

IN THE SUPREME COURT OF
HOLDEN AT ABUJA
ON FRIDAY THE 28TH OF FEBRUARY 2025
BEFORE THEIR LORDSHIPS

UWANI MUSA ABBA AJI
IBRAHIM MOHAMMED MUSA SAULAWA
EMMANUEL AKOMAYE AGIM
CHIOMA EGONDU NWOSU-IHEME
JAMILU YAMMAMA TUKUR

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

SC/CV/1174A/2024
SC/CV/1174/2024
SC/CV/1175/2024
SC/CV/1176/2024
SC/CV/1177/2024
SC/CV/1174B/2024
SC/CV/1175A/2024
SC/CV/68/2025

BETWEEN:

1. Rivers State House of Assembly
2. The Right Honourable Martin Chike Amaewhule
(The Honourable Speaker, Rivers State
House of Assembly)

APPELLANTS

AND

1. The Government of Rivers State
2. River State Independent Electoral Commission
3. Hon. Justice Adolphus Enebeli (Rtd)
(Chairman, Rivers State Independent
Electoral Commission)
4. Central Bank of Nigeria

RESPONDENTS


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5. Zenith Bank Plc.
6. Access Bank Plc.
7. Accountant General of the Federation
8. The Government of Rivers State
(Sir Siminalayi Fubara)
9. The Accountant General of Rivers State
10. Hon. Justice S. C. Amadi (The Chief Judge
of Rivers State)

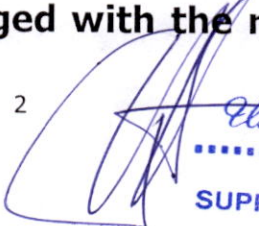
JUDGMENT

DELIVERED BY EMMANUEL AKOMAYE AGIM, JSC

The appellants herein on 15-7-2024 filed an originating summons commencing Suit No. FHC/ABJ/CS/984/2024 in the Federal High Court at Abuja against the respondents claiming for-

- 1 **A Declaration that the 1st Defendant (Central Bank of Nigeria) is not entitled to release any amount, money, fund or revenue standing to the credit of Rivers State in the Consolidated Revenue Fund of Rivers State domiciled at the Central Bank of Nigeria including all allocations and revenue receipts from the Federation Account Allocation Committee (FAAC) due to Rivers State from the Federation Account or from any other source to the 2nd Defendant or any other bank, being the commercial bankers of Rivers State Government or any other person until the fund has been duly charged with the relevant expenditure**

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by an Appropriation Law duly made by the House of Assembly of Rivers State.

- 2 A declaration that the 1st, 2nd, and or 3rd Defendants by themselves or by their Servants or Agents are not entitled to release or permit the withdrawal of any amount, money, fund or revenue standing to the credit of Rivers State, Rivers State Government, Rivers State Institutions or Agencies (Funded through appropriations in the Appropriation Law made by the House of Assembly of Rivers State) including RiversState Independent Electoral Commission – the 7th Defendant, for any purpose whatsoever until an Appropriation Law has been duly made by the House of Assembly of Rivers State.
- 3 A declaration that the Appropriation Bill for the Financial year beginning from 1st January 2024 and ending 31st December 2024 not having been presented by the 5th Defendant and passed into Law or made an Appropriation Law by the House of Assembly of Rivers State, the power of the Governor of Rivers State, the 5th Defendant to authorize or continue to authorize withdrawal of moneys, fund or revenue from the Consolidated Revenue Fund of Rivers State domiciled in the Central Bank of Nigeria (the 1st Defendant) or from any moneys, fund or revenue standing to the credit of Rivers State or Rivers State Government (from whatsoever source derived) domiciled in, held by or in the custody of the 1st, 2nd, 3rd, or 4th Defendants ceased and it is no longer available to be exercised with effect

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from the 1st day of July 2024 by the 5th Defendant or any other person acting on behalf or deriving authority from the 5th Defendant or the office of the Governor of Rivers State including the 6th, 7th, 8th, 9th 10th Defendants.

- 4 A declaration that it is illegal, unlawful, unconstitutional and a subversion of the Constitution of the Federal Republic of Nigeria 1999 (as amended) for the 5th Defendant to withdraw, authorize or continue to authorize withdrawal of moneys, fund or revenue from the Consolidated Revenue Fund of River State, no matter where domiciled or any moneys fund or revenue belonging to Rivers State or standing to the credit of Rivers State Government no matter where it is kept or for the 1st, 2nd, 3rd, and or 4th Defendant by themselves or by their servants or agents to release, continue to release, withdraw or permit the withdrawal of any moneys, fund or revenue in the Consolidated Revenue Fund of Rivers State or belonging to Rivers state, no matter by whatever name called with effect from the 1st day of July 2024 when the constitutionai power of the 5th Defendant to authorize withdrawal of such moneys, fund or revenue in the absence of an Appropriation Law ceased absolutely.
- 5 A declaration that it is illegal, unlawful, unconstitutional and a subversion of the Constitution for the 1st, 2nd, 3rd, and /or 4th Defendants by themselves or by their servants or agents to release moneys to, to permit withdrawal, continue to release or to continue to permit withdrawal of moneys, funds, or revenue

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at the instance of or by the 5th, 6th, 7th, 8th, 9th, or 10th Defendants in respect of or for the purported purpose of funding Tribunals, including Election Tribunals or Election Appeal Tribunal for the said election

- 6 An Order of Injunction restraining the 1st, 2nd, 3rd, and /4th Defendants by themselves or by their servants or agents from releasing any moneys, funds, or revenue of Rivers State or Rivers State Government, its Ministries, Departments or Agencies or withdrawing or permitting the withdrawal of any such moneys, fund or revenue from the Consolidated Revenue Fund or from any Account kept in respect of moneys, fund or revenue due to, or belonging to Rivers or in respect of any moneys, fund or revenue of Rivers State or due to Rivers State or Rivers State Government to/by the 5th, 6th, 7th, 8th, 9th, and/or 10th Defendants or on the authorization of or at the instance of any of them, individually or jointly until an Appropriation Law for the 2024 Financial Year has been duly made by the House of Assembly of Rivers State.
- 7 An Order of Injunction restraining the 5th, 6th, 7th, 8th, 9th, and/or 10th Defendants, by themselves or by their servants and /or agents from authorizing the withdrawal of withdrawing, or demanding for the release of moneys, funds, or revenue from the Consolidated Revenue Fund of Rivers State/Rivers State Government or any moneys, fund or revenue due to or belonging to Rivers State or Rivers State Government until an

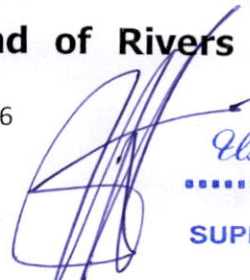
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Appropriation Law for the 2024 Financial Year has been duly made by the House of Assembly of River State.

