

IN THE HIGH COURT OF RIVERS STATE OF NIGERIA
IN THE DEGEMA JUDICIAL DIVISION
HOLDEN AT DEGEMA
BEFORE HIS LORDSHIP, HON JUSTICE DR. O. GBASAM (JUDGE)
DELIVERED ON MONDAY THE 10TH DAY OF JUNE, 2024

SUIT NO.: DHC/20/CS/2024

BETWEEN:

1. HYACINTH WOSA AMADI
2. COMRADE GODSPOWER OBUAH
3. TONYE DATONYE
4. BARIKPE GIBSON EENYIE

(For themselves and as representing other concerned indigenes and registered voters in Rivers State)

===== CLAIMANTS

AND

1. RT. HON. MARTIN AMAEWHULE
(For Himself and as representing the other 26 members of the Rivers State House of Assembly)
2. RIVERS STATE HOUSE OF ASSEMBLY
3. ATTORNEY GENERAL OF RIVERS STATE
4. PEOPLES' DEMOCRATIC PARTY (PDP)
(Joined by Order of Court made on 10/06/2024)

===== DEFENDANTS

RULING/JUDGMENT

This is a Composite Ruling/Judgment. Thus, in this Originating Summons, there are two Rulings. The first one, is on the Motion on Notice challenging the jurisdiction of this court. The other ruling is on the Motion on Notice for joinder. I shall determine the application challenging the jurisdiction of this court, first. Thereafter, I shall determine the Motion on Notice for joinder. And I shall conclude with the Judgment on the Originating Summons.

RULING ON MOTION CHALLENGING JURISDICTION OF COURT

The 1st defendant filed a Motion on Notice dated 10/05/2024 and filed on 17/05/2024. It is brought pursuant to order 42 of the Rivers State High Court (Civil Procedure) Rules 2023; Section 6(6)(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the inherent jurisdiction of this Honourable Court. The 1st defendant prays this court for the following:

1. AN ORDER striking out this SUIT NO. DHC/20/CS/2024 for want of jurisdiction on the part of this Honourable Court to hear and determine it.

2. AND FOR SUCH FURTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstances of this case.

The grounds upon which this application is brought include the following:

- a. The jurisdiction to hear and determine the question whether the office of a member of the House of Assembly of a state has become vacant is vested in the Federal High Court. Consequently, this Honourable Court lacks the jurisdiction to determine that question.
- b. The issues and or matters in this suit have been settled and/or determined in the judgment of the Federal High Court, Abuja Judicial Division in Suit No. FHC/ABJ/CS/I613/2023: RIVERS STATE HOUSE OF ASSEMBLY & ANOR V. THE NATIONAL ASSEMBLY & ORS, which is a judgment in rem.
- c. On the 24/1/2024 the Federal High Court sitting at Abuja issued an Interlocutory Orders of Injunction in Suit No.: FHC/ABJ/CS/1681/2023: RT. HON. MARTIN CHIKE AMAEWHULE & 26 ORS v. INEC & 5 ORS wherein the 2nd Defendant/Respondent herein was restrained jointly and or severally, by herself or her servants, agents, officials, officers, staff, delegates of other persons deriving authority from them (anyhow so called), from interfering with or impeding in any way or attempting to interfere with or impede in any way the performance of the Plaintiffs' official and legislative functions as the Speaker, Deputy Speaker and Members, respectively of the Rivers State House of Assembly, pending the hearing and determination of the substantive suit.
- d. The Claimants lack the locus standi to institute and maintain this action. They are meddlesome interlopers of the worst kind.
- e. This suit which is designed to harass, embarrass, oppress, intimidate and irritate the 1st Defendant constitutes a gross abuse of the judicial process.
- f. The Claimants are busy bodies who are complaining on behalf of another party/person who has not retained them and/or their services.
- g. The instant suit is contentious, and Originating Summons is not the proper procedure to commence it.

It is supported by an affidavit of 5 paragraphs and a written address with Exhibits 1 – 10. Chief Orbih, SAN, adopted the written address and urged this Court to strike out or dismiss this action for want of jurisdiction. The Claimants filed a counter affidavit and written address on 30/05/2024 in opposition to the Motion on Notice filed by the 1st Defendant. Dr. Oporum, adopted the written address and urged this Court to strike out the Motion on Notice with cost.

By paragraphs 3 and 4 of the affidavit in support, the 1st defendant deposed that the issues and or matters in this suit have been settled and or determined by the judgment of the Federal High Court, Abuja Judicial Division in Suit No.: FHC/ABJ/CS/1613/2023: RIVERS STATE HOUSE OF ASSEMBLY & ANOR V. THE NATIONAL ASSEMBLY & ORS, which judgment is a judgment in rem.

On the 24/01/2024 the Federal High Court sitting at Abuja issued Interlocutory Orders of Injunction in Suit No.: FHC/ABJ/CS/1681/2023: RT. HON. MARTIN CHIKE AMAEWHULE & 26 ORS v. INEC & 5 ORS wherein the Respondents thereat were restrained jointly and or severally by themselves or their servants, agents, officials, officers, staff, delegates of other persons deriving authority from them (anyhow so called), from interfering with or impeding in any way or attempting to interfere with or impede in any way the performance of the Plaintiffs' official and legislative functions as the Speaker, Deputy Speaker and Members, respectively of the Rivers State House of Assembly, pending the hearing and determination of the substantive suit. See EXHIBIT 1.

The Claimants are busy bodies complaining on behalf of another party/person who has not retained them and or their services. There are three million, two hundred and fifteen thousand, two hundred and seventy-three (3,215,273) registered voters in Rivers State of Nigeria. The Claimants are not members of the Rivers State House of Assembly. The subject matter of this suit is already being litigated upon in other Suits in which the Defendants are already parties. Some of the said suits are as follows:

1. SUIT NO.: FHC/PH/CS/01/2024 _ HON. EMMANUEL KEGUNANI & 3 ORS v. HON. (MRS) NKEMJIKA EZEKWE & 3 ORS which is attached herein and marked as Exhibit 2.
2. SUIT NO.: FHC/PH/CS/28/2024 _ CHARLES OKECHUKWU ANYANWU & 5 ORS v. RIVERS STATE HOUSE OF ASSEMBLY & 7 ORS which is attached herein and marked as Exhibit 3.
3. SUIT NO: FHC/PH/CS/25/2024 _ LABOUR PARTY v. RIVERS STATE HOUSE OF ASSEMBLY & 29 ORS which is attached herein and marked as Exhibit 4.
4. SUIT NO: PHC/3771/CS/2023 _ JAKE EPELLE & 2 ORS v. GOVERNOR OF RIVERS STATE & 30 ORS. Which is attached herewith and marked as Exhibit 5.
5. SUIT NO.: PHC/3806/CS/2023 _ DR. CHUKWUMA A. J. CHINWO & ANOR v. THE ATTORNEY-GENERAL OF RIVERS STATE & 3 ORS which is attached herewith and marked as Exhibit 6.
6. SUIT NO: FHC/PH/CS/269/2023 _ BECAUSE OF OUR TOMORROW PARTY (BOOT PARTY) & 2 ORS v. HON. JOHN DOMNIC IDERIMA & 26 ORS which is

attached herewith and marked as Exhibit 7.

7. SUIT NO.: FHC/PHC/CS/12/2024 _ Geotel Foundation for Citizens and Leadership Development & 5 Ors. v. Rivers State Government & 32 Ors. which is attached herewith and marked as Exhibit 8.
8. FHC/PH/CS/38/2024 _ Barrister Ekine Egbelekuro & 41 Ors. v. Governor of Rivers State & 30 Ors. which is attached herewith and marked as Exhibit 9.

By virtue of Section 272 (3), of the Constitution of the Federal Republic of Nigeria 1999 (as amended) only the Federal High Court has the jurisdiction to determine whether or not the term of office of a member of a House of Assembly of a State has ceased or become vacant. This Honourable Court lacks the jurisdiction to determine that question. The instant suit is contentious and Originating Summons is not the proper procedure to commence this suit.

That this suit is incompetent and this Honourable Court lacks the jurisdiction to hear and determine same. The Federal High Court, Abuja Division on 22/1/2024 delivered judgment in SUIT NO. FHC/ABJ/CS/1613/2023 - RIVERS STATE HOUSE OF ASSEMBLY & ANOR v. THE NATIONAL ASSEMBLY & ORS. A Copy of the said Judgment is annexed herewith and marked EXHIBIT 10. The issues for determination in this suit are the same as those for determination in EXHIBITS 2 to 9 attached to this affidavit.

In the written address in support, the 1st defendant identified the following issues for determination:

- a. "Whether this Honourable Court has the jurisdiction to hear and determine the Claimants' suit?"
- b. "Whether having regard to the contentious nature of the allegations in the Originating Summons and Affidavit in Support, Originating Summons is the proper procedure to commence this suit?"

On issue one, Chief Orbih, SAN, submitted that the law is well settled and trite that a Court of law can only have and properly exercise its jurisdiction to hear and determine a case before it where the following conditions are satisfied, namely;

- i. The proper parties are before the Court,
- ii. Where the Court is properly constituted as to members and qualification,
- iii. Where the subject matter of the case is within its jurisdiction and there are no features in the case which prevent the Court from exercising jurisdiction; and
- iv. Where the case comes before the Court initiated by due process of law, and upon fulfillment of any condition precedent to the assumption

of jurisdiction.

He referred to:

1. C.B.N vs. S.A.P. NIG. (2005) 3 NWLR (Pt. 911) 152 at 177.
2. MADUKOLU vs. NKEMDILIM (1962) 1 ALL NLR 587 at 595,
3. SALATI vs. SHEHU (1986) 1 NWLR (Pt. 15) 198 at 218.
4. HUM v. MADUAGWU (2021) 3 NWLR (Pt. 1770) 584 at 624;
5. LOKPOBIRI V. OGALA (2016) 3 NWLR (Pt. 1499) 328 at 360-361.

Counsel submitted that jurisdiction is the life-blood, fulcrum, centre-pin or the main pillar upon which the validity of any decision of any Court stands and without which no proceeding, however brilliantly conducted by the Court, can be valid. It cannot be assumed or implied. It cannot also be conferred by consent or acquiescence of parties. He referred OHAKIM V AGBASO (2010) 19 NWLR (Pt. 1226) 172 at page 243 Para A-E.

Senior counsel submitted that in MADUKOLU vs. NKEMDILIM (Supra) the Court held inter alia that even where the subject matter of a case is within the Court's jurisdiction, there must be no feature in the case that infringes on the Court's jurisdiction to adjudicate over it. The instant case has a plethora of features that robs this Honourable Court of the jurisdiction to hear and determine it. For instance, the Federal High Court has already in a judgment in rem settled some of the issues for determination in it. The Federal High Court has also issued an Order of interlocutory injunction that touches directly on the subject matter of the instant case. Another feature in the case that robs this Honourable Court of the jurisdiction to entertain this suit is the fact that the Claimants lack the locus standi to commence and maintain this suit. Additionally, the instant suit constitutes a gross abuse of the judicial process.

Senior counsel submitted that it is clear from Section 272(3) of the Constitution that the Court vested with jurisdiction to hear and determine whether the seats of the 1st to 27th Defendants as Members of the Rivers State House of Assembly have ceased or have become vacant, is the Federal High Court and not this Honourable Court. He referred to INEC v. DPP & ORS (2014) LPELR-22809 (CA) (Pp. 45-46 paras. F), per Ogunwumiju JCA (as she then was), OFOBRUKU v. DPP & ANOR (2015) LPELR-24899(CA) (Pp. 11-21 paras. E-E).

Learned silk submitted that it is clear from the above cited authorities that this Honourable Court lacks the jurisdiction to determine whether or not the seats of the 1st Defendant and other members of the Rivers State House of Assembly who purportedly defected from the PDP to the APC have ceased or become vacant. The Claimants cannot ventilate their grievance in this Honourable Court.

On Locus Standi senior counsel submitted that the Claimants do not have the locus standi to institute this action. The term "locus standi" denotes the legal capacity to institute proceedings in a Court of law. The term is also used interchangeably with

the term "standing" or "title to sue" he referred to *FAWEHINMI V AKILU* (No.1) (1987) 4 NWLR (Pt.67)797; *AKINFOLARIN V AKINNOLU* (1994) 3 NWLR (Pt.335)659. He submitted that the issue of locus standi does not depend on the success or the merits of the case but on whether the Claimants have sufficient interest or legal right in the subject matter of the dispute. He referred to *LADEJOBI V OGUTAYO* (2004) 18 NWLR (PT.904) 149.

Senior counsel submitted that the claimants did not show in the originating processes that they are registered members of the PDP or APC platform on which the 1st Defendant and other members of the House of Assembly were elected and the party they purportedly defected to respectively. The Claimants neither stated that they are or showed that they are members of the Rivers State House of Assembly. The mere assertion by the Claimants that they are registered voters is insufficient to confer on them the locus standi to institute this action. There are three million, two hundred and fifteen thousand, two hundred and seventy three (3,215,273) registered voters in Rivers State of Nigeria. The Claimants' rights as Registered Voters are not over and above all the other Registered Voters in Rivers State. The Claimants did not state any interest that is peculiar to them that conferred on them the locus standi to institute this action. We submit that the Claimants have not disclosed sufficient interest in this suit; or shown any real and tangible interest. He referred to *AG LAGOS STATE V. EKO HOTELS LTD* (2006) 18 NWLR (PT 1011) 378 AT 450, PARA F-H.

He submitted that from the Originating Summons and Affidavit in Support, the Claimants have not disclosed clearly their interest, rights, advantages, duties, liabilities, loses or the like, connected with them whether present or future, ascertained or potential in the subject matter of this suit. Indeed, the Claimants' Affidavit in Support is bereft of any facts to show that they have interest in the subject matter. The Claimants, therefore have not convinced the Honourable Court that they have the right and standing to ventilate their grievances before this Honourable Court without any impediment, inhibition and or restriction. Senior counsel referred to *GOVERNOR OF EKITI STATE V. FAKIYESI* (2009) LPELR-K353 (CA).

Senior counsel submitted further that the Originating Summons and Affidavit in Support do not disclose any legal or equitable right and interest of the Claimants in the subject matter. These processes do not disclose that the right or interest of the Claimants are in imminent danger of being violated or adversely affected by the actions or decisions of the Defendants. He urged the Honourable Court to hold that the Claimants lacks the locus standi to bring this suit.

Chief Orbih, SAN, submitted that that this Suit is a gross abuse of the process of this Honourable Court. A perusal of Exhibits 2-9 will reveal that they all deal with the subject of whether or not the 1st Defendant and other members of the 2nd Defendant can legitimately retain their membership of the Rivers State House of Assembly having regards to their purported defection from the Peoples' Democratic

Party (PDP) on whose platform they were elected into the Rivers State House of Assembly, to the All Progressive Congress (APC). The question which arises is: can this Honourable Court allow the Claimants to maintain this action in the light of Exhibits 2-9 attached to the Affidavit having regard to the high probability of conflicting judgments that may arise from the suits? He answered this question with a resounding NO.

Senior counsel submitted that the term abuse of court process cannot be judicially defined with any mathematical precision. He referred to *Mallam & ors v. Registered Trustees of Ipman* (2016) LPELR-41606(CA)@Pp. 33-35 paras. A, on the definition of abuse of court process. Counsel submitted that abuse of court process means instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action. A common feature of all the cases on abuse of process is that the concept is the improper use of the judicial process by a party in litigation to interfere with the efficient and effective administration of justice to the irritation and annoyance of his opponent. It is also where there is no iota of law supporting a Court process or where it is premised on frivolity or recklessness. He referred to *Jadesimi Vs Okotie-Eboh* (1986) 1 NWLR (Pt 16) 264, *Saraki Vs Kotoye* (1992) 9 NWLR (Pt. 264) 156; *Jimoh Vs Starco (Nig) Ltd* (1998) 7 NWLR (Pt 558) 523; *Abubakar Vs Bebeji Oil and Allied Products Ltd* (2007) 18 NWLR (Pt. 1066) 319; *Tomtec (Nig) Ltd Vs Federal Housing Authority* (2009) 18 NWLR (Pt 1173) 358, *Ogoejeifo Vs Ogoejeifo* (2006) 3 NWLR (Pt. 966) 205, *AH Vs Albishir* (2008) 3 NWLR (Pt. 1073) 94; *Igbeke Vs Okadigbo* (2013) 12 NWLR (Pt. 1368) 225." Per ABIRU, J.C.A *Banjo & Ors v. Eternal Sacred Order of C. & S* (1975) LPELR-741 (SC) (Pp. 8-9 paras. E)

Senior counsel urged this court to hold that the instant case is one too many. The suit is designed to harass, intimidate and irritate the 1st Defendant as well as scandalize the Court especially when it is leading the Court down the dangerous path of making conflicting Court Orders especially against the judgment in Exhibit 10, the Order of interlocutory injunction in Exhibit 1 and Suits on the same subject matter in Exhibits 2 to 9.

Senior counsel submitted that where a court finds that a process amounts to an abuse, the proper order to make is that of dismissal. He referred to *DANTIYE & ANOR V. INEC & ORS.* (2020) LPELR-52030(CA) (Pp. 41 paras. C).

Senior Counsel on the authority of *DANTIYE & ANOR V. INEC & ORS.* (Supra), urged this court to dismiss this suit for constituting a gross abuse of the process of this Honourable Court.

On issue two, Chief Orbih, SAN, submitted that Courts have in a long line of cases stated when it is appropriate or inappropriate to commence an action by Originating Summons. He referred to *INAKOJU v. ADELEKE* (2007) 4 NWLR (Pt. 1025) @ 701, paras D-E, to the effect that originating summons is used when the

sole or principal question in issue is or is likely to be one of the constructions of a written law or any instrument or of any deed, Will, contract or other document or other question of law or in a circumstance where there is not likely to be in dispute as to the facts. In general terms, it is used for non-contentious actions - i.e. those actions where facts are not likely to be in dispute. It is important to stress that when proceedings are commenced by originating summons, pleadings are not used, rather, affidavit evidence is used. He referred to OLLEY v. TUNJI (2013) 10 NWLR (Pt. 1362) 275 @ 331, paras F-H, EZE V. APGA (2003) NWLR (PT 1712) 413 AT 444; KEYAMO V. HOUSE OF ASSEMBLY LAGOS STATE (2002) 18 NWLR (PT 799) 605 AT 613; J EV V. IYORTYOM (2014) 14 NWLR (PT 1428) 575 AT 615; SANI V. KOGI STATE HOUSE OF ASSEMBLY (2019) 4 NWLR (PT 1661) 172.

He submitted that in the instant suit, the Honourable Court is not being called upon to interpret documents or Deeds or Will. Rather, the Honourable Court is faced with Affidavit in Support of the Originating Summons which makes allegations that the 1st Defendant has lost his membership of the Rivers State House of Assembly. These allegations not only require proof but there are likely to be disputes as to the facts. Furthermore, the questions before the Honourable Court in the instant Originating Summons are not questions of law but at best questions of mixed law and facts that require the calling of oral and documentary evidence to establish, and therefore considered hostile and contentious. He submitted that by the law, this suit was inappropriately commenced by Originating Summons and should be struck out. He referred to OSUAGWU V. EMEZI (1998)12 NWLR (PT 579) 640.

The claimants' counter affidavit in opposition to the 1st defendant/applicant's motion on notice filed on 17/05/2024. The deponent BARIKPE GIBSON EENYIE, stated as follows:

1. That I am the 4th Claimant/Respondent on record and by virtue of my position and facts made available to me where so stated, I am conversant with the facts of this case.
2. That I have the consent and authority of the 1st, 2nd and 3rd Claimants/Respondents to depose to this affidavit on our behalf.
3. That the Claimants/Respondents have seen and read the Motion on Notice along with the affidavit in support filed by the 1st Defendant/Applicant on 17/05/2024 and states that the said supporting affidavit contains facts which are either total falsehood or concocted facts aimed at misleading this Honourable Court and therefore same are hereby denied.
4. That in response to paragraph 3(a) - (f) of the said supporting affidavit, I state as follows:
 - a. That the issues and or matters in this suit are different from the ones determined in Suit No. FHC/ABJ/CS/1613/2023 before the Federal

High Court sitting at Abuja Judicial Division. The Claimants were not parties to that suit too.

- b. That the parties, issues and subject matter in this suit are not the same with that of Suit No. FHC/ABJ/CS/1681/2023 wherein the said interlocutory orders of injunction were made and the said orders have nothing to do with the subject matter of this suit.
 - c. That the Claimants have interest in the subject matter of this suit as the wrongful actions of the Defendants complained about in this suit affects the Claimants who are indigenes/citizens of Rivers State who are constitutionally entitled to good governance in the state.
 - d. That the Claimants are not parties to the cases mentioned in paragraph 3(f)(1) - (8) of the affidavit in support of motion.
5. That I was informed by our Solicitor, A. A. Abo, Esq of Principal Counsel in Chambers at No. 4 Hospital Road, Port Harcourt, Rivers State on 23/05/2024 at about 2pm while reviewing this application and I verily believe him as follows:
- a. That section 272(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) does not confer EXCLUSIVE jurisdiction on the Federal High Court to hear and determine the question whether the term of office of a member of the House of Assembly of a State, a Governor or Deputy Governor has ceased or become vacant. The State High Court also has jurisdiction to entertain such matters.
 - b. That the facts of this case are non-contentious and can be determined under the Originating Summons procedure.
 - c. That the Claimants are not parties to Suit No. FHC/ABJ/CS/1613/2023 and those in Exhibits 2 to 9 attached to the affidavit in support of motion.
6. That it would be in the interest to dismiss the 1st Defendant's application and proceed to hear the case on its merit.
7. That I depose to this affidavit in good faith believing the contents to be true and correct to the best of my knowledge and in accordance with the provisions of the Oaths Act, LFN 2004.

