugorji Vs. Onwu (1991) 3 NWLR (Pt 178) 177, 184-185.

In the circumstance, I hold that this ground of objection fails and it is accordingly dismissed.

On the ground of objection that this suit ought not to begin by Originating Summons but by Writ of Summons because it is potentially hostile, I have considered the facts and submissions in support of this Originating Summons as well as that in opposition thereof. The common ground as accepted by the parties is that there was an impeachment of the claimants from the offices of the 6th and 7th Defendants and carried

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out by the 1st – 5th Defendants as persons constituting the Etsako West Local Government Legislative Council.

Parties also agree that the Local Government Law 2000 as amended in 2002, Section 19 (1-9) thereof governs the procedure to be followed in effecting the said impeachment.

The claimants complained that the procedure outlined by the said law was not followed by the 1st – 5th Defendants in impeaching them from the offices of the 6th and 7th Defendants.

The 1st to 7th Defendants stated that they did follow the statutory steps in carrying out the said impeachment and in their counter affidavit showed the steps they took in effecting the said impeachment.

I do not find any conflict as to facts. What I see is a matter of perception; whether what has happened as to steps taken by the 1st to 5th defendants in impeaching the claimants are in compliance with the outlined steps in the law which both parties agree to govern impeachment. What the court is called upon to do is to take a look at the said steps followed to impeach the claimants whether it conforms with that laid down procedure by a written law or instrument, in this case section 19 (1-9) of the Edo State Local Government Law 2000 as amended in 2002.

Originating Summons proceedings are undertaken when the suit seeks as interpretation of a written law or an instrument as it affects the interest of the Claimant. See

TUOYOEGBE & ORS Vs. CHIEF REGISTRAR, DELTA STATE JUDICIARY & ANOR (2021)

LPELR-56758 (CA) (PP. 23-24 PARAS. E),

where the court of appeal Per HASSAN, J.C.A held thus:

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"Originating Summons is usually employed to commence a suit where the question to be determined is or likely to be one of the constructions of a written law or of any instrument made under any written law or of any deed, will, contract or other document or where there is unlikely to be any substantial dispute as to facts. In other words, where the principal question in issue in an action involves the construction of a written law like the Constitution, the action should be commenced by an originating summons which requires the matter to be proved by affidavit evidence. See the cases of BALONWU v. OBI (2007) 5 NWLR (Pt. 1028) 488 CA, OSUAGWU v. EMEZI (1998) 12 NWLR (Pt.579) 640 CA, DIRECTOR OF SSS & ANOR v. AGBAKOBA (1999) 3 NWLR (Pt.595) 314 SC."

Presented in this case, is the situation of the impeachment of the claimants from office as Chairman and Vice Chairman respectively of Etsako West Local Government Council. There are no substantial or material disputes or conflict as to facts. What appears to be area of conflict is the perception of the claimants on the one hand and that of the defendants on the other as to what conduct of theirs constitute compliance or non-compliance with the local government law on impeachment. The duty of the court is to evaluate whether by their respective actions depicted in their affidavit evidence there is compliance or violation of the law.

I find therefore that there are no conflicts on the fact of impeachment and the law governing same. The factual differences on the activities carried out that are alleged to be non-compliance by the claimants or compliance by the 1st to 7th defendants have been supported by documentary evidence which the court will evaluate in deciding on the sore issue presented before it. See

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where the court of appeal Per SENCHI, J.C.A held thus:

"I have perused the Counter-Affidavit of the Appellant at pages 209 - 211 of the Record of Appeal sworn to by one Akowe Faruna, a Litigation Officer in the Department of Legal Services of the Ministry of Defence. The Counter-Affidavit did not disclose or aver facts of hostilities between the parties at the trial Court. In other words, the facts as revealed in the Record of Appeal are not in dispute or likelihood of any dispute, and in such cases, the action can be commenced by Originating Summons. See DOHERTY V. DOHERTY (1968) NWLR 241 at 242, NATIONAL BANK OF NIGERIA LTD & ANOR V. LADI ALAKIJA & ANOR (1978)9- 10 SC 59 at 71, S. A. I OSSAI V. ISSAC WAKWAH & ORS (2006) LPELR 2813 (SC):

In the case of BARR ENYINNA ONUGBU & ORS V. ATTORNEY GENERAL OF IMO STATE & ORS (2012) LPELR-191091, this Court per ABBA AJI, JCA (as he then was, now JSC) held as follows:

"Commencement of action by Originating Summons is a procedure which is used where the facts are not in dispute or there is no likelihood of their being in dispute. Therefore Originating Summons is not for matters of such controversy that the justice of the case would demand the settling of pleadings. The main advantage of resort to use of Originating Summons in appropriate cases is its simplicity resulting from the elimination of pleadings and as such is not supposed to be used by parties in hostile action. In other words, Originating Summons is only applicable in

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circumstance where there is no dispute on question of fact or likelihood of such dispute."

In the instant case, the questions or fact for determination are documents or exhibits mostly emanating from the Appellant herself. And that is why the facts in both the Affidavit in support and Counter-Affidavit appear not to be in dispute or to raise controversy or hostility.

I therefore hold the view that the Respondent's action commenced by Originating Summons is most appropriate in the circumstance, and I so hold."

See also

APOCHI Vs. AKOR & ORS (2023) LPELR-60849 (CA) (PP. 16-18 PARAS. B)

where the court of appeal Per DANJUMA, J.C.A held thus:

"In the judgment appealed against, the lower Court had, on this issue of the propriety or otherwise of the use of Originating Summons by the 1st - 2nd Respondents in commencing the action against the Appellant and the 3rd-6th Respondents, stated inter alia thus:

"The law is that it is not in all cases that conflicts in affidavits can be resolved by oral evidence. If there are some other documents which can tilt what is perceived as conflict, such conflict can be resolved without the necessity of calling oral evidence" See page 227 of the Record of Appeal."