They asked for the determination of the following questions namely:

1. Whether upon a proper construction of Section 120(2), (3) and (4), and Section 122 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the 1st, 2nd, 3rd, and /4th Defendants are entitle to release, continue to release or to permit the withdrawal of moneys, fund or revenue of Rivers State /Rivers State Government (moneys in the Consolidated Revue Fund, Federation Account Allocation Committee – FAAC, and internally Generated Revenue Fund inclusive) after 30th June 2024 in respect of the 2024 Financial Year upon the authorization of the 5th Defendant acting by himself or his servants, agents or person deriving authority from him including the 6th, 7th, 8th, 9th, and/or 10th Defendants without an Appropriation Law for the 2024 Financial Year having first been made and put in place by the Rivers state House of Assembly?
2. Whether upon a proper construction of the provisions of Sections 1(1), 1(2), 120(2), 120(3), 120)(4) 122 and 287(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the authorization of withdrawal or continued withdrawal of moneys, fund or revenue from the Consolidated Revenue Fund of Rivers State or from any

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moneys, fund or revenue belonging to Rivers state after the 30th of June 2024 and without an Appropriation Law for the 2024 Financial year having been made by the Rivers State House of Assembly does not amount to a subversion of the Constitution of the Federal Republic of Nigeria and therefore unconstitutional?

3. Whether upon a proper construction of the provisions of Section 120(2, (3) and (4), Section 122 and Section 197 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 10 of the Rivers State Local Government Election Tribunal Law, the 5th Defendant is entitled to authorize withdrawal of any moneys and whether 6th, 7th, 8th, 9th, and/or 10th Defendants by themselves or by their servants or agents are entitled to withdraw or demand for the release to them or release of moneys, funds or revenue for the Consolidated Revenue Fund or any moneys due to or belonging to Rivers State/Rivers State Government after the 30th day of June 2024 in respect of the 2024 Financial Year for Rivers State, the Appropriation Law for the said 2024 Financial year not having been made and put in place by the Rivers State House of Assembly.

The originating summons is supported by an affidavit of urgency containing 11 paragraphs and affidavit of 26 paragraphs.

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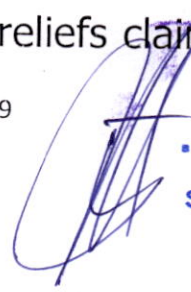
setting out the facts relied on in support of the originating summons and accompanied by three documents marked exhibits RSHA1(judgment of Federal High Court delivered on 22-1-2024 in Suit No.FHC/ABJ/CS/1613/2023), RSHA2(Judgment of Court of Appeal delivered on 4th July, 2024), RSHA3(Notice of te Resolutions of the Rivers State House of Assembly dated 8th July 2024 signed by the 2nd appellant herein),RSHA4 and RSHA5(judgment of Court of Appeal in Appeal No, CA/ABJ/CV/133/2024.

After hearing both sides on their respective affidavits and addresses, the trial court on 30-10-2024 delivered judgment infavour of the plaintiffs (appellants herein) granting them the reliefs claimed for. Dissatisfied with this judgment, the 8th respondent herein appealed against it to the Court of Appeal as Appeal No.CA/ABJ/CV/1293/2024. Following the filing, exchange and adoption of written addresses, the Court of Appeal on 13-12-2024 delivered judgment allowing the appeal to it against the judgment of Federal High Court on the ground that the trial Federal High Court lacked the jurisdiction to entertain and determine the said suit and struck it out, but on the merits, dismissed the appeal. This Appeal No.SC/CV/1174/2024 is against this judgment of the Court of Appeal.

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Other appeals filed against the same Court of Appeal judgment in CA/ABJ/CV/1293/2024 were heard along with this Appeal No. SC/CV/1174/2024. These appeals include –

1. The 2nd and 3rd respondents cross-appeal in Appeal No.SC/CV/1174A/2024 against the decision of the Court of Appeal that the plaintiffs had the locus standi to sue.
2. The 1st respondent's cross-appeal in Appeal No.SC/CV/1174B/2024 against the decision of the Court of Appeal that the 2nd appellant and 26 members of the Rivers State House of Assembly who were said to have defected are still legitimate members of the Rivers State House of Assembly.
3. The appellants also appealed in Appeals Nos.SC/CV/1175/2024 and SC/CV/1177/2024 against the decision of the Court of Appeal that the trial court had no jurisdiction to entertain and determine the suit.
4. The 8th respondent cross- appealed in Appeal No.SC/CV/1175A/2024 against the decision of the Court of Appeal affirming the decision of the trial court that the suit has merit and granting the reliefs claimed for and the refusal


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to invoke the doctrine of necessity to regard the Rivers State House of Assembly as properly constituted by 4 or 3 members in the circumstances.

5. The appellants also appealed in Appeal No.SC/CV/1176/2024 against the decision of the Court of Appeal on several grounds.
6. The 5th respondent appealed in Appeal No.SC/CV/68/2024 against the decision of the Court of Appeal affirming the decision of the trial court that the Irrevocable Standing Orders issued by 1st respondent in favour of 5th respondent are contracts and cannot override statutory and constitutional provisions.

With the consent of all the parties herein this court decided that the judgment of this court in Appeal No. Sc/CV/1174/2024 shall bind the other appeals listed above. Issues that cannot be covered by the issues in Sc/CV/1174/2024 will also be considered.

The parties have filed their respective briefs.

All the briefs raise one and the same issue for determination as follows – **Whether the Court of Appeal correctly held that the trial court has no jurisdiction to entertain and determine Suit No.FHC/ABJ/CS/984/2024**

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Before I proceed to determine this issue, Let me determine the preliminary objections to this appeal.