In the claimants' written address in opposition to the 1st defendant/ applicant's motion on notice, the claimants identified two issues for determination:

1. Whether this Honourable Court has the jurisdiction to hear and

determine this suit.

2. Whether this suit was properly commenced by way of Originating Summons procedure.

Mr. Abo, firstly, concurred with the arguments of the 1st Defendant/Applicant at paragraphs 3.01 - 3.02 to the effect that jurisdiction is the life-wire and main pillar upon which the validity of any decision of any Court stands and without which no proceedings, however brilliantly conducted by the Court, can be said to be valid. However, as we shall show anon, we submit with respect that this Honourable Court has jurisdiction over the parties and subject matter of this suit and can therefore proceed to hear and determine the Claimants' suit.

Counsel submitted that it is law that a Court is competent to assume jurisdiction and adjudicate over a matter when the following conditions are satisfied:

- a. it is properly constituted as regards members and qualifications of the members of the bench, and no member is disqualified for one reason or another; and
- b. the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and
- c. the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

He referred to MADUKOLU v. NKEMDILIM (1962) 2 SCNLR 341; DURBAR HOTEL PLC v. ITYOUGH (2017) 7 NWLR (Pt. 1564) 256 at 259, ratio 1; BUREMOH v. AKANDE (2017) 7 NWLR (Pt. 1563) 74 at 80, ratio 8.

On jurisdiction under section 272(3) of the 1999 Constitution, counsel submitted that in determining the jurisdiction of the Court in any case before it, recourse must be had to the claims before the Court as contained in the originating processes to see whether the claims can be accommodated within the provisions of the Constitution or Statute conferring jurisdiction on the particular Court. He referred to GOVERNOR OF KWARA STATE v. LAFIAGI (2005) 5 NWLR (Pt. 917) 139 at 151, para. D.

He submitted that the 1st Defendant has argued under paragraph 4.01 of his written address, albeit erroneously in our opinion, that the Claimants' suit seeks to declare the seats of the 1st Defendant and the other 26 members of the 2nd Defendant vacant or that same has ceased and that by virtue of section 272(3) of the 1999 Constitution (as amended), it is only the Federal High Court that has jurisdiction to entertain the Claimants' claim in this suit. He referred this court to the Claimants' claims as endorsed on the Amended Originating Summons filed on

23/04/2024 and submitted that nowhere can you find a relief seeking the orders of this Honourable Court to declare the seats of the 1st Defendant and the other 26 members of the 2nd Defendant vacant. That being the case, the State High Court has jurisdiction to entertain the Claimants' suit.

Assuming without conceding that the Claimants suit seeks to declare the seats of the 1st Defendant and the other 26 members of the 2nd Defendant vacant or that same has ceased, it is his submission that there is nothing in the wordings of section 272(3) of the 1999 Constitution that confers EXCLUSIVE jurisdiction on the Federal High Court to determine questions as to whether the term of office of a member of the House of Assembly of a State has ceased or become vacant. He submitted that as it stands presently, both the Federal High Court and the State High Court have concurrent jurisdiction to determine questions as to whether the term of office of a member of the House of Assembly of a State has ceased or become vacant.

It is our submission that wherever the Constitution intends to confer exclusive jurisdiction on any Court, it states so expressly. Exclusive jurisdiction cannot be inferred or arrived at by inference. For example, under section 232 of the 1999 Constitution (as amended), exclusive jurisdiction was conferred on the Supreme Court of Nigeria with respect to the matters stated therein. Similarly, section 239(1) confers exclusive jurisdiction on the Court of Appeal on the matters specified therein. Under section 251(1) of the 1999 Constitution, the Federal High Court was conferred with exclusive jurisdiction to entertain the matters specified therein. The jurisdiction of the State High Court to entertain matters remains unlimited, save for the matters specified under section 251(1) for which the Federal High Court was given exclusive jurisdiction to entertain.

The provisions of sections 249, 250, 251, 252, 253 and 254 1999 Constitution deal exclusively with the Federal High Court while the provisions of sections 270, 271, 272, 273 and 274 of the 1999 Constitution deal/relate exclusively with/to the High Court of a State. Every matter for which exclusive jurisdiction is not conferred on any other Court in Nigeria, the State High Court has jurisdiction to hear and determine such matter. He submitted that section 272(3) of the 1999 Constitution (as amended) only allowed the Federal High Court to share jurisdiction with the State High Court in respect of matters seeking to determine questions as to whether the term of office of a Governor or Deputy Governor or a member of the House of Assembly of a State has ceased or become vacant. If the framers or drafters of the 1999 Constitution (as amended) intended to confer EXCLUSIVE jurisdiction on the Federal High Court under section 272(3) of the Constitution, they would have stated so expressly or even add it to the matters listed under section 251(1) of the Constitution. We urge my Lord to so hold.

Counsel submitted that the Constitution of any country is the organic law or grundnorm of the people and a very important composite document, the interpretation or construction of which is subject to recognized cannon of

interpretation known to law and designed or crafted to enhance and sustain the relevance in which the Constitutions are held World over. He referred to A.G. FEDERATION & ORS v. ATIKU ABUBAKAR & ORS (2007) 32 NSCQR 1 at 107-108, per ONNOGHEN, JSC (as he then was).

Counsel submitted that section 239(1) of the 1999 Constitution covers exclusive jurisdiction on the Court of Appeal to determine questions as to whether the term of office of the President or Vice-President has ceased or become vacant. Section 251(4) of the 1999 Constitution donated jurisdiction to the Federal High Court to determine questions as to whether the term of office of a Senator or member of the House of Representatives has ceased or become vacant. The drafters of the Constitution would have added that of Governor and member of House of Assembly to section 251(4) if they intended to give exclusive jurisdiction to the Federal High Court in that regard. Since exclusive jurisdiction was not given to the Federal High Court under section 272(3), the State High Court also have jurisdiction to entertain suits to determine questions as to whether the term of office of a Governor or Deputy Governor or a member of the House of Assembly of a State has ceased or become vacant. This is the intendment of the drafters of the Constitution and we urge my Lord to adopt the purposive rule of interpretation to give effect to the legislative purpose of section 272(3).

Explaining the import of the purposive rule of interpretation, the Supreme Court in MARWA v. NYAKO (2012) LPELR-7837(SC), pp. 171-172, paras. D- A) explained, per ADEKEYE, JSC by way of emphasis, that the objective of the purposive approach is to give effect to the legislative purpose of the enactment by interpretation of the words to accord with such purpose. After all, said the apex Court, the law of statutory interpretation is clear that Courts invoke their interpretative jurisdiction to vindicate the intention of the law makers. The Courts cannot plant their judicial mind or thoughts in place of the intention of the lawmakers. He referred to A-G LAGOS STATE v. EKO HOTELS LTD (2006) 18 NWLR (Pt. 1011) 378, ABUBAKAR v. YAR'ADUA (2008) LPELR-52(SC), A.G. LAGOS v A.G. FEDERATION (2003) LPELR-620 (SC), NAFIU RABIU v. THE STATE (1980) 8-11 SC 130 at pages 148-149,

He submitted that without doubt that EXCLUSIVE jurisdiction was not intended and was not conferred on the Federal High Court under section 272(3). Rather, the State High Court, under whose jurisdictional section (that is, section 272), also have jurisdiction to hear and determine questions as to whether the term of office of a Governor or Deputy Governor or a member of the House of Assembly of a State has ceased or become vacant.

On locus standi, counsel submitted that contrary to the argument of the 1st Defendant at paragraphs 4.2 - 4.6 of his written address, the Claimants have the locus standi to institute this suit which is public interest litigation to protect the violation of the Constitution, the grundnorm which binds the citizens. The 1st Defendant and the other 26 members of the 2nd Defendant were elected by the

Claimants and other Rivers indigenes and resident alike to represent them in the 2nd Defendant and make laws for the GOOD GOVERNANCE of the State. They defected from the PDP and joined the APC without lawful excuse and by the authority of ABEGUNDE v. THE ONDO STATE HOUSE OF ASSEMBLY they lost their seats AUTOMATICALLY. Instead of going home after their defection and loss of their seats in the 2nd Defendant, the 1st Defendant and his committee of friends in the 2nd Defendant continued to purport to make laws for the State. One of such laws was the Rivers State Local Government (Amendment) Law, 2024 which purports to elongate the term of office of Local Government Council Chairmen beyond their 3 years term of office which the Claimants and other voters voted them for. He referred to paragraphs 13 and 14 of the affidavit in support of originating summons. He referred to CENTRE FOR OIL POLLUTION WATCH v. NNPC (2019) 5 NWLR (Pt. 1666) 518 (SC) where the Supreme Court relied on foreign case law authorities and pulled significance of the liberal and progressive portion outlined in BELLO, JSC's leading judgment in ABRAHAM ADESANYA v, PRESIDENT FRN (1981) 2 NCLR 385 and welcomed the liberal position held in FAWEHINMI v. AKILU (1982) 18 NSCC (Pt. 11) 1265 at 1301.

He urged this court hold that the Claimants have the locus standi to institute this action as public interest litigation to protect the rape and abuse Constitutional provisions by the Defendants.

On abuse of court process, counsel submitted that the 1st Defendant's argument is grossly misconceived. As rightly stated in the 1st Defendant's address, abuse of court process simply in practical sense denotes a situation where a party has instituted a multiplicity of suits against the same opponent in respect of the same subject matter and on the same issues. He referred to R-BENKAY NIGERIA LTD v. CADBURY NIGERIA LTD (2012) LPELR - SC. 29/2006, CHIEF VICTOR UMEH & ANOR v. PROFESSOR MAURICE IWU & ORS (2008) LPELR - SC. 60/2007,

Counsel submitted that in the instant case, the present suit does not constitute an abuse of court process as the parties, subject matter and issues in this suit and that of Suit No. FHC/ABJ/CS/1613/2023 and Suit No. FHC/ABJ/CS/1681/2023 are clearly different. The Claimants are not parties in Suit No. FHC/ABJ/CS/1613/2023 and Suit No. FHC/ABJ/CS/1681/2023 and they are also not privies of the Defendants in the said suits.

On the contention of the 1st Defendant that this suit was inappropriately commenced by originating summons and therefore same should be struck out, counsel submitted that this suit was commenced vide the originating summons procedure for this Honourable Court to make declarations and orders after a careful scrutiny of Constitutional provisions, particularly sections 100 and 109 of the 1999 Constitution (as amended). He referred this court to the reliefs sought and the questions for determination set out in the Claimants' originating summons filed on 23/04/2024. This Honourable Court is called upon to interpret those sections to ascertain whether the Defendants are acting rightly or not. He urged

this court to hold that the Claimants' suit was properly commenced by way of originating summons for the interpretation of the Constitutional provisions as stated above.

He submitted that the cases cited by the 1st Defendant are not applicable to this case. The facts of this case are different from those of the cases cited by the 1st Defendant. The law is settled that each case must be determined on its particular or peculiar facts and circumstances. Hence, it is settled in our jurisdiction that legal principles established in decided authorities are not to be applied across board and in all matters without regard for the peculiar facts and circumstances of a particular case. He referred to *CSS BOOKSHOP LTD v. THE REGISTERED TRUSTEES OF MUSLIM COMMUNITY IN RIVERS STATE* (2006) All FWLR (Pt. 319) 819; *EMEKA v. OKADIGBO* (2012) 18 NWLR (Pt. 1331) 55 at 96; *SKYE BANK PLC v. AKINPELU* (2010) 9 NWLR (Pt. 1198) 179; *APGA v. OYE* (2019) 2 NWLR (Pt. 1657) 472.

He urged this court to resolve issue 2 in the affirmative and to hold that this suit was properly commenced by way of originating summons.

Decision

Upon considering the application challenging the jurisdiction of this court and the submissions of counsel for the 1st defendant and the claimants, the issue for determination is:

Whether this court has the jurisdiction to hear this suit?

I shall commence with the issue on whether the suit can be commenced under Originating Summons?

By Order 3 rule 5 and 6 of the Rivers State High Court (Civil Procedure) Rules 2023:

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

Rule 6.

"Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed"

By the above provision, an Originating Summons procedure can only be used for

the interpretation or construction of a deed, a Will, enactment or other instrument and not for a case where the issues contain riotous facts. See **Ekanem & Ors. v. The Registered Trustees of the Church of Christ the Good Shepherd & Ors.** (2022) LPELR-59173(SC) p. 36 paras. c-G), the Supreme Court per Jauro, JSC, **Titilayo Plastic Industries Ltd & Ors v. Fagbou** (2019) LPELR - 47606 (SC), **Jev v. Iyortyom** (2014) LPELR - 23000 (SC), **Elelu-Habeeb & Anor v. AG Federation & Ors** (2012) LPELR-15515 (SC), **Zakirai v. Muhammad & Ors.** (2017) LPELR-42349 (SC) pp. 64-66, Paras. A-A, per Augie, J.S.C., **Atago v. Nwuche & Ors.** (2012) LPELR-19656(SC).

The case of the claimants as can be gleaned from the affidavit in support, and the questions set out for determination is basically interpretation of statutes or enactment. Precisely, sections 100 (1) and 109 (g) of the 1999 Constitution. Perusing the entire case, it is crystal clear that the questions for determination, I must say completely fall under the questions to be determined under Order 3 rules 5 and 6 of the Rules of this Court, 2023. The contention that this case cannot be entertained under Originating Summons is therefore, not tenable. Admittedly, there are facts in the form of affidavit in support and counter affidavit in opposition. These facts are not against the Originating Summons procedure, but for it. There are instances where, the facts in the affidavit in support and against an Originating Summons, play relevant roles in interpretation, especially where they are not riotously in conflict. The facts in this case are not alien to the Originating Summons suit, but are soothing in the circumstances. See **Sani v. Kogi State House of Assembly** (2019) 4 NWLR (Pt. 661) 172 at 189 paragraphs A – B. It is settled law that what is prohibited in an Originating Summons Procedure is substantial dispute of facts. I do not see such in the instant case. See **A.P.C v. Sheriff** (2024) 2 NWLR (Pt. 1921) 49.

I hold the candid view that, it is not the mere existence of facts in an Originating Summons that makes the procedure inapplicable to cases of interpretation of statutes. It is the existence of conflicting facts that affects a case from being entertained under an Originating Summons. It is my candid view that despite the various factual narratives in this case, the focal point is the interpretation of some sections of the constitution referred to above as it relates to the allegation of defection against the 1st defendant and the 26 others, and the right of the 1st defendant and the 26 others to make law in the 2nd defendant. I therefore, agree with Mr. Abo, that the suit is properly commenced under Originating Summons procedure, and same shall be conveniently determined as such.

Locus standi

Jurisdiction is key in every adjudication. The primary jurisdiction of courts of law are conferred by the Constitution and other statutes. The various spheres of what constitutes jurisdiction are as aptly set out by the Apex Court since 1962 in **Madukolu vs. Nkemdilim** (1962) 2 SCNLR 391 as follows; the Court is properly constituted with respect to the number and qualifications of its members, the

subject matter is within its jurisdiction and there is no feature in the case which prevents the Court from exercising jurisdiction and the matter comes before the Court initiated by due process of law and upon fulfillment of any condition precedent to exercise jurisdiction.

The issue of jurisdiction is both procedural and substantive. Some statutes confer procedural jurisdiction. Procedural jurisdiction can be waived by parties, but substantive jurisdiction cannot be waived, because its existence is statutory and parties or the Court cannot by agreement or *suo motu* clothe the Court with jurisdiction or otherwise. See **Chisco Int'l Ltd vs. P.M.A. Ltd.** (2016) 3 NWLR (Pt. 1499) 249. In **BPE vs. Dangote Cement Plc.** [2020] 5 NWLR (Pt. 1717) 322 at (Pp. 344-345. paras. G-E) the Supreme Court held as follows:

"There is a difference between jurisdiction as a matter of procedural law and jurisdiction as a matter of substantive law. Whilst a litigant can waive a defect in the former, no litigant can confer jurisdiction in the Court where the Constitution or a statute or any provision of the common law states that the Court has no jurisdiction..."

See also **CIL Risk & Asset Mgt. Ltd. v. Ekiti State Govt.** [2020] 12 NWLR (Pt. 1738) 203

Locus standi is a substantive jurisdictional issue which can be raised at any time even for the first time at the Court of Appeal and the Supreme Court. It affects the entire proceedings. It cannot be waived and it goes to the root of the case. See **Ajayi v. Adebisi** (2012) 11 NWLR (Pt. 1310) 137. It is the reliefs of a claimant set out in the writ of summons and the facts deposed to in the statement of claim that are considered in determining the locus standi of a party to sue in order to see if the court has jurisdiction to entertain the suit. In the instant case, the affidavit evidence represents the pleadings of the claimants. See **Isah v. I.N.E.C** (2016) 18 NWLR (Pt. 1544) 175, See **Adesokan v. Adegorolu** (1997) 3 NWLR (Pt. 493) 261 at 278. Ogundare, JSC, **Bolaji v. Bamgbose** (1986) 4 NWLR (pt.37) 632 at 646. Indeed, a Court of law exists to determine disputes based on Claimant's alleged legal right and the infringement thereof. See **Oloriode v. Oyebi** (1984) 5 S.C 1.

Locus standi is the legal capacity to institute a proceeding in a Court of law and for there to be the locus to sue, there must exist a legal dispute between the parties suing and the ones sued. Courts of law only determine live issues between parties and not speculations. See **Ladejobi v. Oguntayo** (2004) 18 NWLR (PT 904). Therefore, evident in the issue of locus standi are; legal dispute between parties, who must be juristic personalities. By section 6 (6) (b) of the 1999 Constitution of Nigeria (as amended), Courts of law only determine disputes relating to the civil rights of persons. The persons referred to in the above section must be legal personalities, either human beings with flesh and blood or incorporated bodies which are creation of statutes. The law is settled that there is no locus standi to institute an action in a court of law where the reliefs sought by the claimant if

granted will not confer any tangible benefit on the claimant. See **Oloriode v Oyebi [1984] 1 SCNLR 390 @ 400, 405.**

Generally, from the facts set out in the affidavit in support which is like a statement of claim, there is no disclosed interest of the claimant in the suit or an infringement of the right of the claimants over the disclosed interest by the defendants. In fact, there is no allegation by the claimants against the defendant that could even find a cause of action. It must be noted that the determination of the issue of locus standi is different from the determination of the case on the merit. Indeed, the consideration of the issues relating to the standing to sue has nothing to do with the overall merit of the suit. The existence of the standing to sue carries with it the existence of an interest in the subject matter to be determined on the merit. Therefore, there will be no need for a determination of a suit on the merit, where there is no locus standi to sue. In **Adeokin Records v. M.C.S.N Ltd/GTE (2018)15 NWLR (Pt. 1643)550 at 563 paras G-E** Supreme Court held:

"Locus standi is a matter of law. It connotes the capacity a plaintiff has to commence an action or suit. It is the personal interest, legal or equitable, the plaintiff has in the subject matter of the suit, which he alleges has been or is likely to be infringed. The main test or determination of locus standi is whether the plaintiff, from the pleadings, has disclosed sufficient interest in the subject matter of his suit. Once he discloses in the pleading, his sufficient interest in the subject matter of the suit he is by law, entitled to sue"

The Supreme Court held further thus:

"When a court is deciding whether a Plaintiff has locus standi or not, it is not necessary for the court to consider whether the plaintiff has a genuine case on the merit. In other words, the determination of the question whether a plaintiff has or has not disclosed his locus standi to institute his suit is quite distinct from the merit of the case"

See **Eze v. P.D.P (2019)1 NWLR (Pt. 1652) 1 @p. 18 paras E-F**, where the Supreme Court held:

"For a person to have the legal capacity to sue over a matter he must show sufficient interest in the subject matter of litigation and that will give him the access to institute proceedings in a court of law. The pleadings of the party must disclose a cause of action vested in the plaintiff and the rights and obligations or interest of the plaintiff which have been violated before he can be vested with *locus standi* to sue..."

See **Owodunni v. Registered Trustees of CCC (2000) 2 WRN 29; (2000) 6 SC (pt. 111) 60; (2000) 10 NWLR (Pt 229) 338; Ojukwu v. Governor Lagos State**

& Anor (1986) 3 N. W. L. R (pt. 26) 39; **Adesanya v. President of the Federal Public of Nigeria** (2002) 44 WRN 80; (1981) 5 SC 112 and **Fawehinmi v. FRN** (2008) 20 WRN 65 at 108.

This case is predicated on alleged defection by members of a political party to another political party. Either way, that is for APC or PDP, the Political Party and none other, has the right to determine or say who its members are and whether they have defected or not. In the instant case, the claimants are not members of the 4th defendant. They are not members of APC, neither are they members of the 2nd defendant. They know nothing about the proceedings of the 2nd defendant. They know nothing about the membership of the APC or the PDP. They do not belong to the same ward or constituency with the 1st defendant and the 26 others. It is not enough to sue the 1st defendant and 26 others and the 2nd defendant just to interpret the constitution. They have to show the action of the 1st defendant and the 26 others related to the allegations of defection that has infringed on their rights beyond the rights of other registered voters to now constitute a cause of action to be determined by this court. The claimants have not shown how the alleged act of defection of the 1st defendant and the 26 others in the 2nd defendant has affected their rights as general voters without any designated political party.

I am of the view that the claimants do not have the locus standi to sue the defendants over the issue of defection to another party which relates to membership. The issues of membership of a political party remain the exclusive preserve of the Political Party as it is an internal party affair. And it is the Political Party that has to say on who its members are and whether they are no longer their members. It is not such that a mere busy body will dabble into as the claimants did in this case. See In **Anyanwu v. Ogunewe** (2014) 8 NWLR (PT. 1410) PG. 437, it was held as follows:

"My Lords, it is indeed the prerogative of a political party to determine who its members are".,

See also **Abdullahi v. Argungu** (2023) LPELR-59950 (SC), **Enang v. Asuquo** (2023) 11 NWLR (PT. 1896) 510 AT 531 Para F-G.