I think the lower Court was right as it stated above, in that in law it is not all and every conflict in affidavit evidence, particularly where there are copious documentary exhibits that ought to necessitate or warrant

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recourse to oral evidence to render Originating Summons unsuitable. In Balogun Vs. APC (2020) All FWLR (Pt. 1056) 626 @ pp. 647-648, it was held inter alia thus:

"Where proceedings in a Court are by affidavit evidence, it is important that conflicts in such affidavits are not glossed over. The Court is enjoined to look at the nature of the conflict when facts are deposed in an affidavit, the purpose of a counter affidavit is to contradict those facts and not to merely set up a distinct fact as defence. Where the conflict arising from affidavit and counter-affidavit depositions are not on material issues, the Court calling for oral evidence becomes unnecessary. In effect, where the conflicts are not material to the case or where the facts are inadmissible in evidence, the Court should not be saddled with the responsibility of calling oral evidence to resolve the conflict.... Where the conflicting evidence can be resolved from other documentary evidence, the need to call oral evidence becomes unnecessary."

Also, in Nagogo V. CPC. (2012) KLR (Pt. 321) 4444 @ p. 4461, the Supreme had held inter alia thus:

"From the above and the materials made available to the Court of first instance, there were enough from which the Court could resolve the conflicts existing between the contending positions of the parties as shown in their affidavits for and against. At the risk of repetition, it is not only from oral evidence that conflicts in affidavit evidence would be settled. This is a point severally reiterated by this Court."

See also Lafia LG V. Gov. Nasarawa State (2012) KLR (Pt. 321) 4385 @ p. 4406, Peters V. Jackson (2002) FWLR (Pt. 113) 376 @ p. 392."

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Flowing from the above stare decisis, this court will painstakingly evaluate the relevant documentary evidence attached to the affidavit and counter affidavit in this suit to resolve the issue as to compliance or non-compliance with the Local Government Law on impeachment in Edo State. I hold that this suit can be effectively determined via Originating Summons by affidavit and documentary evidence as presented herein and not by Writ of Summons where pleadings are made and oral evidence called. I hold that this ground of objection fails and it is accordingly dismissed.

On the ground of ouster of jurisdiction by section 19 (10) of the Edo State Local Government Law 2000 as amended in 2002, which prohibits the court from exercising jurisdiction to entertain any suit bothering on the proceedings of impeachment, it is pertinent to set down the said provision of section 19 (10) in resolving same, which is hereby quoted as follows:

“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.”

The law is clear that ouster clauses are to be interpreted strictly. The court in interpreting similar ouster clauses as in that of section 19 (10) of the Edo State Local Government Law 2000 as amended in 2002 has held that what is ousted is the jurisdiction to inquire into the proceedings that took place from stage to stage in the process of impeachment. It does not prohibit the court from inquiring into compliance with statutory steps or procedure, whether the stage by stage approach enumerated by law was followed in the eventual impeachment of the claimants. The court is not concerned with how the proceedings within each stage occurred, and specifically in this case, the proceedings of the Panel or the House of Assembly as specified in the said

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"Procedure is the set of actions necessary for doing something. It is also the method and order of directing business in an official meeting. On the contrary, proceedings are the records of activities. In the definition, procedure generally comes before proceedings. Putting it in another language, proceedings are built on the procedure established for the particular activity or business." Per TOBI, J.S.C in Inakoju & ors v. Adeleke & ors (2007) LPELR-1510(SC) (Pp. 66-67 paras. F).

In the light of the foregoing, what section 19(10) when read together with the preceding sections 19 (1-9) prohibits is the jurisdiction to entertain matters bothering on the proceedings of the Panel of investigation of the allegation of gross misconduct against the claimants or the review of the report/findings of same panel as well as the resolution of the Legislative Council adopting same by the House of Assembly in its eventual approval of the said impeachment. This court can effectively adjudicate as to the steps, which are the procedure taken in arriving at the impeachment of the claimants, whether those statutory steps were followed. If the court finds that the statutory procedural steps have been followed, that will be the end of the matter; if not, the impeachment will be declared null and void.

In the circumstance, I hold that this court has the jurisdiction to adjudicate on this matter, this ground of objection also fails and it is accordingly dismissed.

The last ground is as to the affidavit in support of the Originating Summons deposed to by the litigation manager of the claimant's law firm. One will wonder why either of the two claimants would not personally depose to the affidavit in support of the originating summons as crucial as it is, rather than having a litigation manager who may not have personal knowledge of all the facts that transpired to make the

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deposition. This is quite a risk as this case may rise or fall on it. The law is however clear as a general rule that it amounts to inadmissible hearsay if a person testifies of facts not within his personal knowledge, if what the person says is for the purpose of establishing the truth of the fact deposed to, but not hearsay if it is to state the fact of being so informed. See

MOHAMMED Vs. A-G, FED (2020) LPELR-52526 (SC) (PP. 27-28 PARAS. F),

where the Supreme Court Per KEKERE-EKUN, J.S.C (now CJN)held thus:

"Hearsay" is defined in Section 37 of the Evidence Act as follows:

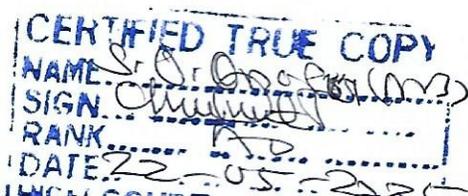
"37. Hearsay means a statement -

- (a) Oral or written made otherwise than by a witness in a proceeding; or
- (b) Contained in a book; document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it."

In the locus classicus, **Subramaniam Vs Prosecutor (1965) 1 WLR 965**, it was held:

"Evidence of a statement made to a person called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made."

See also: *Utteh Vs The State* (1992) 2 NWLR (Pt. 223) 287; (1992) LPELR-6239 (SC) @ 11 C -E; *Arogundade Vs The State* (2009) 6 NWLR (Pt. 1136) 165; *FRN Vs Usman* (2012) LPELR-7818 (SC) (a) 19 - 20 F - C."



However affidavit evidence constitutes one of the exceptions to the hearsay rule.