I have carefully read and considered all the arguments on these objections. Let me now determine their merits.

Let me start with the 1st respondent's objection that the 2024 financial year having lapsed on 31st December, 2024, the suit leading to this appeal that seeks to prevent or stop the 4th and 7th respondents from releasing funds belonging to Rivers State to the 1st and 8th respondents on the basis of the 2024 Appropriation Law of Rivers State has become moot and merely academic and cannot be validly entertained by a court.

It is glaring from the reliefs claimed for in the originating summons that the suit is not limited to the release of such funds under the 2024 Appropriation Law of Rivers State alone and seeks to stop such release of funds "until an Appropriation Law has been duly made by the House of Assembly of Rivers State". The suit also questions "Whether upon a proper construction of the provisions of Sections 1(1), 1(2), 120(2), 120(3), 120(4) 122 and 287(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the authorization of withdrawal or continued withdrawal of moneys, fund or revenue from the Consolidated Revenue Fund of Rivers State or

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from any moneys, fund or revenue belonging to Rivers state after the 30th of June 2024 and without an Appropriation Law for the 2024 Financial year having been made by the Rivers State House of Assembly does not or amount to a subversion of the Constitution of the Federal Republic of Nigeria and therefore unconstitutional”.

It is clear from the appellants’ reliance on the judgment of the Federal High Court delivered on 22-1-2024 in Suit No. FHC/ABJ/CS/1613/2023 attached to the affidavit in support of the originating summons as Exhibit RSHA1, which judgment made an order restraining the 8th respondent herein “from howsoever or in whatsoever manner making any request, presentation or nomination to the River State House of Assembly except to the Rivers State House of Assembly under the leadership of the 2nd plaintiff as Speaker” that Suit No. FHC/ABJ/CS/984/2024 in the same Federal High Court is meant to enforce compliance with the above judgment. This objective is highlighted by paragraphs 2 and 3 of the affidavit of urgency and paragraphs 17, 18 and 19 of the affidavit in support of the originating summons.

Paragraphs 2 and 3 of the affidavit of urgency state thusly -

2. “That in defiance of the lawful, valid and subsisting orders of this Honourable Court that the Appropriation Bill passed into

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law by the then 4-Member Rivers State House of Assembly, which assented to by the 5th Defendant, was invalid, null and void, the 5th-10th defendants, without any budget passed by the 1st plaintiff, have been using the same nullified Appropriation Bill/Law to withdraw/authorize withdrawal of moneys meant for or belonging to the Rivers State Government which are banked/kept by the 1st-3rd Defendants.

3. That the financial year for presentation and passage of budget ended on 31-12-2024; and up till date the 5th Defendant has not presented to the 1st Plaintiff any budget to be passed by it into law."

Paragraphs 17,18 and 19 of the affidavit in support of the originating summons state thusly-

17. "That in the said Judgment which is hereby attached and marked as Exhibit RSHA 1 the court also set aside the purported Appropriation Law which was made by the four suspended members of the House of Assembly and signed by the 5th Defendant and thereby rendered same to be null and void.
18. That the said Judgment is still valid and subsisting and has not been set aside by any court of competent jurisdiction.

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19. That rather than present an Appropriation Bill to the Rivers State House of Assembly, the 5th Defendant has been authorizing withdrawal of moneys from Rivers State Consolidated Revenue Fund and other funds of Rivers State since 1st January 2024 till date without an Appropriation Law having been duly made by Rivers State House of Assembly."

In any case the judgment in suit No. FHC/ABJ/CS/1613/2023 that nullified an Appropriation Law for being passed by only 4 members of the Rivers State House of Assembly and restrains the Governor of Rivers State from howsoever or in whatsoever manner making any request, presentation or nomination to the River State House of Assembly except to the Rivers State House of Assembly constituted as prescribed by the Constitution is clearly a judgment in rem and is enforceable against the whole world at all times. The Judgment of the Court Appeal affirming it in Appeal No, CA/ABJ/CV/133/2024 is in evidence as exhibit RSHA5 in support of the originating summons. Appeal No. Sc/CV/1071/2024 to this court against that judgment was withdrawn and dismissed by this court. So the Judgment of the Court Appeal in Appeal No, CA/ABJ/CV/133/2024 is final, conclusive and binding on the constitutionality of 4 or 3 members sitting as Rivers State House

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of Assembly and the constitutionality and validity of any thing done by them including making an Appropriation Law as Rivers State House of Assembly. The refusal of the 1st and 8th respondents to comply with the 22-1-2024 judgment in Suit No. FHC/ABJ/CS/1613/2023 which led to the filing of of Suit No. FHC/ABJ/CS/984/2024 on 15-7-2024 is a live issue.

It is clear from the fore going that the subject matter of Suit No. FHC/ABJ/CS/984/2024 raises unceasingly live constitutional issues and other live issues of law.

For the above reasons, I hold that Suit No. FHC/ABJ/CS/984/2024 is not academic. The 1st respondent's objection therefore fails and is accordingly dismissed.

Let me consider the 2nd and 3rd respondent's objection that ground 5 of this appeal is incompetent as leave to appeal on that ground was not first sought for and obtained before the appeal on that ground. I have read the ground and considered the complain in it. The ground complains that the Court of Appeal decision that the subject matter of the suit is outside the jurisdiction of the trial court is wrong. This is an issue of jurisdiction and pure law. An Appeal involving such question is as of right without the need for leave of court to appeal by virtue of S.233(2)(a) and (b) of the Constitution of the Federal Republic

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of Nigeria 1999 (the 1999 Constitution). This objection is baseless. The 2 and 3rd respondents' objection therefore fails and is hereby dismissed.

Let me now determine the merits of the sole issue in this appeal.

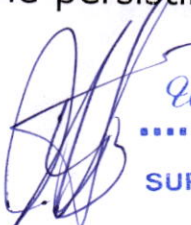
I have carefully read and considered all the arguments in the respective briefs on this issue.