I resolve this issue in favour of the 1st, defendant and consequently, dismiss the suit on grounds of lack of locus standi.

The next point of challenge of this court's jurisdiction is relates to Section 272 (3) of the 1999 Constitution. Section 272(3) of the Constitution provides as follows:

"Subject to the provisions of section 251 and other provisions of this Constitution, the Federal High Court shall have jurisdiction to hear and determine the question as to whether the term of office of a member of the House of Assembly of a state, a Governor or Deputy Governor has ceased or become vacant."

Mr. Abo contends that section 272 (3) Constitution does not confer exclusive jurisdiction on the Federal High Court to determine the question as to whether the term of office of a member of the House of Assembly of a state, a Governor or Deputy Governor has ceased or become vacant. It is the submission of counsel that the Federal High Court and the State High Court share jurisdiction over the issues under section 272 (3) of the Constitution.

This submission to my mind is quite brilliant and alluring. But I am unable to accept same as the clear interpretation of section 273 (3) of the Constitution. Section 272 (3) of the Constitution is made subject to section 251 of the 1999 constitution which creates exclusivity of operation and determination of issues therein for the Federal High Court. So, the difference is made by the existence of the phrase "Subject to" which when interpreted, means that the operational existence of the provision has its umbilical cord tied loyally to section 251 of the constitution. It means that the Federal High Court has an exclusive domain in matters covered under section 272 (3) of the 1999 Constitution made subject to section 251 of the constitution.

In **Olufeagba & Ors. v. Abdur-Raheem & Anor**, (2009) 11-12 SCM (Pt.1) 125 at 141, the Supreme Court defined the phrase "subject to" as follows:

"...Where the provision of a Section is made subject to another one in application, the provision of the latter section governs, controls and prevails over the provision made subject to it. In other words the provision of the memorandum of appointment and the revised Senior Staff Regulations are subservient, subordinate and inferior to the provisions of the University Act, and are consequently rendered subject to it."

See **Idehen vs. Idehen** (1991) 7 SCNJ (Pt.2) 196 at 215-216; **Ezenwosu v. Ngonadi** (1992) 3 SCNJ 59.

The fact that this provision is not contained in section 251 itself does not render it as one that the Federal and State High Court can share the right to determine. I agree with Chief Orbih, SAN, Senior counsel for the 1st defendant in his submission that by section 272(3) of the Constitution the Court vested with jurisdiction to hear and determine whether the seats of the 1st to 27th Defendants as Members of the Rivers State House of Assembly have ceased or have become vacant, is the Federal High Court and not this Honourable Court. See **INEC v. DPP & ORS** (2014) LPELR-22809 (CA) (Pp. 45-46 paras. F), per Ogunwumiju JCA (as she then was), referred to by senior counsel, where the court of appeal held:

"Section 272(3) of the 1999 Constitution provides as follows: "Subject to the provisions of Section 251 and other provisions of this Constitution, the Federal High Court shall have jurisdiction to hear and

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

I am bound by this decision and I apply same *ad seriatim*.

The question in section 272 (3) of the 1999 Constitution deals with tenure of office of the members of the 2nd defendant. A member of the 2nd defendant is entitled to serve out the terms of his office as constitutionally provided. Howbeit, the tenure may be terminated *in limine* if the person resigns, if the person dies, if the person defects from the party that sponsored him to another political party. Therefore, the consequential effect of defection is that the party would lose his seat in the 2nd defendant in deserving circumstances and that affects his tenure in the 2nd defendant.

I hold that this court does not have the jurisdiction to determine this suit. This suit is hereby struck on this score.

Abuse of court process

I adopt the definitions of abuse of court process set out in the submissions of senior counsel to the 1st defendant. In Exhibit 1, the Federal High Court made an order restraining the 2nd defendant from declaring vacant the seats of the 1st defendant and 26 others, which Order is still subsisting. Exhibits 2-9 are various cases on the same subject matter by different claimants in different courts. The claimants in each case are different, thus making it difficult to say the particular party that has abused the process of the court. But it is obvious that there is a form of forum shopping by the various parties who are filing the various case in different courts, both in courts with jurisdiction and without jurisdiction. This is one of such cases of forum shopping. The claimants came to this court despite the provisions of section 272 (3) of the constitution. See **APC v. Enwerem & Ors** (Pp. 18-19 paras D-D), Per Jauro, J.S.C.

Exhibit 10 is a judgment of the Federal High Court. It did not determine the issue of defection under section 109 (g) of the 1999 constitution, the subject of this case. The 1st defendant contends that the issues and or matters in this suit have been settled and/or determined in the judgment of the Federal High Court, Abuja Judicial Division in Suit No. FHC/ABJ/CS/I613/2023: RIVERS STATE HOUSE OF ASSEMBLY & ANOR V. THE NATIONAL ASSEMBLY & ORS, which is a judgment in rem. Should it be true, then this suit should be an abuse of court process. Howbeit, Exhibit 10, the judgment of the Federal High Court, did not determine section 100 (1) and 109 (1) (g) of the 1999 Constitution, but the court made an order that

sustains the continuity of performance or operation of the 1st defendant and the 26 others, thus impacting on an aspect of the case before this court.

It is clear that these suits anchored on forum shopping are vexatious and are filed to harass, embarrass, oppress, intimidate and irritate the 1st Defendant. They constitute gross abuse of the judicial process. Moreso, a suit filed by the claimants who are not in any way connected to the facts in issue, and who knew that they do not have locus standi to sue represents an abuse of court process. Again, being that the claimants knew that this court does not have the jurisdiction to hear this suit, yet they filed it in this court to irritate the defendants is an abuse. This case is amenable to being dismissed for being an abuse of court process. It is accordingly dismissed.

For all I have said on jurisdiction above, I hold the view that this court does not have the jurisdiction to hear this suit for lack of locus standi, abuse of court process and by virtue of section 272 (3) of the 1999 Constitution. The suit therefore, be and is hereby dismissed/struck out on the various grounds respectively.

Assuming, that this court is wrong in holding that it does not have the jurisdiction to hear this suit, it is important that this court considers the merit of the suit irrespective of the decision on jurisdiction. But before considering the substance of this case, this court shall consider the application for joinder filed by PDP.

RULING ON MOTION FOR JOINDER

The applicant filed a Motion on Notice dated 17/05/2024, but filed 21/05/2024. The application is brought pursuant to Order 15 rule 4(1) of the High Court of Rivers State (Civil Procedure) Rules, 2023 and under the inherent jurisdiction of the Court as preserved by section 6(6) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The applicant prays this court for the following reliefs:

1. AN ORDER joining the Peoples Democratic Party as 6th Defendant in this suit.
2. AN ORDER for the amendment of all processes in this suit to reflect the name of the Peoples Democratic Party as the 6th Defendant in this suit.
3. AND FOR ANY OTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is predicated are:

- i. The 1st and 2nd Defendants were elected as members of the Rivers State House of Assembly on the platform of the Peoples Democratic Party, the Applicant/Party seeking to be joined.
- ii. This suit seeks for the declaration of the seats of the 1st and 2nd Defendants

vacant in the Rivers State House of Assembly.

- iii. As the Political Party which sponsored the 1st and 2nd Defendants, the outcome of this suit will affect the Applicant/Party seeking to be joined.
- iv. It is the Applicant/Party seeking to be joined that can reliably inform the Honourable court whether the 1st and 2nd Defendants are still its members or not.
- v. The Claimants are not members of the Applicant/Party seeking to be joined and it is not within their power to determine membership of the Applicant/Party seeking to be joined.
- vi. The questions for determination and reliefs in the Originating Summons are principally about the 1st and 2nd Defendants defecting from the Applicant/Party seeking to be joined that sponsored their elections on the 18th March, 2023 into the Rivers State House of Assembly.
- vii. The Party seeking to be joined is expressly mentioned in both the questions for determination, reliefs sought and the paragraphs of the affidavit in support of the Originating Summons.
- viii. The Applicant/Party seeking to be joined is a necessary party in this suit whose presence as a party is required for the just and effective determination of this suit.
- ix. The Claimants ought to have joined the Applicant/Party seeking to be joined to this suit ab initio.
- x. Order 15 Rule 4(1) of the High Court of Rivers State (Civil Procedure) Rules, 2023 empowers the Honourable Court to join the Applicant/Party seeking to be joined as a Defendant in this suit.

The Motion on Notice for joinder is supported by an affidavit of 15 paragraphs and a written address. the deponent stated as follows:

I, Chief Kingsley Chuku, male, adult, Christian, Nigerian citizen of No. 23, Aba Road, Port Harcourt, Rivers State do hereby make oath and state as follows:

1. That I am the Rivers State Legal Adviser of the Applicant/Party seeking to be joined and by virtue of my position and schedule of duties I am conversant with the facts herein deposed to in this counter affidavit.
2. That I have the consent of the officers of the Applicant/Party seeking to be joined to depose to this affidavit.

3. That all the facts deposed to in the affidavit are facts within my personal knowledge as result of my schedule of duties and my participation in the activities of the Applicant/Party seeking to be joined and as the State Legal Adviser of the Applicant/Party seeking to be joined.
4. That I state as a fact that we had no knowledge of this case until the Applicant's Rivers State Caretaker Chairman, Aaron Chukwuemeka brought it to the attention of the National Secretariat of the Applicant/Party seeking to be joined recently.
5. That I know as a fact that the 1st and 2nd Defendants/ Respondents were sponsored by the Applicant/Party seeking to be joined in the Rivers State House of Assembly election that held on the 18th day of March, 2023.
6. That I know as a fact that 1st and 2nd Defendants won the Rivers State House of Assembly election in their respective constituencies on the platform of the Applicant/Party seeking to be joined.
7. That the Applicant/Party seeking to be joined will be affected by the outcome of this case being the Political Party that sponsored the 1st and 2nd Defendants/Respondents.
8. That it is only the Applicant/Party seeking to be joined that knows its members and can tell this court who its members are.
9. That questions 1 and 2 for determination in the Originating Summons and reliefs Nos. 1, 2, 3 & 4 all centre on the 1st and 2nd Defendants' defection from the Peoples Democratic Party which sponsored their elections on the 18th day of March, 2023 into Rivers State House of Assembly.
10. That I know as a fact that the presence of the Applicant/Party seeking to be joined as a Defendant in this suit will make for the just and effective determination of this suit.
11. That I state as a fact that the facts deposed to in paragraphs 6, 7, 8, 9, 10, 11 and 12 of the affidavit in support of the Originating Summons all concern the Peoples Democratic Party that the Applicant/Party seeking to be joined has to react to before judgment can be delivered in this case.
12. That the Proposed Counter-Affidavit and written address of the Applicant/Party seeking to be joined has been duly filed.
13. That it will be in the interest of justice to grant this application.
14. That the grant of this application will not prejudice the Plaintiffs/Respondents or any other party.

15. That I swear to this Affidavit in good faith conscientiously believing its content to be true and correct to the best of my knowledge and in accordance with the Oaths Act, 2004. Dated and Filed this 21st day of May 2024

In the written address in support of motion for joinder, the applicant raised a sole issue formulated by the Applicant/Party seeking to be joined is:

Whether having regard to the facts and reliefs sought in this case the Applicant/Party seeking to be Joined has shown through the affidavit in support of the application that it is a necessary party and has special interest in this case?

Dr. Musa, SAN, adopted the written address and submitted that the Applicant/Party seeking to be joined has by the evidence made out sufficient case to sway the judicial and judicious exercise of the court's discretion in its favour. The Party Seeking To Be Joined has shown real interest in the suit that it will be difficult to determine this suit without its presence as a party. He referred to *IBEGWURA ORDU AZUBUIKE V. PEOPLES DEMOCRATIC PARTY & 5 ORS* (2014) 7 NWLR (PT. 1406) 292 at 328, paras. B - F, the Supreme Court per Peter-Odili, JSC.

Senior counsel submitted that by the facts submitted by the Claimants/Respondents to the court for adjudication it is not possible to determine this case without making the Applicant a party to the suit. A calm consideration of the Claimants' case will also leave no one in doubt that the Applicant ought to have been made a Defendant ab initio. By the reliefs and facts of this case, the presence of the Applicant/Party seeking to be joined is necessary in order for the court to effectually and completely adjudicate upon and settle all the questions involved in the cause.

Senior counsel submitted that by the facts of this case, the 1st and 2nd Defendants/Respondents are members of the Applicant/Party seeking to be joined and were sponsored by the Applicant/Party seeking to be joined in the State House of Assembly election held on the 18th day of March, 2023 which the 1st and 2nd Defendants/Respondents won on the platform of the Applicant/Party seeking to be joined into the Rivers State House of Assembly as members thereof. The reliefs and facts of this case is to the effect that the 1st and 2nd Defendants/Respondents have defected from the Peoples Democratic Party and on that score they have lost their seats in the Rivers State House of Assembly. It is only the Applicant that can say who is its member. We submit further that declaring the seats of the 1st and 2nd Defendants/Respondents vacant will certainly affect the Applicant/Party seeking to be joined who sponsored them in their election. He referred to *Azubuike v. Peoples Democratic Party* (Supra).

Senior Counsel submitted that a person who will be affected by the decision of the

court ought to be given an opportunity to be heard in the case. He referred to ARCHITECT HUDU IBRAHIM MANOMI & ANOR V. JOSEPH D. MATO DAKAT & ORS (2022) 15 NWLR (PT. 1853) 231 at 263, paras. E - F, the apex court, per Nweze, JSC.

Senior counsel submitted that the Applicant/Party seeking to be joined is a necessary party who will be bound by the outcome of the case and it is convenient for the court to join it so that it will be afforded the opportunity to be heard in line with Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) before the court makes decision(s) which will certainly affect its interest in this suit.

Dr. Opurum, in opposition to the Motion Notice for joinder, the Claimants filed a 7 paragraphs counter affidavit and a written address on 29/05/2024. He adopted the written address. There are two documents referred to as Exhibits E1 and E2. He urged this Court to dismiss the application. The claimants raised a sole issue for determination as follows:

Whether the Applicant is a necessary party to be joined as a Defendant in this suit?

Mr. Abo, submitted that Order 15 Rule 4 of the High Court of Rivers State (Civil Procedure) Rules 2023 empowers this Honourable Court to join parties to proceedings either as claimants or defendants. The grant or refusal of an application for joinder is at the discretion of the Court which discretion must be exercised judicially and judiciously based on the facts and circumstances of each case. Certain guides are followed by the Court in the consideration of the application, to wit:

- i. Is it possible for the Court to adjudicate upon the cause of action set up by the claimant, if the applicant is not joined as a party?
- ii. Is the applicant asking to be joined as a party ought to have been joined in the first place?
- iii. Is the presence of the applicant before the trial Court as a party necessary in order for the Court to effectually and completely adjudicate upon and settle all the questions involved in the case. He referred to RE: MAGAJI (1986) 1 NWLR (Pt. 19) 759, ratios 2 and 7.

Counsel submitted that in the instant case, the 1st Defendant and the other 26 members of the 2nd Defendant who were members of the Applicant (PDP) defected from the party and joined APC on 11th December, 2023 to the knowledge of the whole world as the defection was widely celebrated. The Applicant never challenged the 1st Defendant and the other 26 members of the 2nd Defendant when they took the decision to exit PDP. In any case, it is the constitutional right of every Nigerian to join any political party of his/her choice which freewill decision

the 1st Defendant and his colleagues in the 2nd Defendant took on 11/12/2023.

Counsel submitted that applying the guides enunciated by the Courts as highlighted at paragraph 4.1 above to the facts of this case, he submitted that the Applicant has not met the conditions for the grant of the application for joinder. The cause of action in this suit can be conveniently adjudicated upon without joining the Applicant as a party to this suit. The Applicant could also not have been joined as a party in the first place because they have no interest in the subject matter of this suit. The 1st Defendant and his colleagues only used the Applicant as a vehicle to access the 2nd Defendant and later exercised their constitutional right to leave the Applicant. Thus, the presence of the Applicant is not necessary in this suit. The 1st Defendant and the other 26 members of the 2nd Defendant are in a better position to tell this Court whether or not they are members of the PDP or APC.

He urged this Honourable Court to resolve the sole issue in the negative and to hold that the Applicant is not a necessary party to this suit.

The 3rd Defendant filed a counter affidavit and written address dated 30/05/2024 and filed 02/06/2024. Dame Iroegbu, adopted the Written Address and urged this Court to dismiss the application.

Dr. Musa, SAN, on reply on points of law, adopted the arguments he made earlier in respect to the further affidavit in support of the Originating Summons which according to him is the same thing with counter affidavit in opposition to the Motion on Notice for joinder. Senior Counsel referred to *Okadibo v. Anyaebunam* (2023) LPELR – 61773 S.C. Pages 10 -15 and pages 19 – 20 on the contention on Exhibit E1. Dr. Opurum, submitted that it is a good law that cases are decided on their facts. The facts in *Okadibo* are not the same with the facts of this matter. He referred to *Babatunde v. P. A. S. and T. A. Ltd.* (2007) All FWLR (Pt. 372) 1721 at 1733 Ratio 14.

The 3rd defendant in the written address in opposition to applicant/party seeking to be joined written address for motion for joinder raised a sole issue for determination is:

Whether or not the Applicant is entitled to a grant of its application for joinder in this suit?

Dame Iroegbu, urged the Honourable Court to take judicial of the processes in Suit No. FHC/ABJ/CS/1881/2023 which are collectively attached to 3rd Defendant's Counter Affidavit as EXHIBIT RVSG "A" pursuant to Section 122(2)(m) of the Evidence Act, 2011, as amended. She submitted that that is the best evidence of the defection of the 1st Defendant from the Applicant/Party Seeking to be joined to join the APC. The law remains that documents do not lie! The Rt. Hon. Martin C. Amaewhule, who is the leader of the defectors, has, on their behalf stated the true

position in his Witness Statement on Oath thus:

"10. That I am aware that the Plaintiffs were duly elected to represent their various State constituencies at the Rivers State House of Assembly on the platform of the Peoples Democratic Party and had remained members of the Peoples Democratic Party' until 11th December, 2023 when they (Plaintiffs) left Peoples Democratic Party and joined the All Progressives Congress."

Counsel submitted that this Honourable Court, therefore, does not require the presence of the Party Seeking to be Joined/Applicant to inform it of the defection of the 1st Defendant, a fact which has ordinarily become so notorious because it has been in the public space and media domain over the last six months. The Applicant cannot also deceive itself that the 1st Defendant remain its members. The only narrow issue the Plaintiffs have come to Court to ascertain is the consequences of the defection of the 1st Defendant in view of the provisions of Section 100(1) and 109(l)(g) of the 1999 Constitution, as amended. Thus, it is clear that the suit is about the construction and interpretation of the Constitution. The presence of the Applicant is absolutely not necessary whatsoever in order for the Court to consider and determine the questions for determination in this suit. She urged this court to so hold.

Counsel further submitted that the Applicant has not proffered any cogent reason why it should be joined as a Party in this suit. Counsel referred to IBEGWURA ORDU AZUBUIKE VS. PEOPLES DEMOCRATIC PARTY & 5 ORS (2014) 7 NWLR (PT. 1406) 292; and ARCHITECT HUDU IBRAHIM MANOMI & ANOR. VS. JOSEPH I). counsel contended that the case of MAIO DAKAT & ORS (2022) 15 NWLR (PT. 1853) 231 cited and relied upon by the Applicant actually do not help the Applicant's case.

Counsel submitted that the locus classicus on the issue of joinder has been the case of GREEN VS. GREEN (1987) 3NWLR (PT. 61) 480 at 498, paras. C-I). counsel submitted that the case of the Applicant falls far short of the requirements of the law as enunciated in GREEN vs. GREEN (SUPRA) for it to be joined in this case. The Applicant's application falls flat in the face of the requirements which an Applicant must meet before he can be joined in a suit either as a co-Plaintiff or co-Defendant. Indeed, the 1st - 25th Defendants no longer share the same interest as regards the subject matter of this suit.

Counsel submitted that one of the cardinal principles that govern joinder of parties to a suit is that such a party must be a necessary party in whose absence, vital issues in controversy in the case cannot be effectually and completely resolved by the Court; he must be a party whose presence will assist the Court in effectually and completely determining the dispute between the parties in the suit. Counsel referred to IYIMOGA & ORS VS. GOVERNOR OF PLATEAU STATE & ORS. (1994) 8

NWLR (PT. 360) 73; SUFFOLK PETROLEUM SERVICES LIMITED VS. ADMAN MANSOR (NIG. LIMITED (2019) 2 NWLR (PT. 1655) 1; USMAN DAN FODIYO UNIVERSITY, SOKOTO VS. BALOGUN (2006) 9 NWLR (PT. 984) 124; CARLEN NIGERIA LIMITED VS. UNIJOS (1994) 1 NWLR (PT. 323) 631; LAJUMOKE VS. DOHERTY (1969) 1 NMLR 281; PEENOK INVESTMENTS LIMITED VS. HOTEL PRESIDENTIAL LIMITED (1983) 4 NCLR 122; ONYEMUCHEYA VS. MILITARY ADMINISTRATOR, IMO STATE (1997) 1 NWLR (PT. 482) 429.