See the court of appeal case of

SARKI Vs. NTI COUNCIL & ANOR (2023) LPELR-60760(CA) (PP. 20-22 PARAS. D)

Per IDRIS, J.C.A, who held thus:

"However, there are exceptions to the hearsay rule as enumerated in the case of ALADUM v. OGBU (2023) 9 NWLR (PT. 1888) AT PAGE 80 PARA B - H which include the following:

"Apart from Section 83 of the Evidence Act, 2011 there are other exceptions to hearsay rule under the Act and law of evidence, as follows:

- (i.) Dying declaration- Section 40 of the Evidence Act
- (ii.) Statement made in the course of business Section 41 of the Evidence Act
- (iii.) Declaration against interest - Section 42 of the Evidence Act
- (iv.) Declaration as to public right or custom -Section 43 of the Evidence Act;
- (v.) Declaration as to the existence of relationship - Section 44 of the Evidence Act;
- (vi.) Declaration by testators - Section 45 of the Evidence Act;
- (vii.) Statements made in previous proceedings - Section 46 of the Evidence Act.

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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 respecting the informant and the time, place and circumstance of the information.

Where this is substantially complied with, the affidavit evidence will be accepted as duly deposed to by the deponent and probative value then given to it. See

Aladum Vs. Ogbu & Ors (2023) LPELR 59995 (SC).

I have examined the affidavit in question, which is the affidavit setting out the facts relied upon in support of the Originating Summons deposed to by Oshiomah Murtala Umoru, paragraphs 1 -5 thereof states thus:

“

1. That I am the litigation manager in the law firm of messrs Neplus Ultra Attorney 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 I have the approbation and consent of the claimants and my employer to depose to this affidavit.
5. That the following information was supplied to me by Hon. Zibiri Muhizu Marvelous, the 1st Claimant at our office at No 50, Adesuwa Road, GRA Benin City on Monday 24th February 2025 at about 2pm in the forenoon and I verily believe him as follows: ...”

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From the above it is clear that the deponent in paragraphs 1 – 4 did not show the capacity to have personal knowledge of the facts deposed to; he did not show that he is a staff of Etsako West Local Government Council proximate enough to the happenings around there to possess personal knowledge of the facts he deposed to. The deponent could not be in Benin at the law firm of messrs Neplus Ultra Attorney to be aware of what was happening at Etsako West Local Government Council; his testimonies if based on those paragraphs 1 -4 are outright hearsay.

But a closer look at paragraphs 5 & 6 of the said affidavit shows that the facts following them as stated in their numerous sub paragraphs stem from the said parent paragraphs 586. I have checked those facts with the provisions of section 115(3) and (4) of the Evidence Act and I find that it substantially satisfies the condition as to the name of the informant which is the 1st claimant herein and as well claimant's counsel. The time of the information which for the 1st claimant is Monday 24th February 2025 at about 2pm, place of information which is the law office at No 50, Adesuwa Road, GRA, Benin City. I cannot find the circumstance of the information stated therein. The question is was it in the course of briefing counsel in chambers to represent claimants that 1st claimant narrated to the deponent who may have been present at the briefing or at some other circumstances?

The deponent is not a lawyer and could not have been briefed directly by the 1st claimant of the facts of his case. This is an important particular as required by section 115(4) of the Evidence Act that ought to have been stated, which was not. But would that now nullify the proceedings or the affidavit? The answer is in the negative. The 1st – 7th Defendants who have raised this objection as to probative value of the affidavit evidence in support of the originating summons. sworn to by a litigation manager on behalf of the claimants clearly waived their rights by joining issues on the said irregular process by way of a counter affidavit, and in response to which counter affidavit, 1st

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Claimant personally deposed to a further affidavit in support substantially restating the facts in their initial affidavit. The court will therefore not close its eyes to the said affidavit in support, counter affidavit and further affidavit regarding the originating summons in this suit. The court will rely on them. See

OJOMO Vs. IJEH (1987) 4NWLR (PT 64) 216.

Besides that, section 113 of the Evidence Act provides that the court may permit an affidavit to be used, notwithstanding that it is defective in form according to this Act. If the court is satisfied that it has been sworn before a person duly authorized. See

AGUSIOBO & ANOR Vs. ONYEKWELU (2003) LPELR-10290

(CA) (Pp. 15-16 paras. B).

This objection therefore raised by the 1st – 7th Defendants on this score also fails. Consequently, the entire grounds of the preliminary objection having failed; the preliminary objection is accordingly dismissed.

The court will now proceed to decide the substantive suit.

The Claimant in the substantive suit through their counsel Anderson Asemota Esq. filed a written address in support of the Originating Summons and raised three issues for determination viz:

1. Whether the purported impeachment of the claimant from offices as the Chairman and Vice-Chairman of the Etsako West Local Government Council of Edo State by the 1st – 5th Defendants on the 7th and 8th of January 2025 was in accordance with the provision of section 19 of the Local Government Laws of Edo State 2000 as amended in 2002.

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2. Whether the 1st – 5th Defendants can exercise the power to remove/impeach the claimants who were democratically elected and had secured a tenure of three years from the 4th day of September 2023 when they were sworn into office in accordance with the provisions of the constitution of the Federal Republic of Nigeria (1999) as altered to 4th September 2026 without fair hearing.
3. Whether the 1st Defendant's swearing in as the Acting Chairman of Etsako West Local Government Council of Edo State is not unlawful having regard to section 7 of the 1999 Constitution of the Federal Republic of Nigeria as amended and the facts that the offices have not become vacant.

Arguing these issues, claimants counsel Anderson Asemota Esq. submitted that the claimants call upon the court to interpret the provisions of the law that regulates impeachment of Local Government Council Chairman and Vice Chairman in Edo State, which is the provisions of section 19 of the Edo State Local Government Law 2000 as amended in 2002.

Counsel submitted that section 7 of the Constitution of Nigeria guarantees the existence of a democratically elected Local Government Council. Learned counsel submitted that the provisions of section 19 of Edo State Local Government Law is very clear and unambiguous and so should be given its ordinary meaning. Counsel relied on

I.S.I.E.C Vs. Ehirim (2013) 3NWLR (Pt 1340) 169 at 172 – 174.

Learned counsel submitted that the section 23 (1) – (3) of the Imo State Local Government Administration Law 2000 is *impari materia* with the section 19 of the Edo State Local Government Law 2000 as amended in 2002. That the said section is clear and unambiguous and so should be given its ordinary meaning as was done in the case cited.