It is glaring from the reliefs claimed for in the originating summons, the questions raised for determination therein and the affidavits in support of the originating summons that the central subject of Suit No. FHC/ABJ/CS/984/2024 is whether Central Bank of Nigeria(4th respondent herein) and Accountant General of the Federation(7th respondent) can validly release funds belonging to Rivers State to the Rivers State Government without a valid Rivers State Appropriation Law or can be restrained from releasing funds belonging to Rivers State to the Rivers State Government without a valid Rivers State Appropriation Law. Seven reliefs are claimed for in the originating summons. Four of them claim for declaration that it is illegal and unconstitutional for the Central Bank of Nigeria and Accountant General of the Federation to release funds belonging to Rivers State to the Rivers State Government without a valid Rivers State

Appropriation Law. One of them claimed for an order of injunction restraining them from releasing funds belonging to Rivers State to the Rivers State Government without a valid Appropriation Law. It is glaring that these reliefs deal with the validity of the release funds belonging to Rivers State to the Rivers State Government without a valid Appropriation Law, which is an executive or administrative action or decision of the Central Bank of Nigeria and Accountant General of the Federation, agencies of the Federal Government.

The claim for these reliefs give the trial Federal High Court the jurisdiction to entertain and determine Suit No.FHC/ABJ/CS/984/2024 by virtue of S.251(1)(r) of the 1999 Constitution which provides that the Federal High Court has exclusive jurisdiction over "any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies;"

As already held herein Suit No.FHC/ABJ/CS/984/2024 is sequel to the judgment in suit No. FHC/ABJ/CS/1613/2023 and obviously seeks to enforce compliance with the judgment. The appellants herein who were the plaintiffs in suit No. FHC/ABJ/CS/1613/2023, following the persisting refusal of the 8th

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respondent herein to comply with the judgment in that suit, again as plaintiffs commenced suit no. No.FHC/ABJ/CS/984/2024 seeking for reliefs that will cause the 8th respondent comply with the judgment in suit No. FHC/ABJ/CS/1613/2023.

The trial Federal High Court has the jurisdiction to entertain and determine the suit to enforce compliance with its earlier judgment or the judgment of any superior court in Nigeria by virtue of S. 287(2) and (3) of the Constitution of the Federal Republic of Nigeria 1999 which provides that –

- “(2) The decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Court of Appeal.
- (3) The decisions of the Federal High Court, National Industrial Court, a High Court and all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, National Industrial Court, a High Court and those courts, respectively ”

The Court of Appeal relied extensively on its earlier judgment in Governor of Rivers State V Rivers State House of

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Assembly and others delivered on 10-10-2024 in Appeal No. CA/ABJ/CV/133/2024 affirming the said judgment in suit No. FHC/ABJ/CS/1613/2023. Concerning its said earlier judgment, the majority decision per **Barka JCA** states thusly:-

"I wish to state that I am aware of the recent judgment of this Honourable Court delivered on 10th-10-2024, in Governor of Rivers State V Rivers State House of Assembly & Ors (2024) LPELR-62961(CA) which that lower court copiously quoted and seems to rely on in making the orders it made. The 1st and 2nd Respondents also relied on his decision as establishing their locus standi to file this suit. I have carefully read the judgment. To understand the thrust of the judgment, I find solace in reproducing an excerpt of the judgment of my Noble Lord, Oyewole, JCA, at pages 50-51, paras. F-E, where he stated as follows:

"Pursuant to Section 91 of the Constitution, representation in the Houses of Assembly of the States is based on constituencies delineated in such a manner and divided in an way to reflect, as far as possible, nearly equal population, to ensure that each part of the geographical entity involved is covered. It therefore implies that by by encouraging four members of the Rivers State House of Assembly out of thirty-two to constitute the basis for legislative activities the Appellant as Governor of Rivers State was operating with 12.5% of the entity constituting Rivers State. In

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Dapinlong&Ors V Dariye&Anor (2007) LPELR-928 (SC), the Supreme Court deprecated a scenario where one third or eight members out twenty-four which constituted the Plateau State House of Assembly purported to have carried out the impeachment of a democratically elected Governor of the State instead of two thirds of all the members of the said House of Assembly as constitutionally required. In a constitutional democracy, the foundation of every act must be located in the Constitution as the grund norm. Autocracy is out of place in a constitutional democracy."

My learned brother Abang JCA in the same judgment stated on the issue that:

"The Appellant also hurriedly presented the Rivers State Budget (Appropriation Bill) to the said 4 members purporting to sit as Rivers State House of Assembly. The 4 Members thereafter considered, deliberated and passed the Budget into law few hours after the said purported presentation. The Appellant within 24 hours in an indecent haste signed the Budget (Appropriation Bill) into law.

It is important to point out here that the Appellant has not denied the facts stated by the 1st and 2nd Respondents in the affidavit in support of the application for the injunctive reliefs dated and filed on 15-12-2023. Please pages 905 to 912 of record of appeal volumes 2.

The Appellant did not also place before the trial Court the reason why he acted in this manner.

Apart from the Appellant's conduct being strange in a democratic setting and in contempt of the subsisting Order of Court dated 30-11-2023 and 7-12-2023 respectively, he was clearly in violation of the mandatory provisions of Section 96 of 1999 Constitution as amended which provides:

"The quorum of the House of Assembly shall be one third of the members of the House"

4 out of 31 members of the Rivers State House of Assembly can not by any stretch of imagination constituted required quorum for transacting a legislative business of the Rivers State House of Assembly. The conduct of the Appellant in presenting the Appropriation Bill to 4 out of 31 members of the Rivers State House of Assembly is a gross violation of Section 91 of 1999 Constitution as amended he swore to uphold when he took the oath of office and oath of allegiance of the Constitution.

The worrisome aspect of the Appellant's conduct in this matter is that he has not explained why he acted in this manner. The court cannot speculate in this regard. 27 Constituencies by the Appellant's conduct were denied representation when the Appellant purportedly signed the appropriation bill into law. The business of Rivers State House of Assembly cannot be conducted in secret. This is unknown to law.

This decision being a judgment of a court of coordinate jurisdiction is binding on this court to the extent of the facts which it pronounced its decision upon which is on the validity and legality of the presentation of the Appropriation Bill by the Governor of Rivers State to four members of the Rivers State House of Assembly and affirmed the judgment of the trial court therein which had ordered that the Governor should represent the said Appropriation Bill to the Rivers State House of Assembly led by the 2nd Respondent, herein, as Speaker. This judgment has pronounced on the issue of who is the Speaker of the Rivers State House of Assembly and the composition of the House of Assembly. It is binding on this court until the Supreme Court takes a final decision on the matter based on the appeal already lodged before it. It is wrong to say that since the particular issue is on appeal, it cannot be obeyed, since that judgment has not been stayed.