Counsel submitted further, that merely having an interest in the subject matter of litigation does not make a person a necessary party for the purposes of being joined in a suit. Applicant for joinder is required to go further and show that his presence in the suit is so vital that the suit cannot properly and effectually be resolved in his absence and this has to be borne out by the facts deposed to in the supporting Affidavit. A party who is originally not a party to the suit cannot be joined merely on the whims and caprice of the Applicant. Such a party must scrupulously comply with the requirements of the law in order to swing the exercise of the Court's discretion in his favour. Such quality of evidence is lacking in the Applicant's application. Counsel referred to NDAKENE VS. ADAMU (2023) 9 NWLR (PT. 1889) 389 at 408, paras. D-E, the Supreme Court, per Abba Aji, JSC,

Counsel submitted that the law remains that a Party for joinder must show that his interest will be irreparably prejudiced if he is not joined as a party to the suit. She also referred ODUOLA VS. COKER (1981) 5 SC 197 at 227. In this case, the Applicant has not shown how its interest will be irreparably prejudiced if it is not joined in this suit. The issue in controversy between the parties in this case can be conveniently resolved by the Court without the presence of the Applicant. Counsel referred to IYIMOGA VS. GOVERNOR, PLATEAU STATE (supra), ATTORNEY-GENERAL OF THE FEDERATION VS. ATTORNEY-GENERAL OF ABIA STATE & ORS. (2001) LPELR-24862(SC) at Pp. 98-100, paras. A-A, per Karibi- Whyte, JSC, ENTERPRISE BANK LIMITED VS. AROSO (2014) 3 NWLR (PT. 1394) 256 at 292, paras. A-B, per Rhodes-Vivour, JSC.

Counsel submitted that the law is equally clear and well settled that a Plaintiff cannot be compelled to proceed against a party with whom he has no dispute and against whom he claims no relief. Counsel referred to IYIMOGA VS. GOVERNOR OF PLATEAU STATE (Supra) at p. 96, para. C, Orah, JCA.

Counsel submitted that moreover, by Order 15 Rule 16(1) of (High Court of Rivers State (Civil Procedure) Rules, 2023 the misjoinder or nonjoinder of a party does not vitiate or defeat the proceedings.

Dr. Musa, SAN, submitted that a Defendant in a suit who does not have a counter claim in a suit does not have a right to oppose an application for joinder. Dame Iroegbu, submitted that this is a Court of justice and the 3rd defendant has the right to respond to the Motion for Joinder.

Decision

I have perused the application for joinder, the counter affidavit and written address filed in opposition by the claimants and the 3rd defendant. I have carefully read through the decided cases referred to. The issue for determination is:

Whether the applicant has shown that it is a necessary party to be joined as a defendant?

The applicant, relying on the facts in paragraphs 6-9 of the affidavit in support, states that 1st and 2nd defendant won the Rivers State House of Assembly election in their respective constituencies on the platform of the Applicant/Party seeking to be joined. The Applicant/Party seeking to be joined will be affected by the outcome of this case being the Political Party that sponsored the 1st and 2nd Defendants/Respondents. It is only the Applicant/Party seeking to be joined that knows its members and can tell this court who its members are. The questions 1 and 2 for determination in the Originating Summons and reliefs Nos. 1, 2, 3 & 4 all centre on the 1st and 2nd Defendants' defection from the Peoples Democratic Party which sponsored their elections on the 18th day of March, 2023 into Rivers State House of Assembly.

On the other hand, the claimants and the 3rd respondent are of the view that the 1st defendant and 26 others have defected to APC and by Exhibit E1 and RVSGA referred to by the claimants and the 3rd defendant respectively, they have on their own stated that they have defected. Thus, the presence of the party seeking to be joined is not necessary. This court can determine the issues in the case, without the party seeking to be joined.

I agree with the apt submission of Mr. Abo, that Order 15 Rule 4 of the High Court of Rivers State (Civil Procedure) Rules 2023 empowers this Honourable Court to join parties to proceedings either as claimants or defendants. The grant or refusal of an application for joinder is at the discretion of the Court which discretion must be exercised judicially and judiciously based on the facts and circumstances of each case. Certain guides are followed by the Court in the consideration of the application, to wit:

- i. Is it possible for the Court to adjudicate upon the cause of action set up by the claimant, if the applicant is not joined as a party?
- ii. Is the applicant asking to be joined as a party ought to have been joined in the first place?
- iii. Is the presence of the applicant before the trial Court as a party necessary in order for the Court to effectually and completely adjudicate upon and settle all the questions involved in the case.

See, RE: MAGAJI (1986) 1 NWLR (Pt. 19) 759, ratios 2 and 7.

In law, it is the Political Party that canvasses for votes and wins an election. The votes scored by a candidate belong to the party that sponsored him at the election. See Section 221 of the Constitution of the Federal Republic of Nigeria 1999, which provides that No association other than a Political party can Canvass for votes for any candidate at any election. See **Amaechi v. INEC** (2008) 10 WRN 1 at 117, per Oguntade, JSC, **Wada & Ors v. Bello & Ors** (2016) LPELR-47015(SC) (Pp. 52-53 paras. B-B) Per Ngwuta, J.S.C.

Generally, a party who is interested in a matter and whose presence is needed to aid the determination of the case includes a person affected or likely to be affected or aggrieved or likely to be aggrieved by the outcome of the case. See **Assams & Ors vs. Ararume & Ors** (2015) LPELR 408285 (SC) and **Green v. Green** (1987) 2 NSCC 1115.

It does appear that a necessary party in Pre and Post-Election matters is not left open ended. It has a restricted confine. See Section 133(1) (a) and (b) of the Electoral Act 2022. They include; a candidate in an election; a political party which participated in an election. This case is a post-election related matter, centered on membership an internal affair of the party. And an act that has allegedly affected membership and the tenure of members of the applicant in the 2nd defendant. In law, the only party with the vires to talk about membership of its members is the Political Party. The party that should raise alarm that the 1st defendant and the 26 others have defected is PDP. The party that will call participate and long for replacement of those who allegedly defected is PDP. The party that will say whether the 1st defendant and the 26 others are no longer its members or are still its members, is PDP.

It follows therefore, that considering the issues in the instant case, tied to membership and alleged defection of party members to another party, APC, the applicant is clearly a necessary party whose presence is required in the determination of the itching issues in this case about what happens to the election it won as per the seats the 27 lawmakers occupy in the 2nd defendant, which the claimants aver that the 1st defendant and the 26 other persons have lost by virtue of the allegation of defection. I accept as credible, the facts in paragraphs 6-9 of the affidavit in support, to the effect that 1st and 2nd defendant Defendants won the Rivers State House of Assembly election in their respective constituencies on the platform of the Applicant/Party seeking to be joined. The Applicant/Party seeking to be joined will be affected by the outcome of this case being the Political Party that sponsored the 1st and 2nd Defendants/Respondents. It is only the Applicant/Party seeking to be joined that knows its members and can tell this court who its members are.

There is indeed merit in this application, same be and is hereby granted. I make the following orders:

1. It is hereby ordered that the applicant, Peoples' Democratic Party (PDP) be and is hereby joined as the 4th defendant to this suit.
2. The counter affidavit and written address filed by the applicant designated as 6th defendant are hereby regularized to read 4th defendant's counter affidavit and written address.
3. The said counter affidavit and written address filed by the 4th defendant be and are hereby deemed properly filed.
4. The further affidavit and written address filed by the claimants in opposition to the counter affidavit and written address filed by the 4th defendant and the counter affidavit and written address of filed by the 3rd defendant be and are hereby regularized and deemed as properly filed.

JUDGMENT ON THE ORIGINATING SUMMONS

By an Originating Summons dated 22/04/2024 and filed 23/04/2024, the claimants commenced this suit. The Originating Summons is brought pursuant to Section 100(1) and 109(I)(g) of the 1999 Constitution as amended; Order 3 Rules 5 and 6 of the High Court of Rivers State (Civil Procedure) Rules 2023 and under the Inherent Jurisdiction of this Honourable Court. The claimants amended their Originating Summons and filed Claimants' Amended Originating Summons dated 22/04/2024 and filed on 23/04/2024. By the Amended Originating Summons, the claimants, seeks the determination of the following questions:

1. Whether by virtue of sections 100(1) and 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the power of the 2nd Defendant, that is, the Rivers State House of Assembly to make Laws for the good governance of Rivers State can be validly exercised by the 1st Defendant and the other 26 members of the 2nd Defendant who have ceased to be members of the 2nd Defendant.
2. Whether by virtue of sections 100(1) and 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Laws purportedly passed by the 1st and 2nd Defendants from 11th December 2023 when the 1st Defendant and the other 26 members of the 2nd Defendant defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) till date are valid and enforceable by the 3rd Defendant and the Rivers State Government.
3. Whether the 3rd Defendant and the Rivers State Government are duty bound to enforce and comply with the Laws passed by the 1st and 2nd Defendants in defiance of the provisions of sections 100(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Whereupon, the Claimants seek the following reliefs:

1. A DECLARATION that by the combined effect of sections 100(1) and 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the power of the 2nd Defendant, that is, the Rivers State House of Assembly to make Laws for the good governance of Rivers State cannot be validly exercised by the 1st Defendant and the other 26 members of the 2nd Defendant as they have ceased to be members of the 2nd Defendant since 11th December, 2023 when they defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC).
2. A DECLARATION that by the combined effect of sections 100(1) and 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Laws purportedly passed by the 1st and 2nd Defendants from 11th December 2023 when 1st Defendant and the other 26 members of the 2nd Defendant who defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) till date are invalid, unenforceable, null and void and of no effect whatsoever.
3. A DECLARATION that by virtue of section 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 1st Defendant and the other 26 members of the 2nd Defendant who defected from the Peoples Democratic Party (PDP) to the All Progressives Congress (APC) on 11th December, 2023 have ceased to be members of the Rivers State House of Assembly and can no longer validly exercise the power to make Laws for Rivers State of Nigeria.
4. AN ORDER of injunction restraining the 1st and 2nd Defendants from further carrying out or performing any legislative function for Rivers State of Nigeria pending the conduct of election by the Independent National Electoral Commission to fill the vacant seats of the 1st Defendant and the other 26 members of the 2nd Defendant who defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) on 11th December, 2023.
5. AN ORDER of injunction restraining the 3rd Defendant and the Rivers State Government from enforcing, acting upon, implementing and/or giving effect to any Law purportedly passed the 1st Defendant and the other 26 members of the 2nd Defendant who defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) on 11th December, 2023.
6. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances.

The Originating Summons is supported with an 18 paragraphs affidavit deposed to by the 4th Claimant. There are four documents marked Exhibits A – D. The claimants also filed a written address. The claimants filed a further affidavit and reply on points of law on 29/05/2024 in response to the counter affidavit and

written address of the 1st Defendant. There are Exhibits E1 and E2 attached thereto. With respect to the 2nd Defendant, the claimant filed a further affidavit and reply on points of law on the 29/05/2024. There are Exhibits, E1 and E2 attached thereto. The claimants filed a further affidavit and reply on points of law in response to the 4th Defendant's counter affidavit on the 29/05/2024. There are two Exhibits attached thereto. Dr. Oporum, adopted the written address and the replies on point of law and urged this Court to grant the prayers contained on the face of the Amended Originating Summons filed on 23/04/2024.

According to Chief Orbih, SAN, the 1st Defendant filed counter affidavit and written address in opposition to the Originating Summons. It was dated 14/05/2024 and filed on 16/05/2024. Senior counsel for the 1st defendant adopted the written address and urged this Court to dismiss the Originating Summons. Chief Orbih, SAN submitted that the processes were filed a day out of time. He therefore, sought the leave of this court to orally apply for extension of time. He urged this Court to deem the processes as properly filed.

On his part, Njemanze, SAN, senior counsel for the 2nd Defendant identified the counter affidavit of 5 paragraphs and written address filed by the 2nd defendant in opposition to the Amended Originating Summons on 17/05/2024. There are 7 Exhibits. He adopted the written address and urged this Court to dismiss this Originating Summons. Senior counsel applied orally for extension of time to file these processes as 2nd Defendant is 2 days out of time. He prayed this Court to deem the process as properly filed.

Dame Iroegbu, identified that the submitted that the 3rd Defendant had filed a counter affidavit of 5 paragraphs and written address in response to the Amended Originating Summons on 31/05/2024. Counsel adopted the said processes and urged this Court to do justice in this matter.

Dr. Musa, SAN, identified the 4th Defendant's counter affidavit and written address filed on 21/05/2024 but tagged 6th Defendant because according to him, they were not aware of the amendment when they filed the processes. He prayed this Court to interpret 6th Defendant to be 4th Defendant in view of their process and the amendment of the Originating Summons. Senior counsel adopted the written address and urged this Court to dismiss the Originating Summons. Because of the processes served on them this morning, Senior counsel for the 2nd defendant sought leave of this Court to reply on points of law in two respects. Dr. Musa, SAN submitted that Exhibit E1 attached to the further affidavit of the Claimants is a jurisprudential absurdity. This is because proceedings pending in another Court are only admissible for purposes of contradicting a witness under cross-examination. A witness statement on oath is not an affidavit. Until it is adopted, it is not evidence. Senior counsel urged this Court to hold that Exhibit E1 has no evidential value. Exhibit E2 is a video recording. It is a procedural absurdity to attach the video evidence to the affidavit in an Originating Summon. He urged this Court not to place any weight on it.

Dr. Oporum urged this Court to hold that the arguments of Dr. Musa, SAN is not a reply on points of law. He has failed to address the law that we sited. He urged this Court to discountenance the said reply.

Chief Orbih, SAN, on the video evidence which was served on him this morning in Court, adopted the submissions of Dr. Musa, SAN. He only added that the video evidence is an admission that this suit ought not be commenced under Originating Summons. The filing of counter affidavit and further affidavit points to one direction, that the proceedings are hostile. He urged this Court to strike out the suit. Senior counsel submitted that evidence adduced in one case, before one Court or in another trial is extraneous, extrinsic and irrelevant in another proceeding. At best it can only be used to contradict a witness during cross-examination. He referred to *Ewurum v. Iwuanyanwu* (2021) LPELR – 54909 CA.

Dr. Oporum, submitted that the case of *Ewurum v. Iwuanyanwu* (Supra) is not apposite to the facts in this case. It is distinguishable. This court ought to distinguish the said case. This suit is brought under Originating Summon with affidavit.

The 4th claimant Barikpe Gibson Eenye, Male, adult, Christian, Nigerian citizen, a Businessman residing at Isiokpo, Ikwerre Local Government Area of Rivers State of Nigeria, stated as follows:

1. That I am the 4th Claimant on record and by virtue of my position and facts made available to me where so stated, I am conversant with the facts of this case.
2. That I have the consent and authority of the 1st, 2nd and 3rd Claimants to depose to this affidavit on our behalf.
3. That the Claimants are indigenes and residents of Rivers State of Nigeria and registered voters in Rivers State. I reside at Isiokpo in the Ikwerre Local Government Area of Rivers State. The Claimants' Voters Card are herewith attached and marked Exhibits A, B, C and D respectively.
4. That the Claimants brings this action for ourselves and as representing other concerned and aggrieved indigenes of Rivers State and registered voters in Rivers State.
5. That the 1st Defendant who represents Obio/Akpor Constituency 1 describes himself as the Speaker of the Rivers State House of Assembly. The 2nd Defendant is the legislative arm in Rivers State responsible for making laws for the good governance of Rivers State. The 3rd Defendant is the Chief Law Officer of Rivers State of Nigeria.
6. That the 1st Defendant is sued in this action for himself and as representing

the other 26 members of the Rivers State House of Assembly who collectively defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) on the 11th day of December, 2023. The other 26 members and their Constituencies are Dumle Maol (Gokana); John Dominic Iderima (Abua/Odual); Mrs. Queen Williams (Ahoada East 1); Asuah Major Jack (Akuku-Toru 1); Lolo Isaiah Opuende (Akuku-Toru 2); Ofiks Kabangs Christopher (Andoni); Granville Tekenari Wellington (Asari-Toru 1); Enemi Alabo George (Asari-Toru 2); Abbey Peter (Degema); Igwe Aforji (Eleme); Chief Mrs. Justina Emeji (Emohua); Ignatius Onwuka (Etche 1); Chimezie Nwankwo (Etche 2); Lemchi Prince Nyeche (Ikwerre 1); Mrs. Barile Nwakoh (Khana 1); Mrs. Emilia Lucky Amadi (Obio/Akpor 2); Uchenna Frankline Nwabochi (Ogba/Egbema/Ndoni 1); Mrs. Nkemuika Nkemjika Ezekwe (Ogba/Egbema/Ndoni 2); Davids Anolds (Ogu/Bolo); Linda Somiari Stewart (Okrika); Sylvanus Nwankwo (Omuma); Gerald Oforji (Oyigbo); Wami Solomon Chile (Port Harcourt 1); Tonye Adoki (Port Harcourt 2); Azeru Opara (Port Harcourt 3) and Ngbor Bernand Baridamue (Tai).

7. That Ist Defendant and the other 26 members of the Rivers State House of Assembly who they represent in this suit were elected into the Rivers State House of Assembly on March 11, 2023 on the platform of the Peoples Democratic Party (PDP) one of the registered political parties in Nigeria.
8. That on Monday 5th June, 2023 the Executive Governor of Rivers State, His Excellency, Sir Siminilayi Fubara inaugurated the 10th Rivers State House of Assembly wherein the 1st Defendant emerged as Speaker of the House and they were to remain in office for four years.
9. That on Monday 11th December, 2023 the 1st Defendant and the other 26 members of the Rivers State House of Assembly collectively defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) thereby abandoning the political party that sponsored them into the House of Assembly and joining another political party, that is, the APC.
10. That the defection of the 1st Defendant and the other 26 members of the Rivers State House of Assembly from the Peoples Democratic Party (PDP) who sponsored them to the All Progressive Congress (APC) was done during plenary of the Rivers State House of Assembly and the action was captured in videos which circulated nationwide and reported in all the newspapers in Nigeria.
11. That I know as a fact that the 1st Defendant and the other 26 members of the Rivers State House of Assembly he represents are no longer members of the 2nd Defendant with effect from 11th December, 2023 when they defected as stated above.
12. That I know as a fact that there was no division or factionalization within the

Peoples Democratic Party (PDP) which sponsored the 1st Defendant and the other 26 members of the Rivers State House of Assembly he represents as at 11th December, 2023 when they defected from the PDP to the APC.

13. That the 1st and 2nd Defendants have been sponsoring bills and passing the said bills into Law in Rivers State after their aforesaid defection on 11th December, 2023 till date. The Laws so passed by the 1st and 2nd Defendants after their defection include: The Rivers State Local Government Amendment Law, 2024; The Rivers State Traditional Rulers Amendment Law, 2024; The Rivers State Advertisement and Use of State Owned Property Prohibition Repeal Law, 2024; and The Rivers State Funds Management and Financial Autonomy Law, 2024.
14. That one week ago, the 1st and 2nd Defendants yet again amended the Rivers State Local Government Law to empower the House of Assembly via resolution to extend the tenure of elected Chairmen and Councillors of Local Government Councils in Rivers State, amongst other Laws.
15. That I know as a fact that the 3rd Defendant and the Rivers State Government are implementing the purported Laws passed by the 1st and 2nd Defendants.
16. That I was informed by our Solicitor A. A. Abo Esq of Counsel in his Chambers at No. 4 Hospital Road, Port Harcourt, Rivers State on 22/03/2024 at about 10am while reviewing this case and we verily believe him as follows:
 - a. that this Honourable Court has jurisdiction to interpret and apply the provisions of the 1999 Constitution as requested in this suit.
 - b. that this Honourable Court has the powers to grant the reliefs sought by the Claimants in this suit.
 - c. that the 1st Defendant and the other 26 members of the 2nd Defendant having defected from the political party that sponsored them into office, they have ceased to be members of the 2nd Defendant and can no longer make Laws for Rivers State of Nigeria.
 - d. that the 3rd Defendant and the Rivers State Government are not bound to carry out, implement or give effect to any Law passed by the 1st and 2nd Defendant since 11th December, 2023.
17. That it is in the interest of justice that the Claimants' reliefs be granted in order to infuse sapity and orderliness in the affairs of the Rivers State House of Assembly and Rivers State at large.

18. That I depose to this affidavit in good faith believing the contents to be true and correct and in accordance with the Oaths Act, LFN 2004.

In the written address in support Originating Summons the claimants raised identified the issues for determination as the questions for determination as follows:

- a. Whether by virtue of sections 100(1) and 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the power of the 2nd Defendant, that is, the Rivers State House of Assembly to make Laws for the good governance of Rivers State can be validly exercised by the 1st Defendant and the other 26 members of the 2nd Defendant who have ceased to be members of the 2nd Defendant.
- b. Whether by virtue of sections 100(1) and 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Laws purportedly passed by the 1st and 2nd Defendants from 11th December 2023 when the 1st Defendant and the other 26 members of the 2nd Defendant defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) till date are valid and enforceable by the 3rd Defendant and the Rivers State Government.
- c. Whether the 3rd Defendant and the Rivers State Government are duty bound to enforce and comply with the Laws passed by the 1st and 2nd Defendants in defiance of the provisions of sections 100(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

On issue one, Mr. Abo claimants' counsel, submitted that Order 3 Rules 5 and 6 of the High Court of Rivers State (Civil Procedure) Rules 2023 empowers this Honourable Court to entertain this suit under the originating summons procedure as the questions raised and the reliefs sought relates to the interpretation and construction of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which is a legal instrument.

He contended that it is settled that originating summons procedure can be used where there are no substantial disputes of facts or likelihood of same. It is a procedure wherein the evidence is mainly by way of documents and there is no serious dispute as to their existence in the pleadings. It is usually heard on affidavit evidence and involves questions of law rather than issues of fact. He referred to SANI v. KSHA (2019) 4 NWLR (Pt. 1661) 172 at 183 -184, paras. H – E, S.C.

Counsel submitted that in the instant case, this Court is invited to interpret the provisions of sections 100(1) and 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to determine if the Defendants have complied with the provisions therein by their recent actions.

On Issue 1, counsel referred to section 100(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides thus:

- “(1) The power of a House of Assembly to make laws shall be exercised by bills passed by the House of Assembly and, except as otherwise provided by this section, assented to by the Governor.
- (2) A bill shall not become Law unless it has been duly passed and, subject to subsection (1) of this section, assented to in accordance with the provisions of this section.”