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Counsel submitted that for a Local Government Chairman and or Vice- Chairman to be removed from office, the procedure set out in the law that regulate such removal must be strictly complied with and where such is not followed, the court can intervene to nullify the purported removal or impeachment. Counsel relied on

Ekekeugbo Vs. Fiberesima (1994) 3NWLR (Pt 335) 707 at 713 – 714.

Counsel submitted that even if a majority of councilors of a Local Government Council state that they do not want a Chairman, that fact has no significant legal effect since it is not a ground upon which such Chairman could be removed from office and if the initiating procedure for such removal or impeachment was not followed. Counsel relied on

Orhionmwon Local Government Vs. Ogieva (1993) 4 NWLR (Pt 288) 469

at pages 473 – 474.

Counsel relied also on

Akinmade Vs. Ajayi (2008) 12 NWLR (Pt. 1101) 498,

a case similar to this where the Chairman of Abeokuta South Local Government Council, Ogun State, the respondent was impeached by some councilors on 9th January 2006. The said respondent, not satisfied with the manner of his impeachment and so filed an Originating Summons at the High Court of Ogun State to interpret section 37(1-10) of the Local Government Law of Ogun State 2000, which is similar to section 19 of the Edo State Local Government Law 2000 as amended in 2002, and the High Court and Appeal Court held that compliance is compulsory; that when the statutory pre-conditions for impeachment is not complied with, it will nullify the act of impeachment so carried out.

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The Counsel for the Claimants submitted that the provisions of section 19 (1-9) of the Edo State Local Government Law, 2000 as amended in 2002 require strict compliance but was not so complied with by the 1st – 5th Defendants acting as the legislative Council of Etsako West Local Government Council and so urged the court to grant the reliefs of the claimants.

Counsel submitted that the 1st – 5th Defendants failed to serve the claimants with impeachment notices notifying them of allegations of impeachable offences against them and also failed to invite them to appear and be heard before any panel of investigation on the said allegation of impeachable offences, before declaring the Claimants impeached from the offices of the 6th and 7th Defendants.

Claimants' Counsel submitted that the claimants were denied fair hearing. That they only got to know from the news about their alleged impeachment and that the men of the Nigeria Police under the overriding command and control of the 8th Defendant aided the 1st – 5th Defendants to gain access to the Etsako West Local Government Council Secretariat and kept the claimants away from accessing their offices.

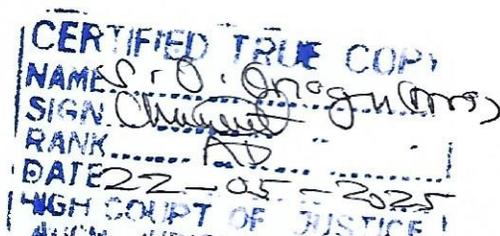
Counsel submitted that the conduct of the 1st – 5th Defendants in denying claimants fair hearing contravenes section 36 (1) of the Constitution of the Federal Republic of Nigeria, and that by itself is sufficient to nullify the declaration of impeachment on grounds of breach of fair hearing. Counsel relied on

Pestra Investment LTD Vs. FRN & Anor (2020) LPELR 52293 (CA).

Harmony Transport Service LTD Vs. Biscom TDIGIT LTD (2021) LPELR-55622 (CA)

and also Kotoye V. CBN (1989) 1NWLR (pt 98) 419@ 488CD.

Finally Counsel urged on court to grant the reliefs of the Claimants.



Learned Counsel had filed a reply on point of law upon receipt of the Written Address in opposition by the 1st – 7th Defendants, in that reply the Claimants' Counsel submitted that the Defendants failed to frontally meet allegation of non-compliance with the law governing impeachment of the Claimants, that the general traverse in their counter affidavit without backing it up with evidence to the contrary are not sufficient. Counsel relied on

UGELA Vs. Tarvenda & Ors (2013) LPELR – 21232 (CA),

Amber Resources (NIG) LTD Vs. Century Energy Service LTD (2018) LPELR – 43671 (CA).

Rukuje Vs. Deba (2018) LPELR 44422) (CA)

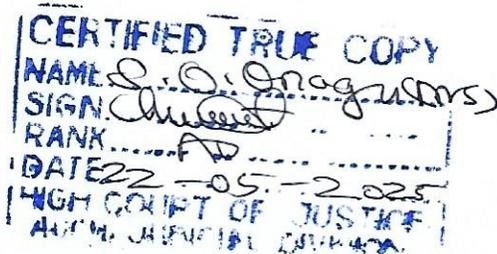
The Claimants' Counsel submitted that the Defendants failed to effectively controvert the facts of violations of the Local Government Law of Edo State stated in the affidavit in support of the summons and so urged on court to hold that the Defendants are deemed to have admitted these facts that were not specifically denied. Counsel relied on

Lawson Vs. Okoronkwo & Ors (2018) LPELR 46356 (SC), Adamson V. Zenith Bank & Anor (2021) LPELR 55144.

Counsel submitted also that the Defendants failed to substantiate the deposition in the counter affidavit with material documentary evidence and that such renders the affidavit evidence unreliable and with no probative value. Counsel relied on

Cameroon Airlines Vs. Otutuizu (2011) 4NWLR (pt 1238) 512.

Ayoade & Ors Vs. Omoye (2023) LPELR 59578 (CA).



Learned counsel submitted that this suit is not commenced by a wrong procedure but properly via an Originating Summons procedure. Learned counsel submitted also that there is no failure on the part of the claimants to fulfill any condition precedence to the institution of this suit, that there is no failure to join any necessary party; and that non joinder of a party does not nullify proceedings; counsel submitted also that the jurisdiction of this court is not ousted as the suit is against impeachment without following statutory procedures and not against the impeachment proceedings itself. The steps to be followed in order to carry out the impeachment were not so followed. Counsel submitted also that the affidavit deposition in support of the Originating Summons is reliable and of probative value. Counsel finally urged court to grant the reliefs of the claimants.