Prior to the above decision, this court had earlier made pronouncement on the status of the House of Assembly of Rivers State in the recent case of Appeal No. CA/PH/198/2024: Hon. Martin Chike Amaewhule & 24 Ors V Rt. Hon. Victor Oko Jumbo & 5 Ors, judgment delivered on 4-7-2024. The appeal arose from a decision of the High Court of Rivers State on the seats of 25 members of the House of Assembly. In pungent and lucid terms that broached of no confusion, I had cause to state that:-

"...accordingly agree that the High Court of Rivers State per Wali J, by dint of Section 273(3) of the Constitution of

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the Federal Republic of Nigeria 1999 as amended, acted without jurisdiction to have entertained the application in the first place dealing with the question whether he Appellant seats can be declared vacant, talk less of granting the far-reaching orders made. In the event this is seized with the powers declaring all the acts of the Lower Court null and void, being acts done without jurisdiction and the suit filed before it struck out for want of jurisdiction. For clarity, the suit before the lower court having been struck out, all orders made by that court were so made without jurisdiction and therefore void ab initio. The consequence thereof is that Appellants shall revert to their positions prior to when those orders were made, and all actions made or taken in consequence upon those orders by the lower court are hereby declared null and void and thereby vacated."

As a matter of fact, it is the above judgment that gave an insight on the status of all the members of the Rivers State House of Assembly by stating that the 2nd Respondent and his group are still members of the House of Assembly since the High Court had no jurisdiction to make the orders barring them on the ground that their seats are vacant.

The subsequent judgment of 10-10-2024, Governor of Rivers State V Rivers State House of Assembly & Ors (2024) LPELR-62961(CA) is reinforcing this situation by declaring that the 7th Respondent, as Governor, cannot validly claim to have presented

the Appropriation Bill of Rivers State to a House of Assembly of only four members and that such presentation should be made to the House of Assembly as led by the 2nd Respondent.

The unambiguous effect of these two judgments of this Honorable Court is that as at today the 2nd Respondent and other members of the Rivers state House of Assembly who allegedly defected are still legitimate members of the Rivers State House of Assembly and empowered to conduct the business of the House of Assembly. I abide by this well-reasoned decision of this court.

My Lords, it is meet at this stage, to refer to Section 287 (1), (2) and (3)_ of the Constitution of the Federal Republic of Nigeria 1999 as amended. It states that:

287(1) the decision of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons and by courts with subordinate jurisdiction to that of the Supreme Court.

(2) the decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons and by courts with subordinate jurisdiction to that of the Court of Appeal.

(3) the decisions of the Federal High Court, a High court and all other courts established by this constitution shall be enforced in any part of the Federation by all authorities and persons and by other courts of law with subordinate jurisdiction to that of the Federal High Court, a High Court and all those other courts, respectively. In the Book the Rule of Law and disobedience of court orders in Nigeria, Adebayo Akinlade was disturbed and

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thereby quoted as having said, are we a nation where the rule of law is practiced or the rule of men is the norm; needless to say that disobedience of court orders (2) is detrimental to the rule of law, good governance and progressive democracy as stated by TheophilusAdedokun. It must be stated loud and clear, that the crisis in Rivers State is as result of non-adherence to the rule of law as well as the flagrant disregard to court orders. It is wrong as posited by my learned brother Abang JCA: "The posture of the Appellant to the effect saying "I do not like the Order made and I will not obey it" has to be condemned in the strongest term if we are not to say good-bye to democracy predicated on the Rule of law and not the rule of might.

Where a party or person makes an attempt to disparage an Order of Court as in this case, the court that made the Order or another court of competent jurisdiction that is seised of the proceedings where the alleged disobedience is raised should do everything possible to protect its Order. This is to maintain the integrity and sanctity of the Court of Law"

However, the case that gave rise to this appeal is a fresh action with different parties and different reliefs and cause of action targeted at the Consolidated Revenue Fund of Rivers State, which is a different subject matter. The capacity and locus standi of the 1st and 2nd Respondents to initiate the suit is not in doubt but the issue is the judicial forum where the action was initiated and whether the Federal High Court had the jurisdiction to entertain

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the action. The right to bring a court action is one thing but the subject matter of the action being within the jurisdiction of the court where the action is commenced is another thing, as the three conditions laid down in *Madukolu V Nkemdilim* (supra) must be present for the exercise of court's jurisdiction. On the merit of the appeal, I would have had no hesitation whatsoever dismissing this appeal.

In the instant case, having before now found that the Federal High Court lacks the jurisdiction to entertain the suit over the Consolidated Revenue Fund of Rivers State. Accordingly, the judgment of this Honourable Court in *Governor of Rivers State V Rivers State House of Assembly & Ors* (2024) LPELR-62961(CA) delivered on 10-10-2024, cannot be used to cure the blatant defect in the jurisdiction of the Federal High Court in the instant case.

Consequently, on the merit, the appeal is dismissed, but having concluded that the lower court is devoid of jurisdiction, by dint of section 15 of the Court of Appeal rules 2004, the suit before the lower court is hereby struck out."

The view of the Court of Appeal that Suit No.FHC/ABJ/CS/984/2024 is over the Consolidated Revenue Fund of Rivers state is wrong as it is not supported by the reliefs claimed for in the originating summons. This wrong view influenced it to hold that the subject matter of the suit is not within the scope of the jurisdiction of the Federal High Court.