Counsel submitted that the power of the 2nd Defendant, that is, the Rivers State House of Assembly to make Laws for the good governance of Rivers State cannot be validly exercised by the 1st Defendant and the other 26 members of the 2nd Defendant who have automatically ceased to be members of the Rivers State House of Assembly (2nd Defendant) following their defection on 11th December, 2023 from the Peoples Democratic Party (PDP) which sponsored them to the All Progressive Congress (APC).

Counsel submitted that the provisions of section 109(l)(g) of the 1999 Constitution is clear and unambiguous and it is to the effect that a member of the House of Assembly SHALL vacate his seat in the House if he defects from the political party that sponsored at the election to the House to another political party before the expiration of the period for which that House was elected which in the instant case is from 2023 to 2027, except there was a division or factionalization within the political party that sponsored the defecting member of the House of Assembly, which is not the case in the instant case as the 1st Defendant and the other 26 members of the 2nd Defendant do not come within the exception created under section 109(l)(g) of the 1999 Constitution. He referred to paragraphs 7 - 12 of the affidavit in support of originating summons, ABEGUNDE v. THE ONDO STATE HOUSE OF ASSEMBLY (2015) LPELR-24588(SC), FEDECO v. GONI (1983) 2 SCNLR 227, (1983) LPELR-1256(SC); AG FEDERATION v. ABUBAKAR (2007) 10 NWLR (Pt. 1041) 178; SPEAKER, CROSS RIVER HOUSE OF ASSEMBLY & ANOR v. EKOM & ORS (2021) LPELR-55738(CA); ITUEN v. SPEAKER AKWA IBOM STATE HOUSE OF ASSEMBLY & ORS (2021) LPELR-53318(CA).

Counsel submitted that by the Supreme Court decision in ABEGUNDE's case, the defector loses his seat AUTOMATICALLY and ceases to be a member of the House of Assembly to which he was sponsored, and elected into, by the political party he defected from. In the instant case, the 1st Defendant and the other 26 members of the Rivers State House of Assembly they represent who collectively defected from the PDP to the APC have lost their seat automatically and ceased to be members of the Rivers State House of Assembly. That being the case, the 1st and 2nd Defendants no longer constitute the Rivers State House of Assembly and therefore does not have the constitutional power anymore under section 100(1) of the 1999 Constitution to make Laws for Rivers State of Nigeria.

He urged this court to resolve the first question or issue 1 in the originating summons in the negative in favour of the Claimants.

On issue two counsel adopted the submissions under issue 1 above and submitted further that the 1st Defendant and the other 26 members of the 2nd Defendant having ceased to be members of the 2nd Defendant cannot validly make Laws for Rivers State and consequently, ALL the Laws purportedly passed by the 1st and 2nd Defendants from 11th December 2023 when the 1st Defendant and the other 26 members of the 2nd Defendant defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) till date are invalid, null and void and unenforceable by the 3rd Defendant and the Rivers State Government.

Counsel submitted that you cannot put something on nothing and expect it to stand. He referred to *UAC v. MACFOY* (1961) 3 All ER 1169 (PC) at 11721.

Counsel submitted by virtue of the combined provisions of sections 4(6) & (7) and 100(1) of the 1999 Constitution, only a validly constituted House of Assembly can make Laws for the peace, order and good governance of Rivers State of Nigeria. Otherwise, such Laws not validly made becomes invalid, unenforceable, null and void and of no effect whatsoever. Nullity in law has been defined as a void act and the effect thereof is that such an act has no legal consequences. A void act such as a null proceeding is not only bad but of no legal consequences. It is incurable and cannot be salvaged. He referred to *SALEH v. MONGUNO* (2006) 15 NWLR (Pt. 1001) 26 at 74.

Counsel referred to paragraphs 13 - 16 of the affidavit in support of originating summons and submitted that ALL the Laws purportedly passed by the 1st and 2nd Defendants from 11th December 2023 when they defected from PDP to APC without justifiable reason are null and void and cannot be enforced by the 3rd Defendant and the Rivers State Government.

He urged this Honourable Court to resolve the second question or issue 2 raised in the originating summons in the negative in favour of the Claimants and to proceed to grant the Reliefs sought in the originating summons.

On issue three counsel submitted adopted the submissions under issues 1 and 2 above and submitted further that under and by virtue of section 5(2)(b) of the 1999 Constitution, the 3rd Defendant and the Rivers State Government are duty bound to execute all Laws made by the Rivers State House of Assembly. However, the question remains whether the 1st and 2nd Defendants constitute the Rivers State House of Assembly as to make enforceable Laws for the state. The answer is a resounding NO.

Counsel submitted that it is trite law that the executive arm of government is responsible for implementing the laws made by the legislature and enforcing same.

However, for the laws made by the legislature to be enforceable by the executive, such laws must be validly passed by a properly constituted legislature.

Counsel submitted that in the instant case, that since the 1st and 2nd Defendants does not constitute a proper Rivers State House of Assembly as we have shown by our arguments under issues 1 and 2 above, the 3rd Defendant and indeed the Rivers State Government are not duty bound to implement the Laws made by the 1st and 2nd Defendants commencing from 11th December, 2023 when the 1st Defendant and the other 26 members of the 2nd Defendant defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) and consequently lost their seats automatically.

Counsel urged this Honourable Court to resolve the third question or issue 3 raised in the originating summons in the negative in favour of the Claimants and to proceed to grant the Reliefs sought in the originating summons.

Conclusively, counsel submitted that that the instant suit was properly commenced via an originating summons and the Claimants have by their affidavit evidence and Exhibits A - C proved their case and are therefore entitled to the grant of the reliefs sought in the originating summons.

The 1st, 2nd, 3rd and 4th defendants filed their counter affidavit and written address in opposition. The 1st defendant in his counter affidavit filed on 16th day of May, 2024, in opposition to the Originating Summons deposed as follows:

I, CHIMA IBEH, Adult, Female, Christian and Nigerian Citizen of No. 106, Old Aba Road, Opp. Ugorji House, Rumuobiokani, Port Harcourt, Rivers State do hereby make oath and state as follows:

1. That I am a Litigation Clerk in the firm of Emeka Onyeka and Co, one of the law firms that was instructed by the 1st Defendant/Applicant to defend him in this Sun and I have the authority of the Applicant to depose to this Counter-Affidavit to this Originating Summons.
2. That by virtue of my position as a Litigation Clerk in the law firm of Emeka Onyeka & Co., one of the firms of Solicitors for the 1st Defendant in this Suit, I am conversant with the facts of this case and the circumstances leading to this Counter-Affidavit.
3. That I was informed by Rt. Hon. Martin Amaewhule, the 1st Defendant on record on the 13th day of May, 2024 at No. 106, Old Aha Road, Opp. Ugorji House, Rumuobiokani, Pon Harcourt, Rivers State, al about 2:45pm and I verily believe him as follows;
 - a. That the Claimant's affidavit in support of the Originating Summons was served on him and he has gone through it.

- b. That paragraphs 4, 5, 9, 10, II. 12, 13, 15, 16, 17 and 18 of the affidavit in Support of the Originating Summons are false.
- c. That the Claimants were not mandated to file this action on behalf of the alleged concerned Indigenes and registered voters in Rivers State as the Indigenes and registered voters in Rivers State are not aggrieved by the action or omission of the 1st Defendant and other members of the Rivers State House of Assembly referred to at paragraph 6 of the Affidavit in support of the Originating Summons, in any manner whatsoever.
- d. That the 1st Defendant and the erstwhile 2nd Defendant do not describe themselves as the Speaker and Deputy Speaker of the Rivers State House of Assembly. On the contrary they were duly elected into those offices and have been performing the functions of those offices ever since without let or hindrance from any person or persons in any manner whatsoever.
- e. That the 1st Defendant, the erstwhile 2nd Defendant and the other 24 members of the Rivers State House of Assembly have not defected to the APC as alleged by the Plaintiffs.
- f. That no one can legitimately defect to the APC or any other party without his/her name first being entered into his/her Ward Register and thereafter issued with the party membership card.
- g. That the names of 1st Defendant and the other alleged defectors are not in any APC Ward Register of members.
- h. That the 1st Defendant and the other alleged Defectors do not carry any APC membership cards.
- i. That the 1st Defendant and the other alleged defectors did not submit any letter to inform the Speaker of the Rivers State House of Assembly that they have defected to the APC as alleged.
- j. That the 1st Defendant and the other 26 members of the Rivers State House of Assembly are still and remain members of the Rivers State House of Assembly.
- k. That the PDP is seriously factionalized and fractured.
- l. That the Rivers State House of Assembly led by the 1st Defendant as Speaker and the other 26 members of the Rivers State House of Assembly have been performing their legislative functions by passing

Bills and forwarding the same to the Governor of Rivers State for his accent.

- m. That I do not have the consent of the twenty-six other members of the Rivers State House of Assembly mentioned in paragraph 6 of the Affidavit in Support of the Originating Summons to defend this Suit on their behalf.
4. That I was also informed by Emeka Onyeka, Esq., one of the lawyers in Chambers on the 10th day of May, 2024 at No. 106, Old Aba Road, Opp. Ugorji House, Rumuobiokani, Port Harcourt, Rivers State, at about 5:15pm and I verily believe him as follows;
 - i. That this Honourable Court is bereft of any jurisdiction to hear and determine this suit.
 - ii. That this Honourable Court lacks the power to grant the reliefs sought in this application.
 - iii. That the 1st, the erstwhile 2nd and the other alleged defectors are still the Rivers State House of Assembly Speaker, Deputy Speaker and members respectively.
 - iv. The 5th Defendant and the Rivers State government are duty bound to execute the laws made by the Rivers State House of Assembly.
5. That it is in the interest of Justice that the Claimants' Originating Summons be refused.
6. That I swear to this Counter-Affidavit in good faith believing its contents to be true and correct to the best of my knowledge, belief and understanding and in consonance with the Oaths Law of Rivers State.

In the written address in support of the 1st defendant's counter-affidavit, the 1st defendant identified two issues for determination as follows;

1. "Whether the Claimants have proved their case on the preponderance of evidence and on the balance of probabilities?"
2. "Whether this suit is properly constituted having regards to the fact that the 1st Defendant does not have the mandate or consent of the other members of the Rivers State House of Assembly mentioned at paragraph 6 of the Affidavit in support of the Originating Summons, to defend this suit on their behalf?"

Senior counsel for the 1st defendant submitted that the Claimants' claims in the instant suit are declaratory in nature, that being the case, the law is well settled on the point that the Claimants have the evidential burden to prove that they are entitled to those reliefs on the preponderance of evidence and on the balance of probabilities. He referred to *WOME v. NIGER DELTA PETROLEUM RESOURCES LTD* (2022) LPELR-58556(CA) (Pp. 21-23 paras. C),

In this case, while the claimants contend that they have discharged the burden of proof, the Senior counsel for the 1st, 2nd and 4th defendant submitted that the question that arises at this juncture whether the Claimants discharged the legal burden of proof espoused in *Wome v. Niger-Delta Petroleum Resources Ltd.* (*supra*) with sufficient evidence both oral and documentary to entitle to the Declaratory reliefs sought in this Originating Summons? He answered this question in the Negative.

Counsel submitted that the Claimants failed to prove that the 1st Defendant or any of the other 26 members of the Rivers State House of Assembly have resigned from the PDP. No letter of resignation was tendered to that effect. Even though the Claimants alleged that the defection took place at the Rivers State House of Assembly, No Hansard or Votes and Proceedings of the Rivers State House of Assembly was tendered to prove this allegation. Even though defections do not take place on the pages of Newspaper, social or tele-media, the Claimants however referred to video evidence to prove defection, but none whatsoever was tendered before this Honourable Court.

Counsel further submitted that the Claimants failed to tender either the Register of members of the APC to establish that the names of the 1st Defendant and the other 26 members of the Rivers State House of Assembly have been entered into them or APC membership Cards to prove that they are now members of the APC. There is also no letter from the 1st Defendant and the other 26 members of the Rivers State House of Assembly to show they have resigned their membership of the PDP and or letter of such purported defection addressed to the 2nd Defendant or the Clerk of the Rivers State House of Assembly.

Counsel submitted that the length and breathe of the Originating Summons were indeed long on allegation but short on proof. Counsel urged this court to resolve this issue in favour of the 1st Defendant.

On Issue Two, senior counsel submitted that We submit that the law is now settled beyond per adventure that to an action brought or defended in a representative capacity to be properly constituted, there must be evidence of some authorization to sue or to defend on behalf of the others. Senior counsel referred to *MUSTAPHA v. SUNTAI & OKS* (2013) LPELR-22109(CA), *NDULUE v. IBEZIM & ANOR* (2002) LPELR-1980(SC).

Counsel submitted that the 1st Defendant stated clearly in the counter-affidavit that

twenty-six other members whose names were copiously mentioned in the Affidavit in Support of the Originating Summons did not give him authorization to defend the suit on their behalf, the consequences are fatal. Allegations were made against the other members throughout the entire gamut of the Originating Summons. These allegations and the issues surrounding them cannot be resolved by this Honourable Court without hearing from them. To decide this case in their absence would be tantamount to breaching their fundamental right to fair hearing enshrined in Section 36 (1) of the Constitution. The law is trite that the Court cannot make an Order against a person who is not a party or privy to a proceeding before it. Senior counsel referred to *Kokoro-owo & Ors v Lagos State Govt & Ors* (2001) LPELR - 1699 (SC) p. 14, paras. B - B.

He urged this court to resolve this issue in favour of the 1st Defendant.

In the 2ND defendant's counter affidavit in opposition to the originating summons the deponent stated as follows:

I, EMEKA AMADI, PhD, Public Servant of the Rivers State House of Assembly Complex, Moscow Road, Port Harcourt, Nigerian Citizen, do hereby make oath and state as follows:

1. That I am the Clerk of the 2nd Defendant and I am conversant with the facts of this case by virtue of my aforesaid position.
2. That I have the consent and authority of the 2nd Defendant to depose to this affidavit on its behalf.
3. That I have seen and read the affidavit in support of the Originating Summons deposed to by one Barikpe Gibson Eenyie.
4. That paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, of the aforesaid affidavit in support of the Originating Summons are false and in answer I state as follows:
 - a. That the 1st Defendant and 26 others were duly elected as members of the 2nd Defendant representing their respective State Constituencies.
 - b. That the 1st Defendant was duly elected Speaker of the 2nd Defendant on 05/6/2023 and have validly remained in his aforesaid office till date.
 - c. That the seats of the 1st Defendant and 26 others in the 2nd Defendant are being occupied by them, have never been vacant and are not available to be filled by election whatsoever or howsoever.
 - d. That the 1st Defendant and 26 others are members of the 2nd

Defendant till date.

- e. That the 1st Defendant and 26 others have till date been performing their constitutional and or statutory duties and function including making laws, carrying out their oversight functions. Letters from Sir Siminalayi Fubara GSSRS, Governor of Rivers State addressed to the 1st Defendant as Speaker of 2nd Defendant on some of these functions are annexed hereto and marked Exhibits A, B, C, D and E.
- f. That on 30/10/2023 Hon. Edison Ehie was duly removed as the Majority Leader of the 2nd Defendant by members of the said House. Copy of the record of the proceedings of the 2nd Defendant on 30/10/2023 is annexed hereto and marked Exhibit F.
- g. That Hon. Edison Ehie, Hon. Sokari Goodboy Sokari, Hon. Adolphus Timothy Oruibienimigha, and Hon. Victor Oko Jumbo were on 30/10/2023 indefinitely suspended as members of the 2nd Defendant. The proceedings of the said suspension are contained in Exhibit "F".
- h. That Hon. Edison Ehie was never elected Speaker of the 2nd Defendant.
- i. That in the judgment of the Federal High Court delivered on 22/1/2024 in Suit No. FHC/ABJ/CS/1613/2023: RIVERS STATE HOUSE OF ASSEMBLY & ANOTHER V. THE NATIONAL ASSEMBLY & OTHERS, the status of various proceedings of the 2nd Defendant were determined, declared and or pronounced on. Copy of the said judgment is annexed hereto and marked Exhibit "G".

5. That I depose to this affidavit in good faith conscientiously believing same to be true and correct and in accordance with the provisions of the Oaths Act.

In the 2ND defendant's written address in opposition to originating summons a sole issue for determination was raised as follows:

Whether having regard to the circumstances of this case, the Claimants have established entitlement to the declaratory and injunctive reliefs sought by them in this suit?

Njemanze, SAN, senior counsel for the 2nd defendant submitted that it is a settled principle of law that in civil cases such as the instant suit, the burden of proof lies on the person who desires the Court to give judgment as to any legal right or liability which depends on facts, which he asserts to prove that those facts exist. Also, it is settled that the burden of proof in a civil proceeding lies on the person who would fail if no evidence is given on either side. He referred to Sections 131 and 132 of Evidence Act 2011.

He contends that in the instant case, the onus is on the Claimants to establish their case by cogent and admissible evidence before the burden will shift to the Defendant to rebut the Claimant's case. Senior counsel referred to ANDREW V INEC (2018) 9 NWLR (Pt. 1625) 507 AT 551, AKINBADE V. BABATUNDE (2018)7 NWLR (Pt. 1618)366 AT 393 - 394.

Senior counsel further submitted that in an action where the Claimant is seeking declaratory reliefs (as in the instant case), the burden of proof on the Claimant in establishing the declaratory reliefs sought to the satisfaction of the Court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendants. The Claimant must succeed on the strength of his case and not on the weakness or admission of his opponent. He referred to OKEREKE V. UMAHI (2016)11 NWLR (Pt.1524) at 438, (PG.489) Paras B-D. See also OGBURU V. OKOWA (2016)11 NWLR (Pt.1522) 84 AT 123.

Senior counsel submitted that in the instant case, the Claimants failed to present before the Honourable Court, cogent, admissible, material and relevant evidence in support of the allegations made by them. The affidavit evidence presented by the Claimants is clearly bereft of material facts that would entitle them to the declaratory and injunctive reliefs sought by them in this suit as we shall show hereunder.

Njemanze, SAN, submitted that cessation of membership of the House of Assembly or the vacation of a legislative seat by a member of the House of Assembly involves constitutional legislative procedure as stipulated in Section 109 (1) & (2) of the 1999 Constitution as amended. The Law makers in Section 109 of the 1999 Constitution as amended stipulated condition precedents which must exist before a member of a House of Assembly could be said to have ceased to be a member or could be said to have vacated his seat.

He submitted that the best evidence of proceedings of the Rivers State House of Assembly are contained in the votes and proceedings of that House of Assembly or what is commonly known as Hansard. By virtue of the provisions of Section 102(a) of the Evidence Act, all documents forming the official acts and records of the Rivers State House of Assembly are public documents and by virtue of the Provisions of Section 106 (c) of the Evidence Act, the Official Acts and Records of Rivers State House of Assembly including the proceedings of the House may be proved by the production of minutes of that body printed by Order of Government i.e votes and proceedings or Hansard. In the instant case, the Claimants have not produced any document purporting same to be the votes and proceedings or Hansard of the Rivers State House of Assembly. The said proceedings are not established by social media or news media accounts or recordings. The Claimants' failure to produce evidence of proceedings of the House of Assembly where the procedure in Section 109 of the 1999 Constitution (as amended) was adhered to, is fatal to the case of the Claimants.

He submitted that a Court cannot rely on a document not tendered as an exhibit or placed before it. The Claimants having failed to place these documents before the Court, the Court cannot rely on such documents, speculate or conjuncture as to the content of such documents or happenings of the Rivers State House of Assembly. By virtue of the provisions of Section 167(d) of the Evidence Act, the Claimants are presumed to have withheld evidence. He referred to OPARAJI V. OHANU (1999) 9 NWLR (Pt.618) 290 AT 307, PARAS A-F, BELLO V KASSIM (1969) NMLR 148 at 152, OKUNZUA V. AMOSU (1992) 6 NWLR (PT. 248) 416 at 435.

He submitted that the second issue that arises from this non production of the said written decisions of the arbitrators concerns the basic principle of law that a trial court must not rely on a document not tendered as an Exhibit before it except of course, where its contents have been rendered admissible in law, such as where after sufficient foundation has been laid, secondary evidence thereof is admitted in evidence. The simple rationale in this regard is that without a consideration of the document itself, in this case the recorded proceedings of the customary law arbitrations in issue which was not tendered in evidence, a trial Judge would not be in a position to arrive with any degree of precision at the actual decisions of the arbitration panels relied on by the parties. He referred to OLAGBEMIRO V. AJAGUNGBADE 111 (1990) 3 NWLR (Pt.136) 37 at 63, GBAJOR V. OGUNBUREGUI (1961) 1 AH NLR 853, SOMMER & Ors v. FEDERAL HOUSING AUTHORITY (1992) 1 NWLR (Part 219) 548 at 551.

Senior Counsel submitted further that the provisions of Section 109 of 1999 Constitution as amended is clear and unambiguous. Applying the literal rule of interpretation of statutes, the provisions of Section 109 of 1999 Constitution (as amended) ought to be given its ordinary grammatical meaning and in effect, the Constitution is clear on who activates Section 109 when the need arises. The Speaker of the House is the person with the sole responsibility of activating Section 109, provided the conditions precedents stipulated in section 109(2) of the Constitution (as amended) has been met. He referred to DELTA STATE HOUSE OF ASSEMBLY V DPP (2014) LPELR (22808) CA.

Senior counsel submitted that the Claimants in this suit have failed to establish that the condition precedent for activation of Section 109(1)(g) of the 1999 Constitution (as amended) has been met. The Claimants have also failed to show or establish that the speaker of the Rivers State House of Assembly has activated the aforesaid constitutional provisions. In the circumstance, the Claimants have failed to establish entitlement to the reliefs sought in this suit.