The 1st- 7th Defendants' counsel Evans Ogbeifun Esq. filed the counter affidavit and Written Address on their behalf; it was adopted by Chief Y. Hambali while holding the brief of Evans Ogbeifun Esq. In the said Written Address, the 1st - 7th Defendants raised essentially the same issues as canvassed by them in the Preliminary Objections as it relates to ouster of jurisdiction of court based on section 19(10) of Edo State Local Government Law 2000 as amended in 2002; the issue of defective affidavit in support of Originating Summons which was deposed to by the litigation manager of counsel to the Claimants; the issues of improper procedure to commence the suit which they canvassed ought to be by way of Writ of Summons and not Originating Summons as the facts are potentially contentious and finally the issue of non-joinder of Etsako West Local Government Council.

Arguments were canvassed on them, same as has been previously related and evaluated and considered in this judgment. These said issues were all resolved by this court against the 1st- 7th Defendants at the stage of deciding the preliminary objection.

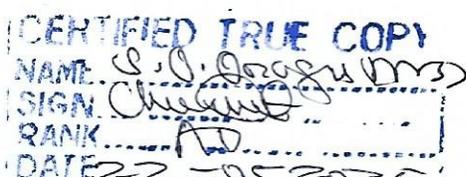
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I adopt my reasoning and conclusions on these issues as resolved in the preliminary objections. Just to add that I agree with the 1st - 7th Defendant's submissions on the guiding principles of when a court will or will not enforce an ouster clause as affecting its jurisdiction to adjudicate, which includes instances of the breach of provisions of the Constitution, breach of fundamental rights and compliance with natural Justice. In such instances the ouster clause is declared unconstitutional, null and void .See

Uwaifo Vs. A.G Bendel State (1982) 7SC 124,
A.G Lagos State Vs. Eko Hotel Ltd (2017) LPELR 42543 (CA).

The Claimants claim they were never invited to appear before any panel of investigation on any alleged allegation of acts of gross misconduct; that in fact such a panel was never constituted to investigate the purported allegation of gross misconduct against them before they were declared impeached. If that is so, this by itself violates the Constitution on the right of fair hearing and so the court will be empowered by law to intervene notwithstanding the provision of section 19 (10) of the Edo State Local Government Law 2000 as amended in 2002. To allow such undemocratic and unconstitutional conduct to stand will be doing violence to justice in its purest sense and in so doing destroy the fabric of our constitutional democracy. This will make the situation not different from a military coup whose actors take over power unconstitutionally and immediately issues decrees to prohibit the court from questioning the legitimacy or legality of their forceful unconstitutional takeover of power. Those sad era of our history should not be reignited by conducts liken to it in our nascent democracy.

Removal of elected Local Government Chairmen and Vice-Chairmen even before the expiration of tenure of office by impeachment under the Edo State Local Government Law 2000 is possible and permissible; all that is simply required is to strictly



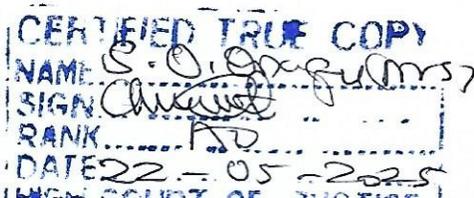
follow the procedure laid down by statute, which guarantees fair hearing to the affected person(s). And when that statutory procedure is meticulously and scrupulously followed, the proceedings of the said impeachment cannot be questioned by the court; the ouster clause then applies. Otherwise the court has the requisite jurisdiction to inquire if the statutory precondition to the impeachment were met or satisfied.

Consequently, I hold that this court has the jurisdiction to entertain this suit which is also properly constituted by Originating Summons. I hold also that all necessary parties are before court with whose presence the issues in this case will be effectively and effectually determined.

I hold also that the facts of the affidavit evidence in support of this Originating Summons as well as that of the counter affidavit carry probative value and are admissible; what is most important is whether those facts meet the standard of proof in this case.

The core issue for determination in this suit is whether there was compliance with the provisions of section 19(1-9) of the Edo State Local Government Law 2000 as amended in 2002 in impeaching the Claimants from their democratically elected offices of Chairman and Vice-chairman of Etsako West Local Government Council, the 6th and 7th Defendants herein whose tenure of office of three years ought to expire in September 2026.

In determining this issue, the court is enjoined to set out the step by step statutory procedure outlined by the law and check by the deposition and documentary evidence of the parties especially that of the 1st to 7th Defendants who assert the affirmative of compliance, if there was indeed compliance with the law. The claimants



asserted the negative by saying there was no compliance and there was no fair hearing given to them. The burden of proof is therefore on those who assert the affirmative. See

OGWO Vs. STANDARD CHARTERED BANK (NIG.) LTD (PP. 14 PARAS. A),

where the Court of Appeal Per BARKA ,J.C.A held thus :

"Generally, the law requires that in civil cases, the burden of proof rests upon that party, whether plaintiff or defendant who asserts the affirmative before evidence is gone into. Put in another way, the burden lies on that person who will fail where no evidence is adduced, and against that party whom judgment will be given if no evidence is rendered on the fact which is in issue. See Mani vs. Shanono (2006) 4 NWLR (pt. 969) 132 @ 138."

The 1st to 7th Defendants in paragraphs 7, 8, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of their counter affidavit stated that claimants were impeached by a procedure enumerated by the Edo State Local Government Law 2000 as amended in 2002 and stated the steps taken, backing it with relevant documents as evidence of such compliance; having asserted the affirmative, the burden of proof rests on the Defendants.

The claimants on the other hand in paragraphs 5w, 5x, 5y, 6f, of the affidavit in support of the originating summons as well as paragraphs 13, 14, 15, 16, 18, 19, 21, 22, 25 and 26 of their further affidavit in support of the originating summons and in response to the defendants counter affidavit deny compliance, they asserted the negative, enumerating a number of ways in which the defendants denied them fair hearing by not following the statutory procedure before they were pronounced impeached.