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It is glaring that the objective of Suit No.FHC/ABJ/CS/984/2024 is to stop the release of funds to the 1st and 2nd respondents herein so as to compel them to comply with the judgments in RSHA1 and RSHA2 by causing the making of the Appropriation Law by the Rivers State House of Assembly properly constituted as prescribed by the 1999 Constitution. The Court of Appeal acknowledged above that "the crisis in Rivers State is as result of non-adherence to the rule of law as well as the flagrant disregard to court orders." The Court of Appeal also acknowledged that "the unambiguous effect of these two judgments of this Honorable Court is that as at today the 2nd Respondent and other members of the Rivers state House of Assembly who allegedly defected are still legitimate members of the Rivers State House of Assembly and empowered to conduct the business of the House of Assembly". After referring to S.287 of the 1999 Constitution that enables any superior court to enforce the judgment, turned round to say that the judgments cannot be used to cure the blatant defect in the jurisdiction of the Federal High Court in the instant case. This is wrong. The trial Federal High Court has the jurisdiction to entertain No.FHC/ABJ/CS/984/2024 that seeks to enforce compliance with those judgments. It is not unusual for judgment enforcement proceedings to name as parties thereto

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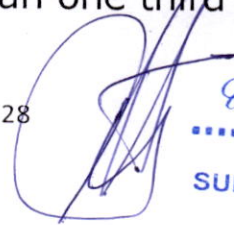
persons not parties in the judgment because they have official roles that will enable the enforcement of the judgment. One ready example is garnishee proceedings. So Suit No.FHC/ABJ/CS/984/2024 is not a fresh action with a subject matter independent of those judgments. It is sequel to the judgment in suit No. FHC/ABJ/CS/1613/2023.

In the light of the foregoing, I hold that the decision of the Court of Appeal that the trial Federal High Court lacked the jurisdiction to entertain and determine Suit No.FHC/ABJ/CS/984/2024 is wrong. The trial court validly exercised jurisdiction to hear and determine Suit No. Suit No.FHC/ABJ/CS/984/2024.

The sole question in Appeal No. Sc/CV/1174/2024 is resolved in favour of the Appellants.

On the whole this appeal succeeds as it has merit. It is accordingly allowed. The order of the Court of Appeal made on 13-12-2024 in Appeal No.CA/ABJ/CV/1287/2024 striking out Suit No. FHC/ABJ/CS/984/2024 for lack of jurisdiction is hereby set aside.

Let me now deal with the question of whether Ss.102 and 109(g) of the 1999 Constitution and the doctrine of necessity give validity to the proceedings of the Rivers State House of Assembly constituted by less than one third of all the members



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of the Rivers State House of Assembly and the actions of the Government of Rivers State on the basis of such proceedings.

This is the main issue raised in cross-appeal

No.SC/CV/1175A/2024 filed by the Governor of Rivers State.

Learned SAN for the cross appellant argued that the 2nd Cross Respondent (who was the 2nd plaintiff at the trial court) and 26 others were no longer members of the Rivers State House of Assembly having defected from the political party platform on which they were elected members of the Rivers State House of Assembly thereby actuating the provisions of Section 109 (g) of the Constitution of the Federal Republic of Nigeria 1999, that from the moment, the 2nd Cross Respondent and the 26 others moved to become members of another political party, they automatically vacated their seats and could under no circumstances be considered as members of the Rivers State House of Assembly, that this must be so to forestall the mischief of the aforesaid provision, which is the unsavory practice of cross-carpeting by politicians without consequence. For these submissions he relied on the decisions in *Abegunde V Ondo State House of Assembly* (2015) 8 NWLR (Pt. 1461) 314 @ 368-370 Paras. C –Band *Federal Electoral Commission (FEDECO) V Goni* (1983) 2 SCNLR. The Learned SAN further submitted that the doctrine of necessity creeps in to help

salvage the unsavory constitutional imbroglio where the Rivers State would have been grounded to halt owing to the self-serving antics of the 2nd Cross Respondent and 26 other members to cross carpet, from the political party which sponsored them, that a situation where the legitimate members of the House of assembly will not equal "one-third of all the members of the house" so as to at least form a quorum and vote on any decision, is not a situation hitherto conceived by the Constitution, that one certainly cannot do violence to the automatic provision of Section 109(1) (g) of the Constitution of the Federal Republic of Nigeria 1999 (As amended) in a bid to satisfy that requirement, that Sections 91, 96 and 98 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) conceive of only legitimate members sitting in the hallowed Chambers of the House, that the only way out would be to ensure as a matter of necessity, that the Rivers State House of Assembly continues to function to salvage the unsavory constitutional imbroglio, as is conceived under Section 102 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), that in a situation that is not dissimilar, the Apex Court in the case of **Nyesom V Peterside (2016) 1 NWLR (pt 1492) 71 @ 142 -- 143 Paras G-D**, stated that in situations where a Constitutional organ may be inhibited from functioning and which situations were

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not hitherto conceived by the Constitution the doctrine of necessity will operate, that in the circumstances, the legislative business of the Rivers State House of Assembly would be carried on by the remaining 4 members of the House of Assembly, including the passing of the Rivers State Appropriation bill for the fiscal year of 2024, and as shown in the Rivers State House of Assembly Debates of Wednesday 13-1-2023, that curiously, the trial court held that the issue surrounding the defection and status of the 2nd plaintiff and 26 other members of the Rivers State House of Assembly has been dealt with by the court in Suit No. **FHC/ABJ/CS/1613/2023 (Exhibit RSHA 1)** and that the Court of Appeal in Appeal No. **CA/ABJ/CV/133/2024 (Exhibit RSHA 5)** affirmed the judgment in Suit No. **FHC/ABJ/CS/1613/2023** that the 2nd Cross Respondent, Hon. Martin Amaewhule is the authentic Speaker of the Rivers State House of Assembly, that a proper reading of the judgment in Suit No. **FHC/ABJ/05/1613/2023 (Exhibit RSHA 1)** will reveal that the status of the 25 members of the Rivers State House of Assembly led by the 2nd Cross Respondent was not the subject matter, going by the issues for determination and the reliefs subscribed on the originating summons, that also, who as between the Rt. Hon. Martin Chike Amaehule and Victor Ola-Jumbo was the Speaker of the Rivers State House of Assembly was not a live issue

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in the judgment of the Court of Appeal, delivered on 10-10-2024, in Appeal No/ C4/ABJ/CV/133/2024 (EXHIBIT RSHA 5), that the judgment in Appeal No. CA/ABJ/CV/133/2024, has not determined with finality the issues canvassed therein as it is now a subject of an appeal before the supreme court, that it is trite law that an appeal is a continuation or rehearing of a case which only comes to an end in the Supreme Court, that therefore, unless and until the decision in Appeal No. **CA/ABJ/CV/133/2024** has been dealt with in the Supreme Court, it does not become a binding precedent as it has yet to come to an end and there is no legal basis upon which any party can enforce same by any means.