Senior counsel submitted that the Claimants relied heavily on HON. IFEDAYO SUNDAY ABEGUNDE V THE ONDO STATE HOUSE OF ASSEMBLY & ORS. (2015) NWLR (Pt. 1461) 314. He submitted that the facts of the Abegunde's case is not in dispute in that the House member, Mr. Abegunde on his action admitted that he had defected from his party to another because there was crisis in the Ondo State Chapter of the Labour Party. In the instant case, the Claimant is not a member of

the Rivers State House of Assembly and from the affidavit evidence before this Court, the facts in the matter are hostile or disputed.

The 3rd defendant filed its counter affidavit and written address in opposition to the Originating summons filed on 23/04/2024, on filed 02/06/2024. The deponent ANDREW JAJA ESQ, Male, Adult, Christian, Nigerian Citizen, special Assistant to the Solicitor General, Rivers State/Permanent Secretary' Rivers State ministry of Justice, Port Harcourt, Rivers State, deposed as follows

1. That by virtue of my afore position and schedule of duties, I am conversant with the facts deposed hereunder.
2. That I depose to this Counter Affidavit with the consent, leave and authority of the 3rd Defendant.
3. That I have seen and carefully read the Claimant's originating summons, affidavit in support thereto and other accompanying processes filed on 23rd April, 2024.
4. That in response to paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 (a), (b), (c), (d) of the Claimant's affidavit in support of Amended Originating Summons, the 3rd Defendant state thus:
 - a. That the 1st defendant have (sic) seized to be members of the Rivers State House of Assembly since 11th December, 2023 when they defected from the People's Democratic Party (PDP), the party under whose umbrella they were elected, to the All Progressives Congress (APC).
 - b. That flowing from the above, the 11th defendant and the other defected members of the Rivers State House of Assembly cannot validly exercise the powers of the Rivers State House of Assembly to make laws for the good governance of Rivers State.
 - c. That all laws purportedly passed by the 1st and 2nd Defendants from 11th December, 2023 when the 1st Defendant and the other members defected from (PDP) to (APC) till date are invalid and unenforceable by the 3rd Defendant and the Rivers State Government.
 - d. That the Rivers State Government are not duty bound to enforce and comply with the purported laws passed by the 1st and 2nd Defendants in defiance of the provisions of the 1999 constitution of the Federal Republic of Nigeria (as amended).
 - e. That the 1st Defendant and his other defected former House of Assembly members are seriously working at cross purposes with the

3rd Defendant and the Government of Rivers state.

5. That I swear to this Counter Affidavit in good faith conscientiously believing its contents to be true and correct in accordance with the Oaths Act in force.

In the 3rd defendant's written address in response to claimants' affidavit in support of amended Originating Summons filed on 23RD April, 2024, a sole issue was raised as follows:

Whether or not the Claimants are entitled to the grant of their prayers?

Dame Iroegbu, set out the provisions of sections 100 (1) and 109 (I) (g) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). She submitted that in the instant case the power of the 2nd defendant to make laws for the good governance of Rivers State cannot be validly exercised by the 1st Defendant and the other defected former members of the Rivers State House of Assembly. Premised on the above, she submitted that the 3rd Defendant and the Rivers State Government who have an obligation to the people of Rivers State and Nigeria cannot be involved in any illegality.

The 4th defendant filed its counter affidavit headed the 6TH defendant's counter affidavit to the Originating Summons. The deponent deposed as follows:

I, Chief Kingsley Chuku, male, adult, Christian, Nigerian citizen of No. 23, Aba Road, Port Harcourt, Rivers State do hereby make oath and state as follows:

1. That I am the Rivers State Legal Adviser of the 6th Defendant and by virtue of my position and schedule of duties I am conversant with the facts herein deposed to in this counter affidavit.
2. That I have the consent of the officers of the 6th Defendant to depose to this affidavit.
3. That all the facts deposed to in the affidavit are facts within my personal knowledge as a result of my schedule of duties and my participation in the activities of the 6th Defendant and as the State Legal Adviser of the 6th Defendant.
4. That I have read the Affidavit in support of the Originating Summons as deposed to by the 4th Claimant, Barikpe Gibson Eenyie and understood same.
5. That paragraphs 3 and 4 of the affidavit in support of the originating summons are denied.
6. That in response to paragraph 5 of the affidavit in support of the originating

summons, I state that the 1st Defendant is the Speaker of the Rivers State House of Assembly and the 2nd Defendant is the Deputy Speaker of the Rivers State House of Assembly.

7. That I deny paragraph 6 of the affidavit in support of the originating summons and state that the 6th defendant has not received any letter of resignation from the 1st and 2nd Defendants.
8. That I deny paragraph 7 of the affidavit in support of the originating summons and state that the 1st and 2nd Defendants and the other 25 members of the Rivers State House of Assembly were elected into the Rivers State House of Assembly on the 18th day of March, 2023 on the platform of the 6th Defendant who is one of the registered political parties in Nigeria.
9. That I deny paragraph 9 of the affidavit in support of the originating summons and state that the 1st and 2nd Defendants and the other 25 members are still members of the 6th Defendant, the Ward Executive Committee of the 6th Defendant where they registered as members of the 6th Defendant, having not informed the 6th Defendant of the resignation of membership of the 1st and 2nd Defendants and the other 25 members of the Rivers State House of Assembly and the 1st and 2nd Defendants and the other 25 members have not informed the 6th Defendant that they are no longer its members.
10. That I know as a fact that the 1st and 2nd Defendants and the other 25 members always and consistently attend the 6th Defendant's Ward meetings in their various Wards up till now.
11. That in response to paragraphs 10, 11, 12 and 13 of the affidavit in support of the originating summons, I state that resignation is done at the ward level and the wards of the 1st and 2nd Defendants and the other 25 members of the Rivers State House of Assembly have not informed the 6th defendant of any resignation by the 1st and 2nd Defendants and the other 25 members of the Rivers State House of Assembly and the 1st and 2nd Defendants and the other 25 members of the Rivers State House of Assembly have not written any resignation letter(s) to the 6th defendant at any other level.
12. That in response to paragraph 16(b) of the affidavit in support of the originating summons, I know that this Honourable court cannot grant the reliefs of the Claimant which is based on facts that are not true.
13. That in response to paragraph 16(c) of the affidavit in support of the originating summons, I state that the 1st and 2nd Defendants and the other 25 members of the Rivers State House of Assembly have not defected from the 6th Defendant which sponsored them into office and they are still members of the 4th Defendant and can validly make Laws for Rivers State of

Nigeria as well as perform other functions within their mandate.

14. That I deny paragraph 16(d) of the affidavit in support of the originating summons and state that the 5th Defendant and the Rivers State Government are bound to carry out, implement and give effect to any Law passed by the 1st - 4th Defendants.
15. That in response to paragraph 17 of the affidavit in support of the originating summons, I state that the grant of the reliefs of the Claimants will not serve the interest of justice as the reliefs are based on facts that are not true.
16. That I swear to this Counter Affidavit in good faith conscientiously believing its content to be true and correct to the best of my knowledge and in accordance with the Oaths Act, 2004.

In the written address in support of the 6TH defendant's counter affidavit to the Originating Summons, the 4th defendant raised a sole issue for determination as follows:

Whether having regards to the circumstances of this suit Section 109(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is applicable when the 1st - 2nd Defendants are still members of the 6th Defendants.

Dr. Musa, SAN, argued the sole issue and submitted that this case is premised on the provisions of Section 109(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). He submitted that the two cardinal elements to prove and which must not be left to conjecture and surmise are that the member of the House of Assembly must have left the Political Party that sponsored him and must have become a member of another Political Party. These are to be proved by hard facts. The documents the Claimant is relying upon are newspaper reports and online videos of the purported resignation of membership and defection of the 1st - 2nd Defendants. He submitted that resignation is an act and must be shown by the mode in which it was done. Senior counsel submitted that a newspaper publication which is not before the court cannot be relied upon to prove resignation of the 1st - 2nd Defendants from the 6th Defendant. Any attempt to believe the said deposition will amount to the court being dragged to the sphere of speculation. He submitted that speculation is not for the court. he referred to ENOBONG VICTOR- ISONGUYO v. THE STATE (2023) 3 NWLR (Pt. 1872) p. 519 @ p. 588, paras. C - F, per Aboki, JSC, Orisa v. State & Ors. (2018) LPELR 43896 SC; (2018)11 NWLR (Pt. 1631) 453; Ivienagbor v. Bazuaye & Anor (1999) LPELR 1562 SC:(1999) 9 NWLR (Pt. 620) 552, VICTOR-ISONGUYO v. THE STATE (supra),

Senior counsel submitted that the Claimants having failed to prove their case, there is no duty on the 6th defendant to prove the contrary. He submitted that what is

alleged without proof can be denied without proof. It is further submitted that the allegation of the defection of the 1st- 2nd Defendants is a mere allegation without proof and can be safely refuted without proof. He referred to *Orisadipe v. State* (2019) 13 NWLR (Pt. 1688) p. 24 @ p. 65, paras. D-E, per Eko, JSC.

Senior counsel submitted that the Claimant read from social media and heard side talks of the defection of some members of the Rivers State House of Assembly but those are mere rumours as the members of the House of Assembly are all members of the 6th Defendant and the Claimants have not shown anything stating that they are no longer members of the 6th Defendant. The affidavit evidence of the 6th Defendant show that the 1st and 2nd Defendants always and consistently attend the 6th Defendant's Ward meetings in their various Wards up till now.

Dr. Musa, SAN, submitted that by Section 85 of the Evidence Act, 2011, the contents of documents can be proved by the production of either the primary or secondary copy of the document. No document made by the 1st and 2nd Defendants to the effect of their resignation is before the court. The resignation of the 1st and 2nd Defendants can only be from the 6th Defendant and any document made by the 1st and 2nd Defendants expressing their resignation must be served on the 6th Defendant. The 6th Defendant, we submit, is not aware of the purported resignation of the 1st and 2nd Defendants who still attend the 6th Defendant's Ward meetings at their respective wards.

He submitted that he who asserts must prove and the burden of proof lies on the party who will fail if no evidence at all is adduced. He referred to section 131(1) of the Evidence Act, 2011, *ABEGUNDE v. ONDO STATE HOUSE OF ASSEMBLY* (2015) LPELR- 24588 (SC). He submitted that in respect of the effect of resignation from a Political Party that sponsored a person into a Legislative House, the Claimants ought to have carefully sat and examined the fact of the case, as in the instant case, and convinced themselves that the cases are similar. Clearly, the case cited by the Claimants is cited out of context because in this case, there is no evidence of resignation of the 1st and 2nd Defendants from the 6th Defendant. He submitted that a case is an authority for what it decided. He referred to *APC v. INEC* (2015) 8 NWLR (Pt. 1462) 531 @ 583, Para. D, per M.D. Muhammed, JSC, *MAJOR GENERAL KAYODE ONI & 4 ORS v. GOVERNOR OF EKITI STATE & ANOR* (2019) 5 NWLR (Pt. 1664) 1 @ 19-20, Paras. F-H.

Senior counsel submitted that section 109(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is a legislation that protects the interest of the Political Party that sponsored a member who defects to another Political Party. It is thus imperative to hear from the Political Party that sponsored the member whether, in deed, such a member has left the membership of the Political Party before punishing the member with the declaration of his seat vacant to avoid punishing the Political Party by declaring vacant the seat of its member wrongly.

Counsel submitted that in the much cited case of *ABEGUNDE v. ONDO STATE*

HOUSE OF ASSEMBLY (2015) 8 NWLR (Pt. 1461) 348, paras. D - F, the Supreme Court relied on its earlier decision on the intention of the law maker in providing Section 109(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

He submitted that the deponent to the Affidavit in support of the Originating Summons, Barikpe Gibson Eenyie, is not a member of the Rivers State House of Assembly. He did not state that he attended the plenary of the Rivers State House of Assembly on the 11th day of December, 2023 in his affidavit and he did not state the source wherefrom he derived the information that the 1st and 2nd defendants defected from the 6th defendant to the ARC and all other information in paragraphs 9, 10, 11, 12 and 13 of his affidavit, we submit that the purported defection of the 1st and 2nd defendants is the cardinal facts upon which all other facts hang. We urge your Lordship to expunge or discountenance paragraphs 9, 10, 11, 12 and 13 of the Affidavit in support of the Originating Summons. This leaves the originating summons bare without any evidence in support thereof.

Senior counsel submitted that the Claimants' arguments in Issues 2 & 3 of its Written Address are premature being issues dependent on established evidence that the 1st and 2nd Defendants have left the membership of the 6th Defendant which the Plaintiff have woefully failed to prove. He urged this court to resolve this sole issue in favour of the 4th Defendant and against the Claimants.

On 29/05/2024 and upon receipt of the counter affidavit of the defendants the claimants filed further affidavits and replies on points of law in response to the 1st, 2nd and 4th defendants' counter affidavits as follows:

The deponent deposed as follows:

1. That I am the 4th Claimant on record and by virtue of my position and facts made available to me where so stated, I am conversant with the facts of this case.
2. That I have the consent and authority of the 1st, 2nd and 3rd Claimants to depose to this affidavit on our behalf.
3. That the Claimants/Respondents have seen and read the Counter Affidavit filed on 16/05/2024 by the 1st Defendant and deposed to by one Chima Ibeh. The Claimants state that the said counter affidavit contains facts which are either total falsehood or concocted facts aimed at misleading this Honourable Court and therefore same are hereby denied.
4. That in response to paragraphs 3, 4 and 5 of the 1st Defendant's counter affidavit, I state as follows:
 - a. That indigenes and registered voters in Rivers State are seriously

aggrieved by several wrongful and unlawful actions of the 1st Defendant and the other 26 members of the 2nd Defendant who are parading themselves as members of the 2nd Defendant and making laws that does not advance the interest of the State.

- b. That the Claimants in 2021 voted in Chairmen and Councilors of the 23 Local Government Councils of Rivers State for a term of three years which was to elapse on 17th June 2024, only for the 1st Defendant and the other 26 members of the 2nd Defendant to wake up one morning and amend the Rivers State Local Government Law to extend or elongate the term of office of the said Chairmen and Councilors beyond 17th June 2024, amongst other wrongful actions of the 1st Defendant and the other 26 members of the 2nd Defendant.
- c. That the 1st Defendant and the other 26 members of the 2nd Defendant immediately after their open defection from the Peoples' Democratic Party (PDP) to the All Progressive Congress (APC) on 11th December 2023 filed an action before the Federal High Court in Suit No. FHC/ABJ/CS/1681/2023 - Between The Rt. Hon. Martin Chike Amaewhule & 26 Ors v. Independent National Electoral Commission (INEC) & 5 Ors and in their Statement of Claim and Witness Statement on Oath filed on 13th December 2023 the 1st Defendant on oath confirmed categorically that the 1st Defendant and the other 26 members of the 2nd Defendant defected and joined the APC on the 11th December 2023. Copy of the Writ of Summons, Statement of Claim and the 1st Defendant's Statement on Oath filed on 13/12/2023 in Suit No. FHC/ABJ/CS/1681/2023 are hereby attached and marked as EXHIBIT E1.
- d. That at paragraph 16 of the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023, he stated that "faced with the state of uncertainty and confusion in the 2nd Defendant caused by the division in the political party, we were constrained to defect and joined the All Progressive Party (APC) on the 11th December, 2023" thereby confirming the Claimants' averments in this suit that the 1st Defendant and the other 26 members of the 2nd Defendant defected from PDP and joined the APC on the 11th December 2023.
- e. That there is a video recording of the seating and proceedings of the 2nd Defendant on the 11th December 2023 showing the 1st Defendant reading the letters of defection written individually by the 1st Defendant and the other 26 members of the 2nd Defendant on the floor of the Rivers State House of Assembly communicating their defection from the PDP to join the APC. Copy of the said video recording is hereby attached and marked as EXHIBIT E2.

- f. That the PDP is neither factionalized nor fractured.
5. That I was informed by our Solicitor, A. A. Abo, Esq of Principal Counsel in Chambers at No. 4 Hospital Road, Port Harcourt, Rivers State on 23/05/2024 at about 2pm while reviewing this suit and I verily believe him that this Honourable Court has jurisdiction to hear and determine this suit and also grant the reliefs sought in this suit.
6. That it would be in the interest to discountenance the facts contained in the 1st Defendant's counter affidavit filed on 16/05/2024.
7. That I depose to this affidavit in good faith believing the contents to be true and correct to the best of my knowledge and in accordance with the provisions of the Oaths Act, LFN 2004.

The claimants' counsel submitted in the reply on points of law in response to the 1st defendant's written address as follows:

Firstly, it must be pointed out that the 1st Defendant in his counter affidavit filed on 16/05/2024 did not specifically deny the allegation of facts contained in paragraphs 6, 9 and 10 of the Claimants' affidavit in support of originating summons to the effect that the 1st Defendant and the other 26 members of the 2nd Defendant sat on Monday 11th December 2023 and during plenary of the Rivers State House of Assembly announced their defection from the PDP the political party which sponsored their election into the House of Assembly to join another political party, that is, the APC. All that the 1st Defendant said in his counter affidavit is that his name and that of the other 26 members of the 2nd Defendant have not been entered into APC Ward membership register, neither do they carry APC membership cards.

The 1st Defendant, who did not specifically deny the event of 11th December 2023, had argued that the Claimants did not prove the allegation of defection of the 1st Defendant and the other 26 members of the 2nd Defendant from PDP to the APC.

Counsel submitted that a defendant is required to specifically and properly traverse averments in a statement of claim. Every allegation of fact not specifically denied or traversed shall be taken as established at the hearing. He referred to TAIWO v. ADEGBORO (2011) 11 NWLR (Pt. 1259) 562 at 583 where the Supreme Court adopted the principle stated in LEWIS AND PEAT (NRI) LTD v. AKHIMIEN (1976) 1 All NLR (Pt. 1) 460.

Contrary to the submissions of the 1st Defendant under Issue 1 of his written address in support of counter affidavit, counsel referred this court to paragraphs 6 - 10 of the Claimants' affidavit in support of originating summons and paragraph 4 of the Claimants' further affidavit as well as Exhibits E1 and E2 and submit that the Claimants have sufficiently proved the allegation of defection of the 1st Defendant and the other 26 members of the 2nd Defendant to warrant the grant of the reliefs

sought in this suit.

He submitted that Exhibit E1 attached to the Claimants' further affidavit is a copy of the Writ of Summons, Statement of Claim and the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023 filed on 13/12/2023, just two days after they publicly announced their defection from PDP to APC on 11th December 2023. In it, the 1st Defendant and the other 26 members of the 2nd Defendant confirmed categorically that they have defected from PDP and joined the APC on the 11th December 2023. In the precise words on oath of the 1st Defendant in this suit, "faced with the state of uncertainty and confusion in the 2nd Defendant caused by the division in the political party, we were constrained to defect and joined the All Progressives Congress (APC) on the 11th December, 2023". He referred to paragraph 16 of the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023 (Exhibit E1). This confirmed the Claimants' averments in this suit that the 1st Defendant and the other 26 members of the 2nd Defendant defected from PDP and joined the APC on the 11th December 2023.

Counsel submitted similarly, that in Exhibit E2, that is, the video recording of the seating and proceedings of the 2nd Defendant held on 11th December 2023, the 1st Defendant can be seen reading the letters of defection written individually by the 1st Defendant and the other 26 members of the 2nd Defendant on the floor of the Rivers State House of Assembly communicating their defection from the PDP to join the APC. Therefore, the Claimants' averments of the defection of the 1st Defendant and the other 26 members of the 2nd Defendant on 11th December 2023 are not a product of social media or side talks as contended by the 4th Defendant in its written address.

Counsel submitted that the law is firmly settled that a party is not permitted to approbate and reprobate, as encapsulated in the maxim "quodapprobo non reprobō" meaning "that which I approve, I cannot disapprove". Counsel referred to MUTTAKA BALA SULAIMAN v. ALL PROGRESSIVE CONGRESS (APC) & ORS (2023) 5 NWLR (Pt. 1877) 211; NASKO & ANOR v. BELLO & ORS (2020) LPELR-52530(SC); A.G. RIVERS STATE v. A.G. FEDERATION (2022) LPELR- 57708(SC); B.B. APUGO & SONS LTD v. O.H.M.B (2016) 13 NWLR (Pt. 1529) 206. In the case of AJUWON & ORS v. GOVERNOR OF OYO STATE & ORS (2021) LCN/5134(SC).

Counsel submitted that the 1st Defendant should not be allowed to state on oath in Exhibit E1 that himself and the other 26 members of the 2nd Defendant defected from the PDP to join the APC on 11th December 2023 and now turn around to state in this case that they did not defect. He submitted that the defection of a member of the State House of Assembly from one political party to another political party only requires expression of the defection to the leadership of the House. It does not require presentation of letter of resignation to the political party that sponsored such member, as insinuated by the 1st Defendant in its written address. That may be the internal workings/arrangement of a political party and not a constitutional requirement to establish defection. In any case, Exhibits E1 and E2 as submitted above sufficiently proved the defection of the 1st Defendant and the other 26

members of the 2nd Defendant on 11th December 2023. He urged this court to so hold.

On the submissions of the 1st Defendant under Issue 2 of his written address in support of counter affidavit, counsel submitted that the facts and decision in MUSTAPHA v. SUNTAI & ORS (2013) LPELR-22109(CA) and NDULUE v. IBEZIM & ANOR (2002) LPELR-1980(SC) cited and relied upon by the 1st Defendant are not applicable to the instant case. He submitted that the facts of the cases cited by the 1st Defendant Respondent do not apply in the instant case which involves defection of House of Assembly Members from a party that sponsored their election to another party. he referred to Babatunde v P. A.S. & T.A. LTD (2007) ALL F.W.L.R. (PT.372) PAGE 372, PAGE 1721 AT PAGE 1733 RATIO 14.