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The Claimants particularly in paragraphs 5u and 5v of the affidavit in support of the originating summons complained of being impeached on the 8th of January 2025, this fact the 1st - 7th Defendants clearly admitted in paragraphs 12, 15 and 18 of their counter affidavit. The Defendants having admitted the fact of the said impeachment. It is trite that a fact admitted needs no further proof. It is therefore established beyond conjecture that there was infact an impeachment. By the provision of section 133(1) of the Evidence Act, the Claimants also have the burden of proving the non-existence of the facts of being impeached without compliance with statutory procedure and without being fairly heard. This burden on the Claimants appears to have been therefore discharged by their assertions in their affidavit evidence of not being given fair hearing or being served any hearing or statutory notices as required by law to notify them of the allegations against them and give them an opportunity to defend the allegations before the panel of investigation. - This having been shown, the burden has shifted to the defendants to show to the contrary that they did comply with the law. The claimants having stated facts of denial of fair hearing and challenged the 1st to 7th defendants to justify same and show how they complied with the law, the burden of proof as to whether the impeachment was carried out in accordance with the law and whether the claimants were afforded fair hearing via documentary evidence of such hearing notices and relevant notices allegedly served on each of the claimants as required by law rests squarely on the Defendants who asserted the affirmative of such compliance. When a person is bound to prove the existence of any facts, the burden of proof lies on that person. **See section 131 of the Evidence Act.**

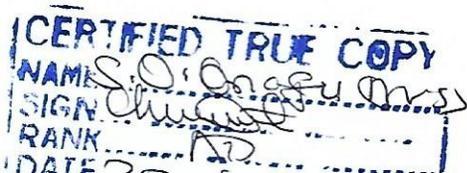
The court will therefore proceed to examine the evidence on record to see if this burden was discharged on the acceptable standard, which is balance of probabilities. **See section 134 of the Evidence Act.**

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The enabling statute sought to be interpreted, which is section 19 (1-9) of the Edo State Local Government Law 2000 as amended in 2002 provides thus:

Section 19:

1. The Chairman or his Vice may be removed from office in accordance with the provisions of this section if they committed misconduct.
2. Whenever a notice of any allegation in writing signed by not less than two third 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 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 resolve by motion, without 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 third majority of all the members of the Legislative Council.
5. Within 7 days of the passing of the 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 not being members of any public service, Legislative Council or political party, to investigate the allegation as provided in this section.



From the above provisions of this beautiful piece of legislation made to entrench our nascent democracy, it is clearly the intention of the legislators that no one who was elected into the office of chairman or vice chairman of the Local Government Council in Edo State should be lightly removed from office. The various constitutional steps outlined are to guarantee fair hearing and a fair process both to the holders of the office in question and the electorate who voted them into office. The above provisions being in simple English Language will be accorded their ordinary meaning; they are in no way ambiguous.

From the evaluation of the number of steps to be followed, it will take about three to four sittings of the Etsako West Local Government Legislative Council, at least one sitting of the investigative panel set up by the Legislative Council, and one sitting of the House of Assembly of Edo State approving the findings of the investigative panel and resolution of the Legislative Council adopting same to successful carry out an impeachment of the office holders. This process is broken down as follows:

1. The first sitting is for the leader of the legislative council to receive a notice of allegation of gross misconduct in writing signed by not less than two third of the majority of members of the legislative council, which notice is expected to be served on the affected executive office holders, the claimants in this case.
2. The second sitting is convened within fourteen days of the service of the notice of allegation of gross misconduct on the affected executive office holders for purpose of a resolution by motion without debate supported by votes of not less than two thirds of the majority of the members of the legislative council as to whether or not the said allegation should be investigated.
3. The third sitting is for the legislative council to convene within 7 days of the said resolution to investigate the allegation of gross misconduct for purposes of setting up a seven man panel composed of people of proven integrity from



- outside the council and not being members of any public service, legislative council or political party to investigate the said allegation.
4. The panel shall sit within four weeks and report their findings to the legislative council.
 5. The forth sitting is to receive the report of the panel of investigation showing the opportunity given to the affected executive office holders to defend themselves and the findings of guilt or otherwise of the said panel, which report by a resolution of not less two third of all members of the Legislative Council is then adopted and forwarded to the State House of Assembly.
 6. The State House of Assembly is to sit and re-examine the findings of the panel of investigation and assess the merits of the resolution of the legislative council and either approve or disapprove same with a resolution of not less than two thirds majority of the members of the State House of Assembly, and then forward their resolution back to the legislative council for necessary final action.

From the foregoing, it will take about 77 days from the first day of notice of allegation of gross misconduct to complete the process of an impeachment; broken down thus:

- a. At least within 14 days from the date of the notice of allegation, the Legislative Council move by 2/3 majority to investigate the allegation.
- b. Within 7 days of moving to investigate the allegation, the Legislative Council sets up a 7 man panel to investigate the allegation.
- c. Within four weeks (28 days) of its appointment, the panel of investigation will submit its report/findings to the Legislative Council. The office holders are entitled to appear before the panel to defend themselves.

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- d. Within 7 days of the receipt of the report of investigation by the Legislative Council, resolve by a 2/3 majority to adopt the said report of the panel and forward same to the House of Assembly that shall re-examine the findings of the panel and assess the merits of the resolution of the Legislative Council.
- e. Within four weeks (28 days) of the House of Assembly receiving the resolution of the Legislative Council, review the report of the panel and resolution of the Legislative Council and by not less than 2/3 majority votes of its members approve or disapprove the findings of the panel and resolution of Legislative Council.

The total period of days may be less than 77 days depending on how fast the process took within each window of time at each stage, but it is important to ensure that these timelines are followed and no steps are jumped to fast track the process.

In a dispassionate evaluation of the facts presented by the Claimants and the defendants, I find in paragraph 5(a) of the affidavit in support of the Originating Summons that the claimants were elected under the platform of the People's Democratic Party (PDP) and sworn into office as Chairman and Vice-Chairman of the Etsako West Local Government Council of Edo State on 4th September 2023. This fact was expressly admitted by the 1st - 7th Defendants in paragraph 3 of their counter affidavit. By paragraph 5(f) and 5 (g) of the affidavit in support, the claimants deposed to fact that they have a fixed term of 3 years in office from the date of their election and swearing into office on 4th September 2023, which tenure is still subsisting. This the 1st - 7th Defendants denied in paragraph 4 of their counter affidavit, ostensibly stating in paragraphs 11 - 18 as a follow up that the Claimants have been impeached and or validly removed from office in a manner provided for by law and so can no longer last three years in office.