Learned SAN for the 1st and 2nd cross respondents argued in reply that the facts and circumstances of the instant case doesnot warrant the application of the doctrine of necessity, that the doctrine of necessity will only apply in a situationwhereby, the constitution itself cannot measure up to the prevailing circumstances which has arisen and where an organ set up under the Constitution is bereft of its power to function, that this is not thesituation in the instant case, that any perceived incapacitation of the 2nd Respondent only exists in the Cross Appellant's mind, the situation herein borders strictly on the interpretation of Constitutional provisions with respect to how the common

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patrimony of a state can be expended, that the fundamental question is whether the Constitution has provided the procedure or condition precedent on how the funds of a State can be expended, that if the doctrine of necessity is to apply against the unconstitutional action of the Cross Appellant who will stop at nothing to continue running the State and expending funds under the purported approval of a four-man House of Assembly by not only declaring his actions unconstitutional but also declaring him unfit to continue occupying the exalted office of the Governor of Rivers State, that the case of *Nyesom V Peterside* (2016) NWLR (Pt 1492) 71 143 parasCD provide a guide on when the Supreme Court will invoke the doctrine of necessity, that there are no facts on the record activating the provisions of Section 109 1 (g) of the 1999 Constitution, that indeed, the consistent position of the courts on the point which the Court of Appeal acknowledged and held that it was bound is the fact that the valid and authentic House of Assembly is that headed by the 2nd Cross Respondent with the 27 member, that there is nothing in the printed record at the trial court and lower court showing that the 27 members of the Rivers State House of Assembly have defected to another political party therefore creating a vacancy as to activate the provisions of section 109 1 (g), that all the arguments of the

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Cross Appellant in this regard are a make belief and obviously unsubstantiated by any scintilla of facts, that everything relating to the legality or otherwise of the Cross Appeal as presently constituted has been settled by the Court of Appeal in the case of Governor of Rivers State V Rivers State House of Assembly & Anor(CA/ABJ/CV/133/2024), as it is a valid and subsisting judgment.

Let me now determine the merits of these arguments.

As already stated in this judgment, the Appeal No SC/CV/1071/2024 to this court against the Court of Appeal Judgment in Appeal No. CA/ABJ/CV/133/2024 was withdrawn and dismissed by this court on 10-2-2025. Therefore the arguments concerning the pendency of the said appeal to this court and its effect on the conclusiveness, finality and bindingness of the said Court of Appeal Judgment in Appeal No. CA/ABJ/CV/133/2024 are rendered irrelevant. Let me however clarify that the appeal against that judgment to this court did not render it ineffective as a correct, conclusive and binding decision. It remains so until it is set aside. The Court of Appeal correctly held that it was bound by this judgment and its other earlier judgments. See PDP V INEC(2018) 12 NWLR(Pt. 1634) 533 @556 . As it is, the said Court of Appeal Judgment in Appeal No.

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CA/ABJ/CV/133/2024 is now final, conclusive and binding on the parties and courts concerning all the issues determined therein.

The Judgment of the Court of Appeal in Appeal No.CA/ABJ/CV/133/20249 is in evidence in this case as exhibit RSHA 5 and the judgment of the Federal High Court in Suit No. FHC/ABJ/05/1613/2023 from which the appeal arose is in evidence in this case as Exhibit RSHA 1.

The concurrent findings of facts in the Court of Appeal Judgment in Appeal No.CA/ABJ/CV/133/20249(exhibit RSHA 5) are that some months after the 8th respondent was elected and sworn-in as Governor of Rivers State in 2023, he started fearing that on the instigation of his political opponents, members of the Rivers State House of Assembly were planning to or initiating proceedings to impeach and remove him from office as Governor of the State, that to pre-empt his said impeachment, 8th respondent took several steps such as attempting to get the National Assembly to take over the exercise of the legislative powers of Rivers State from the Rivers State House of Assembly, preventing the Rivers State House of Assembly from sitting with its complete members or constitutionally prescribed quorum of one third of the 32 members and arranged for initially 4 members and subsequently 3 members to be sitting as Rivers State House

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of Assembly outside the Legislative building of the Rivers State House of Assembly, withholding Rivers State House of Assembly funds, removing the Clerk and Deputy Clerk of the Rivers State House of Assembly, using caterpillars, bulldozers and other earth moving vehicles and equipments to pull down, dismantle and destroy the legislative building of the Rivers State House of Assembly, preventing the members and other staff of the Rivers State House of Assembly from access to the House of Assembly Complex to do official work and engaging in all these actions in disobedience of interim restraining orders of Courts that were obtained by the said 27 members of the Rivers State House of Assembly in suits to restrain these actions. These series of actions by the 8th respondent caused the Rivers State House of Assembly to commence Suit No. FHC/ABJ/CS/1613/2023 against the National Assembly, the 8th respondent, the Accountant General of the Federation, the Inspector General of Police and others.

The concurrent finding of fact by the Court of Appeal in its Judgment in Appeal No. CA/ABJ/CV/133/2024 is that the 8th respondent admitted engaging in all these activities.

The concluding part of the judgment of the trial Federal High Court delivered on 22-1-2024 Suit No. FHC/ABJ/CS/1613/2023 reads thusly –

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"The failure of the 11th Defendant to file a counter affidavit to the Motion on Notice of the plaintiffs means that he admits all the facts stated therein. This court will act on the uncontroverted facts stated. As at the 29th of November, 2023, the Rivers State House of Assembly led by the 2nd plaintiff was sitting and deliberating as the lawfully recognized House of Assembly. On the 30 -11-2023 this court granted an interim order wherein the court observed that more than 2/3 or 25 members out of 31 members of the Rivers State House Assembly are sitting and transacting business. This house was led by the 2nd plaintiff. The Court then granted restraining orders against the Defendants from interfering in the running and affairs of the House of Assembly including withholding funds meant for the House and the tenure of the Clerk or Deputy Clerk of the House of Assembly. The implication is that any other gathering purporting to be Rivers State House of Assembly led by any other person apart from the 2nd plaintiff sits in violation of the interim order of this court which was extended by an Order dated 7-12-2023.

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Thus the purported sittings, deliberations and resolutions of four members of the purported Rivers State House of Assembly led by the 17th Defendant in disobedience of the subsisting order of this court is a nullity and void for all

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intents and purposes. The so called sitting of those members led by the 17th Defendants deliberating and passing the Rivers State Budget (Appropriation Bill) is a nullity and amounts to a void act in the eyes of the law.