Counsel submitted that it is the position of law that a decision is only authority for facts and laws on which it was decided. Where as in this case the authority cited can be distinguished, the court need not willy nilly apply the decision or law which does not support the facts and law before it. He referred to Amori v. Lyanda (2008) ALL FWLR (PT.416) P. 1864 at P. 1887 ratio 9.

Counsel submitted that the position of the law with respect to actions instituted or defended in a representative capacity as raised under Issue 2 of the 1st Defendant written address, that the jurisprudential postulate underlying suits in representative capacities is that the person or persons suing or defending in a representative capacity must have the same interest in the proceeding. This means that parties on record and those they represent must have common interest and therefore, the subject matter must evince a common interest as opposed to diverse interests. Refer to the case of OGUNGWA & ORS v. WILLIAMS & ANOR (2019) LPELR-47536(CA); IGHEDO v. P.H.C.N. PLC (2018) 9 NWLR (Pt. 1623) 51 at 82 - 83.

In the instant case, the 1st Defendant was sued in a representative capacity for himself and the other 26 members of the 2nd Defendant whom he is leading as their speaker. They were all elected on the same day, sworn in on the same day, have the same 4 years term of office and they carried out the defection, subject matter of this suit collectively on the same day, that is, the 11th day of December, 2023. Thus, it is not in doubt that they have common interest to defend in this suit and therefore suing them in a representative capacity is lawful and this action can be properly defended in that representative capacity. We urge my Lord to so hold.

In the claimants' further affidavit in response to the 2ND defendant's counter affidavit filed on 17/05/2024, the deponent BARIKPE GIBSON EENYIE, stated as follows:

1. That I am the 4th Claimant on record and by virtue of my position and facts made available to me where so stated, I am conversant with the facts of this case.

2. That I have the consent and authority of the 1st, 2nd and 3rd Claimants to depose to this affidavit on our behalf.
3. That the Claimants/Respondents have seen and read the Counter Affidavit filed on 17/05/2024 by the 2nd Defendant and deposed to by one Emeka Amadi, PhD. The Claimants state that the said counter affidavit contains facts which are either total falsehood or concocted facts aimed at misleading this Honourable Court and therefore same are hereby denied.
4. That in denial and response to paragraphs 1, 2, 3, 4 and 5 of the 2nd Defendant's counter affidavit, I state as follows:
 - a. that Emeka Amadi, PhD is not the Clerk of the 2nd Defendant and does not have the consent and authorization of the 2nd Defendant to depose to the said counter affidavit.
 - b. that the 1st Defendant is no longer the Speaker of the 2nd Defendant. The current Speaker is Rt. Hon. Victor Oko Jumbo.
 - c. that the 1st Defendant and the other 26 members of the 2nd Defendant on their own freewill defected from the Peoples' Democratic Party (PDP) to the All Progressive Congress (APC) on 11th December 2023 on the floor of the House during plenary.
 - d. that the 1st Defendant and the other 26 members of the 2nd Defendant then proceeded to file an action before the Federal High Court in Suit No. FHC/ABJ/CS/1681/2023 - Between The Rt. Hon. Martin Chike Amaewhule & 26 Ors v. Independent National Electoral Commission (INEC) & 5 Ors and in their Statement of Claim and Witness Statement on Oath filed on 13th December 2023 the 1st Defendant on oath confirmed categorically that the 1st Defendant and the other 26 members of the 2nd Defendant defected and joined the APC on the 11th December 2023. Copy of the Writ of Summons, Statement of Claim and the 1st Defendant's Statement on Oath filed on 13/12/2023 in Suit No. FHC/ABJ/CS/1681/2023 are hereby attached and marked as EXHIBIT E1.
 - e. that at paragraph 16 of the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023, he stated that "faced with the state of uncertainty and confusion in the 2nd Defendant caused by the division in the political party, we were constrained to defect and joined the All Progressive Party (APC) on the 11th December, 2023" thereby confirming the Claimants' averments in this suit that the 1st Defendant and the other 26 members of the 2nd Defendant defected from PDP and joined the APC on the 11th December 2023.

- f. that there is a video recording of the seating and proceedings of the 2nd Defendant on the 11th December 2023 showing the 1st Defendant reading the letters of defection written individually by the 1st Defendant and the other 26 members of the 2nd Defendant on the floor of the Rivers State House of Assembly communicating their defection from the PDP to join the APC. Copy of the said video recording is hereby attached and marked as EXHIBIT E2.
 - g. that the Governor of Rivers State has stopped recognizing the 1st Defendant and the other 26 members of the 2nd Defendant as members of the 2nd Defendant after they abused the soft landing he provided for them following the Presidential intervention in the faceoff between the Governor and the 1st Defendant and his colleagues.
5. That I was informed by our Solicitor, A. A. Abo, Esq of Principal Counsel in Chambers at No. 4 Hospital Road, Port Harcourt, Rivers State on 23/05/2024 at about 2pm while reviewing this suit and I verily believe him as follows:
 - a. the Governor cannot act outside the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to recognize and work with the 1st Defendant and the other 26 members of the 2nd Defendant who are no longer members of the 2nd Defendant.
 - b. that the purported judgment in Suit No. FHC/ABJ/CS/1613 has nothing to do with the cause of action, subject matter and issues raised in this suit. Claimants were not parties to the said suit.
6. That it would be in the interest to discountenance the facts contained in the 2nd Defendant's counter affidavit filed on 17/05/2024.
7. That I depose to this affidavit in good faith believing the contents to be true and correct to the best of my knowledge and in accordance with the provisions of the Oaths Act, LFN 2004.

The claimants in the reply on points of law Firstly, it must be pointed out that the 1st Defendant in his counter affidavit filed on 16/05/2024 did not specifically deny the allegation of facts contained in paragraphs 6, 9 and 10 of the Claimants' affidavit in support of originating summons to the effect that the 1st Defendant and the other 26 members of the 2nd Defendant sat on Monday 11th December 2023 and during plenary of the Rivers State House of Assembly announced their defection from the PDP the political party which sponsored their election into the House of Assembly to join another political party, that is, the APC. All that the 1st Defendant said in his counter affidavit is that his name and that of the other 26 members of the 2nd Defendant have not been entered into APC Ward membership register, neither do they carry APC membership cards.

The 1st Defendant, who did not specifically deny the event of 11th December 2023, had argued that the Claimants did not prove the allegation of defection of the 1st Defendant and the other 26 members of the 2nd Defendant from PDP to the APC.

Counsel submitted that a defendant is required to specifically and properly traverse averments in a statement of claim. Every allegation of fact not specifically denied or traversed shall be taken as established at the hearing. He referred to *TAIWO v. ADEGBORO* (2011) 11 NWLR (Pt. 1259) 562 at 583 where the Supreme Court adopted the principle stated in *LEWIS AND PEAT (NRI) LTD v. AKHIMIEN* (1976) 1 All NLR (Pt. 1) 460.

Contrary to the submissions of the 1st Defendant under Issue 1 of his written address in support of counter affidavit, counsel referred this court to paragraphs 6 - 10 of the Claimants' affidavit in support of originating summons and paragraph 4 of the Claimants' further affidavit as well as Exhibits E1 and E2 and submit that the Claimants have sufficiently proved the allegation of defection of the 1st Defendant and the other 26 members of the 2nd Defendant to warrant the grant of the reliefs sought in this suit.

He submitted that Exhibit E1 attached to the Claimants' further affidavit is a copy of the Writ of Summons, Statement of Claim and the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023 filed on 13/12/2023, just two days after they publicly announced their defection from PDP to APC on 11th December 2023. In it, the 1st Defendant and the other 26 members of the 2nd Defendant confirmed categorically that they have defected from PDP and joined the APC on the 11th December 2023. In the precise words on oath of the 1st Defendant in this suit, "faced with the state of uncertainty and confusion in the 2nd Defendant caused by the division in the political party, we were constrained to defect and joined the All Progressives Congress (APC) on the 11th December, 2023". He referred to paragraph 16 of the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023 (Exhibit E1). This confirmed the Claimants' averments in this suit that the 1st Defendant and the other 26 members of the 2nd Defendant defected from PDP and joined the APC on the 11th December 2023.

Counsel submitted similarly, that in Exhibit E2, that is, the video recording of the seating and proceedings of the 2nd Defendant held on 11th December 2023, the 1st Defendant can be seen reading the letters of defection written individually by the 1st Defendant and the other 26 members of the 2nd Defendant on the floor of the Rivers State House of Assembly communicating their defection from the PDP to join the APC. Therefore, the Claimants' averments of the defection of the 1st Defendant and the other 26 members of the 2nd Defendant on 11th December 2023 are not a product of social media or side talks as contended by the 4th Defendant in its written address.

Counsel submitted that the law is firmly settled that a party is not permitted to approbate and reprobate, as encapsulated in the maxim "quodapprobo non

reprobo" meaning "that which I approve, I cannot disapprove". Counsel referred to MUTTAKA BALA SULAIMAN v. ALL PROGRESSIVE CONGRESS (APC) & ORS (2023) 5 NWLR (Pt. 1877) 211; NASKO & ANOR v. BELLO & ORS (2020) LPELR-52530(SC); A.G. RIVERS STATE v. A.G. FEDERATION (2022) LPELR- 57708(SC); B.B. APUGO & SONS LTD v. O.H.M.B (2016) 13 NWLR (Pt. 1529) 206. In the case of AJUWON& ORS v. GOVERNOR OF OYO STATE & ORS (2021) LCN/5134(SC).

Counsel submitted that the 1st Defendant should not be allowed to state on oath in Exhibit E1 that himself and the other 26 members of the 2nd Defendant defected from the PDP to join the APC on 11th December 2023 and now turn around to state in this case that they did not defect. He submitted that the defection of a member of the State House of Assembly from one political party to another political party only requires expression of the defection to the leadership of the House. It does not require presentation of letter of resignation to the political party that sponsored such member, as insinuated by the 1st Defendant in its written address. That may be the internal workings/arrangement of a political party and not a constitutional requirement to establish defection. In any case, Exhibits E1 and E2 as submitted above sufficiently proved the defection of the 1st Defendant and the other 26 members of the 2nd Defendant on 11th December 2023. He urged this court to so hold.

On the submissions of the 1st Defendant under Issue 2 of his written address in support of counter affidavit, counsel submitted that the facts and decision in MUSTAPHA v. SUNTAI & ORS (2013) LPELR-22109(CA) and NDULUE v. IBEZIM & ANOR (2002) LPELR-1980(SC) cited and relied upon by the 1st Defendant are not applicable to the instant case. He submitted that the facts of the cases cited by the 1st Defendant Respondent do not apply in the instant case which involves defection of House of Assembly Members from a party that sponsored their election to another party. he referred to Babatunde v P. A.S. & T.A. LTD (2007) ALL F.W.L.R. (PT.372) PAGE 372, PAGE 1721 AT PAGE 1733 RATIO 14.

Counsel submitted that it is the position of law that a decision is only authority for facts and laws on which it was decided. Where as in this case the authority cited can be distinguished, the court need not willy nilly apply the decision or law which does not support the facts and law before it. He referred to Amori v. Lyanda (2008) ALL FWLR (PT.416) P. 1864 at P. 1887 ratio 9.

Counsel submitted that the position of the law with respect to actions instituted or defended in a representative capacity as raised under Issue 2 of the 1st Defendant written address, that the jurisprudential postulate underlying suits in representative capacities is that the person or persons suing or defending in a representative capacity must have the same interest in the proceeding. This means that parties on record and those they represent must have common interest and therefore, the subject matter must evince a common interest as opposed to diverse interests. Refer to the case of OGUNGWA & ORS v. WILLIAMS & ANOR (2019) LPELR-47536(CA); IGHEDO v. P.H.C.N. PLC (2018) 9 NWLR (Pt. 1623) 51 at 82 - 83.

In the instant case, the 1st Defendant was sued in a representative capacity for himself and the other 26 members of the 2nd Defendant whom he is leading as their speaker. They were all elected on the same day, sworn in on the same day, have the same 4 years term of office and they carried out the defection, subject matter of this suit collectively on the same day, that is, the 11th day of December, 2023. Thus, it is not in doubt that they have common interest to defend in this suit and therefore suing them in a representative capacity is lawful and this action can be properly defended in that representative capacity. We urge my Lord to so hold.

The claimants filed a further affidavit in response to the 4th defendant's counter affidavit. The deponent stated as follows:

1. That I am the 4th Claimant on record and by virtue of my position and facts made available to me where so stated, I am conversant with the facts of this case.
2. That I have the consent and authority of the 1st, 2nd and 3rd Claimants to depose to this affidavit on our behalf.
3. That the Claimants/Respondents have seen and read the Counter Affidavit filed on 21/05/2024 by the 4th Defendant (PDP) and deposed to by Chief Kingsley Chuku. The Claimants state that the said counter affidavit contains facts which are either total falsehood or concocted facts aimed at misleading this Honourable Court and therefore same are hereby denied.
4. That in response to paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the said counter affidavit, I state as follows:
 - a. That the 1st Defendant and the other 26 members of the 2nd Defendant immediately after their open defection from the Peoples' Democratic Party (PDP) to the All Progressive Congress (APC) on 11th December 2023 filed an action before the Federal High Court in Suit No. FHC/ABJ/CS/1681/2023 - Between The Rt. Hon. Martin Chike Amaewhule & 26 Ors v Independent National Electoral Commission (INEC) & 5 Ors and in their Statement of Claim and Witness Statement on Oath filed on 13th December 2023 the 1st Defendant on oath confirmed categorically that the 1st Defendant and the other 26 members of the 2nd Defendant defected and joined the APC on the 11th December 2023. Copy of the Writ of Summons, Statement of Claim and the 1st Defendant's Statement on Oath filed on 13/12/2023 in Suit No. FHC/ABJ/CS/1681/2023 are hereby attached and marked as EXHIBIT E1.
 - b. That at paragraph 16 of the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023, he stated that 'faced with the state of uncertainty and confusion in the 2nd Defendant caused by the division

in the political party, we were constrained to defect and joined the All Progressive Congress (APC) on the 11th December, 2023" thereby confirming the Claimants' averments in this suit that the 1st Defendant and the other 26 members of the 2nd Defendant defected from PDP and joined the APC on the 11th December 2023.

- c. That there is a video recording of the seating and proceedings of the 2nd Defendant on the 11th December 2023 showing the 1st Defendant reading the letters of defection written individually by the 1st Defendant and the other 26 members of the 2nd Defendant on the floor of the Rivers State House of Assembly communicating their defection from the PDP to join the APC. Copy of the said video recording is hereby attached and marked as EXHIBIT E2.
5. That I was informed by our Solicitor, A. A. Abo, Esq of Principal Counsel in Chambers at No. 4 Hospital Road, Port Harcourt, Rivers State on 23/05/2024 at about 2pm while reviewing this suit and I verily believe him as follows:
 - a. That the 4th Defendant did not deny that the 1st Defendant and the other 26 members of the 2nd Defendant on 11th December 2023 defected from PDP to join the APC.
 - b. That defection of a member of the legislature from one political party to another political party only requires expression of the defection to the leadership of the legislature. It does not require presentation of letter of resignation to the political party that sponsored such member.
 6. That it would be in the interest to discountenance the facts contained in the 4th Defendants counter affidavit filed on 21/05/2024.
 7. That I depose to this affidavit in good faith believing the contents to be true and correct to the best of my knowledge and in accordance with the provisions of the Oaths Act, LFN 2004.

In the claimants' reply on points of law in response to the 4th defendant's written address filed on 21/05/2024, counsel submitted that firstly, and pointed out that the 4th Defendant (PDP) in its counter affidavit filed on 21/05/2024 did not specifically deny the allegation of facts contained in paragraphs 6, 9 and 10 of the Claimants' affidavit in support of originating summons to the effect that the 1st Defendant and the other 26 members of the 2nd Defendant on Monday 11th December 2023 during plenary of the Rivers State House of Assembly announced their defection from the PDP the political party which sponsored their election into the House of Assembly to join another political party, that is, the APC. The 4th Defendant's response captured at paragraphs 7, 9 and 11 of its counter affidavit is that the 4th Defendant (PDP) has not received any letter of resignation from the 1st Defendant and the other 26 members of the 2nd Defendant.

The 4th Defendant, who did not specifically deny the event of 11th December 2023, had argued that the Claimants' allegation of defection of the 1st Defendant and the other 26 members of the 2nd Defendant on 11th December 2023 is a mere speculation. In response, counsel submitted that a defendant is required to specifically and properly traverse averments in a statement of claim. Every allegation of fact not specifically denied or traversed shall be taken as established at the hearing. He referred *TAIWO v. ADEGBORO* (2011) 11 NWLR (Pt. 1259) 562 at 583 where the Supreme Court adopted the principle stated in *LEWIS AND PEAT (NRI) LTD v. AKHIMIEN* (1976) 1 All NLR (Pt. 1) 460.

Counsel submitted that contrary to the submissions of the 4th Defendant at paragraphs 4.8 - 4.18 of its written address in support of counter affidavit, we refer my Lord to paragraphs 6 - 10 of the Claimants' affidavit in support of originating summons and paragraph 4 of the Claimants' further affidavit as well as Exhibits E1 and E2 and submit that the Claimants have sufficiently proved the allegation of defection of the 1st Defendant and the other 26 members of the 2nd Defendant to warrant the grant of the reliefs sought in this suit.

He submitted that Exhibit E1 attached to the Claimants' further affidavit is a copy of the Writ of Summons, Statement of Claim and the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023 filed on 13/12/2023, just two days after they publicly announced their defection from PDP to APC on 11th December 2023. In it, the 1st Defendant and the other 26 members of the 2nd Defendant confirmed categorically that they have defected from PDP and joined the APC on the 11th December 2023.

He submitted that the 1st defendant on oath stated in this suit, as follows: "faced with the state of uncertainty and confusion in the 2nd Defendant caused by the division in the political party, we were constrained to defect and joined the All Progressive congress (APC) on the 11th December, 2023". He referred to paragraph 16 of the 1st Defendant's Statement on Oath in Suit No. FHC/ABJ/CS/1681/2023 (Exhibit E1). According to counsel, this confirmed the Claimants' averments in this suit that the 1st Defendant and the other 26 members of the 2nd Defendant defected from PDP and joined the APC on the 11th December 2023.

Mr. Abo, submitted that similarly, in Exhibit E2, that is, the video recording of the seating and proceedings of the 2nd Defendant held on 11th December 2023, the 1st Defendant can be seen reading the letters of defection written individually by the 1st Defendant and the other 26 members of the 2nd Defendant on the floor of the Rivers State House of Assembly communicating their defection from the PDP to join the APC. Therefore, the Claimants' averments of the defection of the 1st Defendant and the other 26 members of the 2nd Defendant on 11th December 2023 are not a product of social media or side talks as contended by the 4th Defendant in its written address.

He submitted that the facts of the cases cited by the 4th Defendant Respondent do

not apply in the instant case which involves defection of House of Assembly Members from the 4th Defendant/Respondent's party that sponsored their election to another party. he referred to Babatunde v P. A.S. & T.A. LTD (2007) ALL F.W.L.R (PT.372) PAGE 372, PAGE 1721 AT PAGE 1733 RATIO 14.

Counsel submitted that a decision is only authority for facts and laws on which it was decided. Where as in this case the authority cited can be distinguished, the court need not willy nilly apply the decision or law which does not support the facts and law before it. He referred to Amorl v Lyanda (2008) ALL FWLR (PT.416) P. 1864 at P. 1887 ratio 9.

Counsel submitted that the defection of a member of the State House of Assembly from one political party to another political party only requires expression of the defection to the leadership of the House. It does not require presentation of letter of resignation to the political party that sponsored such member, as insinuated by the 4th Defendant in its written address. That may be the internal workings of the 4th Defendant and not a constitutional requirement to establish defection. In any case, Exhibits E1 and E2 as submitted above sufficiently proved the defection of the 1st Defendant and the other 26 members of the 2nd Defendant on 11th December 2023. He urged this court to so hold.

Facts

The claimants contend that the 1st defendant and 26 others by virtue of section 109 (1) (g) of the 1999 Constitution have defected from PDP and are now members of All Progressive Party APC. Therefore, they are no longer members of the 2nd defendant and cannot make laws for the good of the state by virtue section 100(1) of the 1999 Constitution of the Federal Republic of Nigeria. So, the laws made by them from 11/12/2023 when they defected from PDP to APC till date are not enforceable by the 3rd defendant and the Government of Rivers State.

Decision

Before commencing with the judgment, I take note of the applications made orally by the 1st, 2nd and 3rd defendants' counsel that their counter affidavit and written address in opposition to the Amended Originating Summons. I hereby extend time to today the 10th day of June, 2024 for the 1st, 2nd and 3rd defendants to file their counter affidavit and written address in opposition to the Amended Originating Summons. The processes are deemed properly filed.

I have gone through the Amended Originating Summons, the counter affidavits and written address, further affidavit and replies on points of law, and further submissions made by counsel on both sides during hearing. I have also gone through the authorities referred to by counsel to the parties. It is my view that the issues for determination are the questions set out for determination by the claimants as follows:

- a. Whether by virtue of sections 100(1) and 109(1)(g) of the Constitution of the

Federal Republic of Nigeria, 1999 (as amended), the power of the 2nd Defendant, that is, the Rivers State House of Assembly to make Laws for the good governance of Rivers State can be validly exercised by the 1st Defendant and the other 26 members of the 2nd Defendant who have ceased to be members of the 2nd Defendant.