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The Claimants in paragraphs 5 (x), 5 (y), 5cc as well as 6 (d), 6 (e) and (f) of their affidavit in support of the originating summons and paragraphs 13 - 16, 18 - 26 of their further affidavit stated that no notice of impeachment was ever served on them, that they were not invited to respond to any allegation of gross misconduct and no panel was constituted to investigate the accusation as required by law, that they only heard of their said impeachment from the news media and were subsequently prevented from accessing their offices by agents of the 8th Defendant.

That they were impeached on 8/1/25, but from the showing of the Defendants, the notice of impeachment were allegedly served on secretary to the Council on 23/1/25 after the date of impeachment of 8/1/25, and the letter of impeachment dated 9/1/25 also purportedly served on 23/1/25; that they were not given fair hearing.

In paragraph 5 (bb) of the affidavit in support, the Claimants stated that 5 out of 12 councilors in the Etsako West Local Government Legislative Council purportedly carried out the impeachment without the knowledge and participation of the majority of 7 others who have filed affidavit of fact disassociating themselves from the said impeachment. The said affidavit is Exhibit EW7 (i-vii); beyond the general denial of this fact by the defendants, the 1st - 7th Defendants did not depose to any fact challenging such deposition of fact that 7 councilors out of 12 of the Etsako West Legislative Council were not involved in the process of the said impeachment; that the Legislative Council was on recess when the said impeachment was carried out, that at no time was any motion moved to investigate any notice of gross misconduct. They did not sign any of such notice of allegation required to be signed by not less than 2/3 majority of the members of the legislative council supporting any allegation of gross misconduct against the Claimants purportedly presented to the leader of the legislative council.

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The 1st- 7th Defendants on their part had deposed to facts in paragraphs 12 - 19 of their counter affidavit that they followed the laid down procedure and attached exhibits EK1 to EK3 to show compliance.

Exhibit EK 1 is the Certified True Copy of Votes and Proceedings of Etsako West Local Government Legislative Council held on 30/12/24 at the legislative chambers Auchu. Other documents attached to the said exhibit EK1 are:

1. Notice of impeachment dated 30/12/24 addressed to the Vice-Chairman Etsako West Local Government Council, Auchu, which was stamped received on 15/1/25 by open registry of Etsako West Local Government Council Auchu; days after the said impeachment.
2. A letter addressed to the speaker, Edo State House of Assembly, dated 8/1/25 titled 'IMPEACHMENT OF HON. MARVELOUS MUHIZU ZIBIRI, EXECUTIVE CHAIRMAN, ETSAKO WEST LOCAL GOVERNMENT AND HON. BENJI OJIETU VICE CHAIRMAN, ETSAKO WEST' which was stamped received by Etsako West Local Government Auchu on 15/1/25. This letter purportedly communicated the impeachment of the Claimants on 8/1/25 to the speaker Edo State House of Assembly.
3. The third document attached is a letter of impeachment addressed to the Claimants dated 9/1/25 but stamped on 23/1/25 by open registry Etsako West Local Government Auchu; the stamp is not signed and not indicated if it is a receipt of correspondence stamp. This purported to communicate the impeachment to the Claimants. The letter has nine signatories. It was copied to the Nigeria Police and DSS as well as Edo State Local Government Service Commission.

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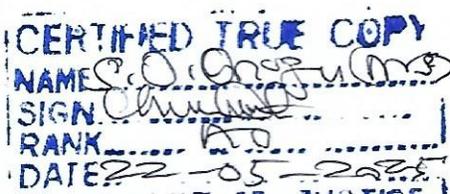
The 1st - 7th Defendants also has attached Exhibit Ek2 which is a resolution passed by Etsako West Legislative Council Auchi dated 12/9/24 addressed to the office of 6th Defendant then being occupied by 1st Claimant. It was stamped received same date. It called for furnishing the legislative Council with the formal income and expenditure from 5th September 2023 till 24th September 2024.

Exhibit EK3 is a resolution dated 8/1/25 addressed to HOLGA Etsako West Local Government Council Auchi notifying the Head of Local Government Administration (HOLGA) of the impeachment of the Claimants on 8/1/25 and that the leader of the legislative arm, who was the undersigned, will act as executive chairman instead of the 1st Claimant.

From the above state of facts I find that the Claimants were able to establish on the balance of probabilities or preponderance of evidence the assertion of their impeachment on 8/1/25 and that no notice whatsoever was served on them before the said impeachment was carried out.

From the documentary evidence attached to the affidavit of the 1st to 7th Defendants who have the burden of showing proof of service of the notice of allegation of acts of gross misconduct, and thereafter notice of hearing before any panel of investigations as well as the composition and findings of the panel of investigation, and thereafter the resolution of the legislative council adopting the findings of the panel of investigation and the resolution from the Edo State House of Assembly approving the said resolution of the legislative council and findings of the investigative panel, failed woefully to show such records of compliance with the laid down statutory procedure and therefore could not discharge the burden of proof.

On the face of Exhibit EK1, it reveals that the notice of impeachment addressed to Vice Chairman, 2nd Claimant was served on the open registry of Etsako West Local



Government Council on 15/1/25 which was 7 days after the said impeachment was carried out. Invariably he was not heard before his fate was hurriedly decided. As for the 1st claimant, the Chairman, there was no record of service of the allegations of gross misconduct against him or invitation to appear before any panel of investigation at all.

Secondly, the Speaker of the Edo State House of Assembly who was allegedly notified of the impeachment via a letter of 8/1/25 reveals on the face of the said letter a received stamp of 15/1/25 bearing Etsako West Local Government. I find that the said correspondence never got to the speaker; it was rather served on Etsako West Local Government on 15/1/25. Invariably, the Edo State House of Assembly through the Speaker played no role whatsoever in the process of the said impeachment of the claimants on 8/1/25 contrary to law.

From the showing of the 1st - 7th Defendants as exemplified in exhibit EK1 (Votes and Proceedings of Etsako West Local Government Legislative Council), held on Monday 30th December 2024 it was resolved that claimants be given 7 days to respond to the allegation of gross misconduct against them; though no record of service of the notice of allegation of gross misconduct on the claimants were presented by the Defendants before they were hurriedly pronounced as impeached. What appears to be such notice of allegation was titled Notice of Impeachment dated 30/12/24 same day of the sitting of the Legislative Council. That notice was only addressed to the Vice-Chairman (the 2nd Claimant), and it was served on 15/1/25 as shown on the face of the said correspondence with a signed received stamp of Etsako West Local Government Open Registry, 7 days after the said impeachment.