- b. Whether by virtue of sections 100(1) and 109(I)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Laws purportedly passed by the 1st and 2nd Defendants from 11th December 2023 when the 1st Defendant and the other 26 members of the 2nd Defendant defected from the Peoples Democratic Party (PDP) to the All Progressive Congress (APC) till date are valid and enforceable by the 3rd Defendant and the Rivers State Government.
- c. Whether the 3rd Defendant and the Rivers State Government are duty bound to enforce and comply with the Laws passed by the 1st and 2nd Defendants in defiance of the provisions of sections 100(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Resolution of the issues

At the center of this Amended Originating Summons with the facts contained in the affidavit in support is the interpretation of sections 100 (1) and 109 (1) (g) of the 1999 Constitution on whether the 1st defendant and the 26 others can still make laws for the state since they have allegedly defected from PDP to APC. And whether the laws made by them from 11th December, 2023 till date can be enforced by the 23rd defendant and Government of Rivers State. Before coming to the conclusion that the 1st defendant and the 26 others cannot make laws by virtue of section 100 (1) of the 1999 Constitution, this court will first of all consider whether they have defected from PDP and become members of APC.

The primary duty of this court on interpretation of statutes or the constitution is to give the provision its elementary and clear meaning. Thus, in **Ibrahim v. Judicial Service Committee, Kaduna State & Anor** (1998) LPELR-1408(SC) (Pp. 24-25 paras. F), Supreme Court Per Iguh, J.S.C, held as follows:

"...It is the cardinal principle of law in the interpretation of a statute that where the words of such a statute are clear and unambiguous, they must be given their plain and ordinary meaning unless this would lead to absurdity and effect must be given to the provision in question without any recourse to any other consideration. See *Nafiu Rabi v. The State* (1980) 8-11 S.C. 130; (1982) 2 NCLR 117. The words of a statute are to be interpreted as bearing their natural and ordinary meaning. See *Attorney-General v. Milne* (1914) A.C. 765. And where such words of an Act of Parliament are plain and clear, there will not arise any room for applying any of the principles of interpretation

which, incidentally, are merely presumptions that are applied in cases of ambiguity in a statute. See *Croxford v. Universal Insurance Co.* (1936) 2 K.B. 253 at 281. Although, therefore, there are quite a few rules of construction that Courts of law have resorted to in their interpretation of statutes, the paramount and golden rule remains that every statute is to be expounded according to its manifest and expressed intention. See *Attorney-General for Canada v. Hallet and Carey LD.* (1952) A.C. 427 at 449."

I shall set out the provisions of section 100 (1) and 109 (1) (g) of the 1999 Constitution for ease of construction of same.

Section 100(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides thus:

"(1) The power of a House of Assembly to make laws shall be exercised by bills passed by the House of Assembly and, except as otherwise provided by this section, assented to by the Governor.

Section 109 (1) (g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provided, thus:

S. 109 (1) of the 1999 constitution provides as follows:

"A member of a House of Assembly shall vacate his seat in the House if-

being a person whose election to the House of Assembly was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected: Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored"

Following a literal interpretation of the section 100(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 2nd defendant is clearly and undoubtedly bestowed with vires or power to make laws by bills passed and assented to by the Governor for the good of the people of State. Admittedly, the part of the persons that make up the 2nd defendant are the 1st defendant and the 26 others. But it is the contention of the claimants in this case that the power of the 2nd Defendant, that is, the Rivers State House of Assembly to make Laws for the good governance of Rivers State cannot be validly exercised by the 1st Defendant and the other 26 members of the 2nd Defendant who have automatically ceased to be members of the Rivers State House of Assembly (2nd Defendant) following their defection on 11th December, 2023 from the Peoples' Democratic Party (PDP) which sponsored them to the All Progressive Congress (APC). I shall come to that anon.

The issue of defection is provided for in section 109 (1) (g) of the 1999 constitution set out as follows:

S. 109 (1) of the 1999 constitution provides as follows:

"A member of a House of Assembly shall vacate his seat in the House if-
being a person whose election to the House of Assembly was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected: Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored"

(Underlining mine for emphasis)

A literal interpretation of section 109(l)(g) of the 1999 Constitution is to the effect that once a member of a political party moves from his party and becomes a member of another party before the expiration of the period for which that House was elected into the legislative house, he shall vacate his seat. He loses that seat. Question one in this case can only be answered after ascertaining question two in the affirmative. That is where the court hold that they have defected. Defection is an act which is not earned by mere pronouncement but by proof that a member of a legislative body has left his party and become a member of another Political Party.

Mr. Abo submits that the section 109 (g) of the constitution is clear and unambiguous to the effect that a member of the House of Assembly SHALL vacate his seat in the House if he defects from the political party that sponsored him at the election to the House to another political party before the expiration of the period for which that House was elected, except there was a division or factionalization within the political party that sponsored the defecting member of the House of Assembly. I agree entirely. In **A. G. Federation v. Abubakar** (2007) 10 NWLR (Pt. 1041) 1 at 173 - 179 it is stated of defection thus:

".... the law makers intended to and indeed have made punishable the defection of an elected member from the political party that sponsored him, to another political party before the expiration not the period for which the house was elected by declaring his seat vacant."

Counsel to the claimants submitted that the above is not the case in the instant case as the 1st Defendant and the other 26 members of the 2nd Defendant do not come within the exception created under section 109(l)(g) of the 1999

Constitution. He referred to **Abegunde v. The Ondo State House of Assembly** (supra).

By virtue of section 109 (1) (g), there are two scenarios created. One exists in the general provision. It lies on proof of defection the effect of which is that the party loses his seat. The other is a proviso which creates an opportunity for a party who has defected and become a member of another party to prove that he defected within the confines of the constitution in order to retain the seat.

I hold a candid view that the above submission of Mr. Abo, on defection and the exception to the constitutional provision can only be determined upon proof of a person becoming a member of another political party for the general provision and proof of the circumstances that will warrant the retaining the seats even when there is proof of defection.

In the instant case, what determines whether a person has defected and thereby lost his seat in the 2nd defendant is the proof that the person has become a member of another political party. The burden of proving the allegation of defection of a person from his political party to become a member of another political party or clearly, the allegation of a member of the 2nd defendant becoming a member of another political party other than the one that sponsored him to the 2nd defendant, in this case the allegation that the 1st defendant and 26 others have become members of APC, lies with the claimants. They claimants asserted it; they will prove same.

It is trite law that courts of law do not grant declaration of rights either on admission or in default of pleadings but only if the Court was satisfied by evidence. See **Alhaji Motunwase v. Sorungbe** (1988) 5 NWLR (Pt.92) 90; (1988) 12 SCNJ 166 at p. 177 where the Supreme Court insisted that in a case of declaration, since the grant of declaratory relief is within the discretion of the Court, the plaintiff to succeed must give evidence of his entitlement to the declaration and could not rely on admission in the pleadings. **Akaninwo & Ors v. Nsirim & Ors** (2008) LPELR-321(SC), **Mohammed v. Wammako & Ors** (2017) LPELR-42667(SC) and **Kwajaffa & Ors v. B.O.N. Ltd** (2004) LPELR-1727(SC), **Emenike v. P.D.P** (2012) 50 NSCQR 94 AT 130 per Fabiyi, JSC.

Defection

Defection is the same thing as cross carpeting. The proof of defection does not lie on mere ipse dedit or an announcement on the radio or video. Section 109 (1) (g) is only effective upon proof of a person becoming a member of another political party. According to the Apex Court in See **Abegunde v. Ondo State House of Assembly & Ors** (2015) supra:

"The defection of an elected executive office holder is not novel to our jurisprudence as it formed the consideration of the Supreme

Court in the case of A.G. FEDERATION & ORS VS ABUBAKAR ORS (supra). In that case, the 1st Respondent Atiku Abubakar who had been elected Vice President alongside President Olusegun Obasanjo on the platform of the PDP defected to another political party, the Action Congress. His action drew the ire of his principal and strained their relationship to the extent that his continued occupation of the office of Vice President became subject of litigation. I do agree with the learned trial Judge that the principles laid down in the said case of A.G. FEDERATION & ORS VS ABUBAKAR & ORS (supra) are applicable to the facts and circumstances of this case. It must be stated clearly that issues of votes are necessary for the determination of the winners of elections and popularity of political platforms. However, once the final determination has been made by the Returning Officer and subsequently by the appropriate tribunal and Courts, where the outcome of the election was challenged, the elected office holder assumes their office and their removal must be in accordance with the provisions of the Constitution. Defection from one party to another may appear immoral or even improper but as well submitted for the Respondents, it must be acknowledged that membership of political parties is an exercise of the freedom of association guaranteed by Section 40 of the Constitution but like every exercise of rights, it comes with attendant consequences. Where a member of the legislature defects from the party on whose platform he was elected without showing that the party he left had suffered a division, the cognizance for him is to vacate his seat as provided in Sections 68 (1) (g) and 109 (1) (g) for the Federal and State legislature respectively otherwise his seat will be declared vacant".

Proof of Membership of a Political Party

The central issue in this case, is the interpretation of sections 109 (g) and 100 (1) of the 1999 constitution as amended. After construing section 109 (g), the court will then construe section 100 (1). The issue in section 109 (g) is centered on defection by a member of the house assembly. The question to be resolved is: Whether the claimants have proved that the 1st defendant and 26 others have defected and have become members of the APC to earn the declarations sought in this case.

In **Agi v. PDP** (2017) 17 NWLR (Pt. 1595) 495-460 paras G-B, Per Rhodes-Vivour, JSC, held as follows:

"A party is like a club. A voluntary association. It has its rules, regulations, guidelines and constitution. Members join the party on their own free will. By joining they have freely given their consent to be bound by the rules, regulations guidelines and constitution of the

party. These rules of the party must be obeyed by all members of the party as the party's decision is final over its own affairs. Members of a party would do well to understand and appreciate the finality of a party's decision over its domestic affairs or internal affairs. The Court would only interfere where the party has violated its own rules. Where the National Working Committee of the 1st Respondent regards a person as a member of the party eligible to contest the primaries, no member of the party can complain against such a decision. Both Courts below were correct that the 3rd Respondent is a member of the 1st Respondent. Such an issue is within the domestic and internal affairs of the 1st respondent over which the Courts have no jurisdiction as such is not justiciable."

See **APGA V Anyanwu** (2014) 7 NWLR, PT 1407, 582-583; **Atago v. Nwuche** (2017) 1 NWLR, PT 1545, 147, **PDP & Ors v. Garo & Ors** (2022) LPELR-58349.

First, it is important that this court considers how a person can become a member of the APC the party that the claimants alleged the 1st defendant and 26 others defected to. Article 9 of the All Progressives Congress (APC) Constitution (As Amended 26th March, 2022) which deals with Membership, Article 9.1 which deals with Eligibility/Registration, provide as follows:

- i. Membership of the Party shall be open to any citizen of the Federal Republic of Nigeria who has attained the age of 18 years and who accepts the aims and objectives of the Party, and is willing to abide by the provisions of this Constitution, provided that such a person is not a member of any other political party.
- ii. Application for membership shall be made to and cleared by the Ward Executive Committee of the Party in the Ward of the Local Government Area where the person was born, resides, works or originates. On-line registration shall also be acceptable, provided that it is approved by the National Working Committee of the Party.
- iii. Where an application is refused, the applicant may as of right appeal to the Local Government Area Executive Committee of the Party and sequentially up to the National Working Committee. In the case of online registration, appeals shall lie the National Working Committee.
- iv. Upon enrolment, every member shall pay the prescribed fees and shall be issued a membership card.

Article 9.4. Register of Members

- i. A register of members shall be compiled and maintained at the Ward level and be transmitted to the Secretariat of the Party Government

Area, transmit a at the Local which shall copy to the State Headquarters, which in turn shall transmit a copy to the National Secretariat. Provided that the Party shall update its membership register every six months and remit updated copies to appropriate Secretariats.

- ii. It shall be the responsibility of a member to ensure that his or her name is duly entered in the Ward register.
- iii. Where a group association joins the Party, the Party shall welcome the group or association, but each member of such group or association shall register individually at their respective Wards.
- iv. Where eligible persons for membership of the Party numbering thirty (30) or more reside in any country outside Nigeria, they may establish a chapter of the Party and shall enjoy full benefits of membership; provided that no city shall have more than one (1) chapter.
- v. Members residing outside Nigeria may establish one (1) national chapter in their country of residence.
- vi. The local and national chapters of the Party outside Nigeria shall forward the list of duly elected Executive Committee at their congresses to the National Working Committee for approval.

Article 9.5. Cessation of Membership

- i. Membership of the Party shall be terminated by death, resignation, expulsion and procurement of membership of another political party.

Let me now consider judicial pronouncements on how a person can become a member of a political party. In **Odinakachukwu v. PDP & Ors** (Pp. 51 paras. E), Per Oho, J.C.A, it was held:

"The only way by which any person can be verified as a bona-fide member of the 1st Respondent or any other political party for that matter, is by the production of the given Party's membership Register, which the Appellant failed woefully to do."

See Section 77(2) of the Electoral Act, 2022 provides:

"Every registered political party shall maintain a register of its members in both hard and soft copy."

Again, in **PDP & Anor v. Kawuwa** (2015) LPELR-26C44(CA) 60, C, this Court reinforced the law, thus:

"...membership of a political party, going by the copious pleadings of the parties in the instant case, is personal to the individual and is usually evidenced by registration with the party and obtaining of the membership card of the political party."

It is the law that in order to prove membership of a political party, recourse must be had to the political party itself, to state who its member is, and proof of this must be through its membership register, membership card and other such relevant documents. In **Tarzoor V Ioraer** (2016) 3 NWLR (Pt. 1500) 463, 505, B-C, the Supreme Court held:

"A member of a political party is one who is registered with that party as its member, is issued with its membership card and fulfills all requirements of membership. It is therefore the political party concerned that can state, conclusively, that a person is its member, can be demonstrated by production of its membership register and other relevant documents, if the Issue arises."

Unarguably therefore, membership of a political party falls squarely within the landscape of domestic affairs of a political party. It is a political party that is equipped with the vires to determine its members.

Although, declaratory reliefs are granted upon the discretion of courts of law, they are not granted on admission or default of pleading but on clear and credible evidential proof by the party that seeks the relief. This is not negotiable.

What did the claimant present before this court in proof of the assertion that the 1st defendant has become a member of another party, specifically APC on 11/12/2023?

Upon the evaluation of affidavits in support the Originating Summons which include the further affidavits and the documentary evidence referred thereto, the claimants only referred to Exhibits A – D which are their voters' cards in proof of the assertion of defection in the Amended Originating Summons. In their further affidavit in response to the assertion of the 1st, 2nd and 4th defendants that the 1st defendant and the 26 others did not resign from PDP, the claimants referred to Exhibits E1 and E2. Exhibit E1 is the Writ of Summons, Statement of Claim, Deposition in the suit filed at the Federal High Court. It is my view that Exhibit E1 and the facts contained in the statement of claim attached therein are subject to proof in the court where it is pending. The deposition ought to be adopted in the court where the suit is pending for it to become the evidence in proof of the assertion of facts in the statement of claim in that case. Until the Federal High Court makes findings relying on Exhibit E1, that is the case before it, this court cannot rely on it to hold that the 2nd defendant and the 26 others have resigned from PDP or are now members of APC. Moreover, being that this suit is still

pending, this court cannot begin to dissect the facts and the reliefs sought therein and thus prejudge a case before another court of co-ordinate jurisdiction only through the processes brought to this court as an Exhibit E1.

In the circumstance, Exhibit E1 does not help the claimants in proof of membership of the 1st defendant and 26 others to APC. It is not a membership card or Membership Register as declared by the Supreme Court as the only means of proving that a person is a member of a political party. The claimant also referred to Exhibit E2 a flash drive or disc. This flash drive or disc was dumped on the court. It was not produced in line with the Evidence Act, 2011 as amended. The mere fact that a flash or disc is attached to an affidavit should not be the reason why a deponent should not include in his deposition that which represents oral testimony on how the flash was gotten. It should not also stop the claimants from demonstrating the contents of the flash or the disc in open court. This court cannot be an investigative officer who will now proceed to the chambers to play the flash, rely on it and make findings in favour of the claimants in open court. In **Jalingo v. Nyame** (1992) 3 NWLR (PART 231) 538 thus:

"...It is an infraction to fair hearing for the Court to do in Chambers what a party has not himself done in advancement of his case in the open Court." See also **Ugochukwu v. Co-Operative Bank** (1996) 7 SCNJ 22.

The content of Exhibit E2 is not known to this court. It cannot be presumed to be an answer to the fact the 1st defendant and the 26 others presented their resignation before the 2nd defendant. the claimants' case is not about resignation but about 1st defendant and 26 others defecting and becoming members of the APC. The undisclosed content of Exhibit E2 does not represent Membership Card and Party Membership Register which aid the determination of the allegation that the 1st defendant and 26 others have defected to APC. So, even if it was played, it would make no difference if it does not represent these items referred to above to prove membership of a political party.

Announcement in rallies or radio or Newspaper Cover Pages that one has become a member of another party may be enough to earn the bestselling points for the publications, face book votes, political discusses with channels or Arise television, twitter handles et all. But once a case is filed in court and a party alleges that another has defected to another party, he must prove this point by credible evidence. This proof at this stage will go beyond what was allegedly said as captured in the Newspapers and radio. The proof required is what the law says and not what the person said. Despite the emotional height of the pervading issue of defection, the law on the subject must not be allowed to be swept underneath or be swallowed by emotions, passion public outcry.

In this case, the claimants contend that the 1st defendant and the 26 others have defected to APC. They cannot make any law which the 3rd defendant should

enforce or execute. The 3rd defendant's counsel Dame Iroegbu, on the provisions of sections 100 (1) and 109 (I) (g) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), submitted that in the instant case the power of the 2nd defendant to make laws for the good governance of Rivers State cannot be validly exercised by the 1st Defendant and the other defected former members of the Rivers State House of Assembly. Premised on the above, she submitted that the 3rd Defendant and the Rivers State Government who have an obligation to the people of Rivers State and Nigeria cannot be involved in any illegality. But the 3rd defendant failed to show which illegality is referred to.

The claimants must prove the assertion on their own credible evidence. Once the claimants prove that the 1st defendant and the 26 others have defected, that is that they have become members of the APC, the burden of proving the reason why they defected will now shift to the 1st defendant to establish by credible evidence the proviso to section 109 (g) of the 1999 constitution. In the instant case, the 4th defendant deposed that the 1st defendant and the 26 others are still its members, they have not defected. In **Anyanwu v. Ogunewe** (2014) 8 NWLR (PT. 1410) PG. 437, it was held as follows:

"My Lords, it is indeed the prerogative of a political party to determine who its members are".,

Abdullahi v. Argungu (2023) LPELR-59950 (SC), **Enang v. Asuquo** (2023) 11 NWLR (PT. 1896) 510 AT 531 Paras F-G.

From the painstaking evaluation of the affidavit and documentary evidence in support of the Originating, the claimants I must state clearly have failed to prove that the 1st defendant and the 26 others are now members of APC by virtue of their defection on 11/12/2023. The claimants have not established the ways a person can become an APC member. Indeed, by the APC Constitution, it cannot accept a person whose membership in another party has not been severed. Therefore, until it is proved that the 1st defendant and the 26 others have become APC members as asserted by the claimants, section 109 (g) of the 1999 constitution cannot apply against the 1st defendant and the 26 others.

I hold that the claimants have failed to prove that the 1st defendant and the 26 others that is: Dumle Maol (Gokana); John Dominic Iderima (Abua/Odual); Mrs. Queen Williams (Ahoada East 1); Asuah Major Jack (Akuku-Toru 1); Lolo Isaiah Opuende (Akuku-Toru 2); Ofiks Kabangs Christopher (Andoni); Granville Tekinari Wellington (Asari- Toru 1); Enemi Alabo George (Asari-Toru 2); Abbey Peter (Degema); Igwe Aforji (Eleme); Chief Mrs. Justina Emeji (Emohua); Ignatius Onwuka (Etche 1); Chimezie Nwankwo (Etche 2); Lemchi Prince Nyeche (Ikwerre 1); Mrs. Barile Nwakoh (Khana 1); Mrs. Emilia Lucky Amadi (Obio/Akpor 2); Uchenna Frankline Nwabochi (Ogba/Egbema/Ndoni 1); Mrs. Nkemuika Nkemjika Ezekwe (Ogba/Egbema/Ndoni 2); Davids Anolds (Ogu/Bolo); Linda Somiari Stewart (Okrika); Sylvanus Nwankwo (Omuma); Gerald Oforji (Oyigbo); Wami Solomon

Chile (Port Harcourt 1); Tonye Adoki (Port Harcourt 2); Azeru Opara (Port Harcourt 3) and Ngbor Bernand Baridamue (Tai), are now members of APC. They are still members of PDP and members of the 2nd defendant.

From what I have said above, it is thus, clear that the claimants have not proved that by virtue of sections 100(1) and 109(l)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the power of the 2nd Defendant, that is, the Rivers State House of Assembly to make Laws for the good governance of Rivers State cannot be validly exercised by the 1st Defendant and the other 26 members of the 2nd Defendant who have not ceased to be members of the 2nd Defendant.

The claimants have also not proved that the 3rd Defendant and the Rivers State Government are not duty bound to enforce and comply with the Laws passed by the 1st and 2nd Defendants in line with the provisions of section 100(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The claimants' case lacks merit. It is hereby dismissed.



O. David Gbasam, PhD.

Judge

10/06/2024

Appearances: Dr. Kasmir Oporum, with A. A. Abo, Esq., E. Promise, Esq., for the Claimants.
Chief Ferdinand Oshioke Orbih, SAN for the 1st Defendant with Emeka Onyeka, Esq., and M. F. Eneawaji, Esq.,
K. C. O. Njemanze, SAN for the 2nd Defendant with Kalu Uduma, Esq., and O. D. Gbarage, Esq.
Dame N. C. Iroegbu Director Rivers State MOJ for the 3rd Defendant.
Dr. J. Y. Musa, SAN for 4th Defendant with F. N. Ibirien-Agama, Esq.