Meanwhile the sitting of 30/12/24 adjourned till Wednesday 8th January 2025 as shown in Exhibit EK1, the Votes and Proceedings of 30/12/24. There is no record of any

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other sitting after that of 30/12/24 before the claimants were pronounced impeached by the 1st to 5th defendants at the resumed sitting of 8/1/25.

Invariably at the resumed sitting of 8/1/25 the Claimants have not been served with any notice of allegation of acts of misconduct. The 1st to 5th Defendants, between those dates, failed to show the setting up of any 7 man panel to investigate the said allegation of gross misconduct, and no record of invitation to the claimants to attend that panel to defend them. The Defendants also did not show the report or findings of the said panel of investigation, nor the 2/3 majority resolution of the Legislative Council to adopt the said findings and forward same to the House of Assembly for review. There was no record of 2/3 majority approval from the Edo State House of Assembly of any resolution of the Etsako West Local Government Legislative Council to adopt the findings of the panel of investigation put forward by the Defendants.

The Defendants attempted to show that they communicated the House of Assembly of the resolution but that fell short of doing so as the said correspondence dated 8/1/25 was infact not delivered to the speaker but to the Etsako West Local Government Council, which was stamped received and signed for on 15/1/25. The said letter purportedly addressed to the speaker, Edo State House of Assembly titled. "IMPEACHMENT OF HON. MARVELOUS MUHIZU ZIBIRI, EXECUTIVE CHAIRMAN ETSAKO WEST LOCAL GOVERNMENT AND HON. BENJI OJIETU VICE CHAIRMAN ETSAKO WEST" reads in part at paragraphs 1 and 2 thereof thus:

"We wish to refer to the above subject and to inform you that at the plenary sitting of Etsako West Legislative Council held on 8th January 2025, the attention of the House was drawn to various misconduct reported against the Executive Chairman, Hon. Marvelous Muhizu Zibiri and Vice-

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Chairman, Hon. Benji Ojietu, this gross misconduct include, misappropriation of funds, contracts executed without seeking approval from this Honourable House as required by law.

Honourable members deliberated on the issue extensively and noted that it was an illegal act and an impeachable offence. Therefore, the House unanimously resolved that the executive chairman and vice-chairman are impeachable and they hereby stand impeach (SIC)"

From this correspondence, it is crystal clear that 1st to 5th Defendants impeached the claimants at their resumed sitting of 8/1/25 after their sitting of 30/12/24 without taking any further steps as required by law. It was at their resumed date of sitting on 8/1/25 they pronounced the claimants impeached. There was obviously no panel set up to investigate the allegation; no resolution of the Legislative Council adopting the said report of the investigative panel, no review of such findings of the panel was undertaken by the House of Assembly approving same by a resolution of 2/3 majority of its members before the 1st- 5th Defendants pronounced the claimants impeached.

Infact by the letter partly reproduced in this judgment, the 1st Defendant who purported to write to the speaker was merely informing the speaker of the act of impeachment already carried out by them on 8/1/25 and not communicating any findings of the panel of investigation and their resolution adopting same to the House of Assembly for review and possible approval as clearly spelt out in the law.

The 1st - 5th Defendants clearly violated the clear and unambiguous provisions of section 19 of the Edo State Local Government Law 2000 as amended in 2002. I find that the 1st to 7th Defendants have failed woefully to discharge the burden placed on them by law to justify the impeachment in compliance with law. I hold that they acted

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unlawfully. I hold also that the constitutional rights to fair hearing of the Claimants were violated; their said impeachment is a sham and a rape on democracy.

I therefore answer all the questions posed in the Originating Summons in favour of the Claimants. The existence of a democratically elected Local Government is guaranteed by section 7 of the Constitution of Nigeria by a law made for such by the House of Assembly of the State and in this case the Local Government Law of Edo State.

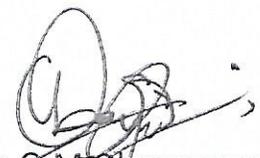
The Defendants are under obligation to comply with the said Edo State Local Government Law 2000 as amended in 2002 made pursuant to the Constitution. The Local Government is independent and cannot be annexed by any other tier of government under any guise whatsoever; it is that local government that brings democracy closer to the people. Should there be any basis to remove an elected Local Government Executive, it must be in accordance with the law and can never be permitted to be done arbitrarily as was attempted in this case.

Consequently I make the following orders:

1. I grant the declaratory reliefs 1 - 8 as claimed by the Claimants.
2. I nullify the impeachment of the claimants as Chairman and Vice Chairman of Etsako West Local Government Council.
3. I nullify the appointment and swearing in of the 1st defendant as acting Chairman of Etsako West Local Government Council.
4. I order the immediate reinstatement of the Claimants to their offices as Chairman and Vice-Chairman of Etsako West Local Government Council of Edo State together with the rights, privileges, paraphernalia and perquisites of the said offices.

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5. I order perpetual injunction restraining the Defendants either by themselves, agents, privies, representatives or associates or persons acting for or through them and or deriving authority from them from preventing Claimants from performing the functions of the office of the Local Government Chairman and Vice-Chairman of Etsako West Local Government Council of Edo State.
6. I order the 8th Defendant, the Inspector General of Police to provide protection to the Claimants for the peaceful resumption and discharge of their duties and function as bestowed in their offices as Chairman and Vice Chairman of Etsako West Local Government Council respectively until the end of their three year tenure in office in September 2026.
7. I order cost of this action in the sum of N1,000,000.00 each to the claimants, jointly and severally against the 1st to 5th defendants only.


 Hon. Justice O.M. Obayuwana
 Judge
 15/5/25

Counsel:

1. J.O. Okeme Esq. holding the brief of Anderson Asemota Esq. for Claimants.
2. Chief Y. Hambali Esq. holding the brief of Evans Ogbeifun Esq. for 1st to 7th Defendants.
3. 8th Defendant unrepresented.

CERTIFIED TRUE COPY
 NAME: C. O. ...
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 HIGH COURT OF JUSTICE
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