.....

The Plaintiffs stated facts showing that the 11th Defendant carried out acts intended to stop the sitting and deliberations of the Rivers State House of Assembly led by the 2nd Plaintiffs. Also, that the 11th Defendant presented the Appropriation Bill of the State to a purported Rivers State House of Assembly other than the one led by the 2nd Plaintiff. This Court finds it strange that the 11th Defendant as Chief Executive of the State would go the extent of stoping the authentic House of Assembly from sitting through devious means such as destroying the House of Assembly complex. Moreover, the Court is bemused by the fact that a bill as important as the Appropriation Bill (State Budget) for 2024 would be presented to an unconstituted House of Assembly sitting with just less than 6 members out of the 31 lawfully recognized members of the Rivers State of Assembly. Furthermore, this presentation of the budget was done in flagrant disobedience to the interim orders of this Court made 30- 11- 2023 but extended on the 7 - 12- 2023

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The effect of this disobedience renders all the decisions including presentation and passing of the Appropriation Bill 2024 of Rivers State to be void acts. Thus, the presentation of the Bill by the 11th Defendant to the so-called House of Assembly is void, deemed not to have existed in law.

.....

Thus as it stands in law, so Appropriation Bill of River State has been presented neither has any of such bill being passed into law as the purported presentation, passage and signing into law of the Appropriation Bill 2024 of Rivers State is void ab initio. Consequently, it is hereby ordered as follows:

1. AN ORDER is hereby made restraining the 11th, 12th, 13th, and 14th Defendants, their servants, agents, hirelings and workmen from continuing the demolition and or destruction under whatever guise, of the buildings, structures and developments in the Rivers State House of Assembly Complex, Moscow Road, Port Harcourt, Rivers State (which act has continued to impede or frustrate the Plaintiffs/Applicants from performing their legitimate constitutional functions and/ or duties).
2. AN ORDER is hereby made restraining the 11th, 12th, 13th, 14th and 16th Defendants, their servants, agents, hirelings and workmen in any manner or howsoever from stopping or preventing the plaintiffs/Applicants, members and staff of

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the 1st plaintiff from having access (ingress and egress) to the Rivers State House of Assembly Complex, Moscow Road, Port Harcourt, Rivers State, in the performance of their functions and or duties including holding of meetings and transacting of the business of the 1st plaintiff.

3. AN ORDER is hereby made restoring the status quo as at 29th November 2023 when this said suit was filed, irrespective of the merits of this suit as may be ultimately decided, and in particular setting aside the purported proceedings and deliberations in the name of the Rivers State House of Assembly surreptitiously arranged or organized by the 11th Defendant including purported decisions and or resolutions passed therein, presentation of Budget and purported deliberation on and passing of the so called Budget (Appropriation Bill) purportedly signed into law by the 11th Defendant despite the pendency of this suit.
4. AN ORDER is hereby made restraining the 11th Defendant from howsoever or in whatsoever manner making any request, presentation or nomination to the River State House of Assembly except to the Rivers State House of Assembly under the leadership of the 2nd plaintiff as Speaker.

It must be emphasized that the 11th Defendant withdrew all his processes filed in opposition to the Originating process and

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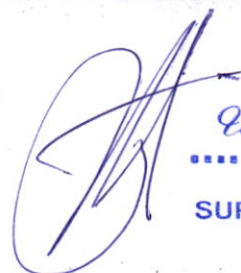
Motion on Notice dated and filed on 15-12-2023 and the 17th Defendant has resigned his membership of Rivers State House of Assembly and not the Speakership of the House and thereby not having capacity to be a party in this suit. All the facts by the plaintiffs remain unchallenged and not controverted”.

The concurrent findings of the Court of Appeal in Appeal No. CA/ABJ/CV/133/2024 in its judgment delivered on 10-10-2024 read thusly -

Per **Oyewole, JCA** –

“The Appellant without disputing the substance at trial surreptitiously wanted it set aside in this appeal. Litigation by stealth is an outdated strategy with zero efficacy. By withdrawing his processes contesting the substantive action and the Motion on Notice issue, the Appellant committed what has turned out to be a faux pas which cannot be redeemed by advocacy no matter how brilliant. The present arguments of counsel have no pillars to rest upon and cannot therefore be sustained. Certainly, you cannot place something on nothing as well espoused in *Mcfoy V UAC* (1962) AC 152.

The motion on notice in issue here together with the attached exhibits and accompanying legal arguments can be found on pages 904-944 of the record of appeal. The Appellant as Governor of Rivers State conceded this application at the lower court. The facts which he conceded in the affidavit in support of



the said application included paragraph 10 thereof which contains as follows:

That I am informed by the 2nd plaintiff in our chambers at No. 21, Daniel Gemamna Close, Off Ima Douglas Okpongette Drive, 7th Avenue, Gwarinpa Estate, Abuja, on 13-12-2023 by 6pm and I verily believe him as follows:

- (i) That in spite of the pendency of the suit and the Motion for interlocutory injunction, and the subsisting order of interim injunction, the 11th Defendant with his servants, agents, hirelings, workmen and Rt. Honourable Ehie Ogerenye Edison in the morning of 13-12-2023 unlawfully broke into the Rivers State House of Assembly Complex, Moscow Road, Port Harcourt.
- (ii) The 11th Defendant, Rt. Honorable Ehie Ogerenye Edison on the said day brought into the said complex caterpillars, machines and other Earth Moving equipment; and ordered their servants, agents, hirelings and workmen to demolish and destroy all buildings, structures and developments in the said complex; and they started the demolition and or destruction.
- (iii) That the said demolition and or destruction exercises are still ongoing and will continue unless the Honourable Court makes the orders sought in this

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Motion. Copies of Newspaper reports of these acts are annexed are marked Exhibits 'C' and 'D'.

- (iv) That these unlawful and unconstitutional acts of the 11th defendant and Rt. Honourable Ehie Ogerenye Edison are intended to and have continued to impede and or frustrate the plaintiffs, members and staff of the Rivers State House of Assembly from effectively performing their legitimate and constitutional duties and functions.
- (v) The Rt. Honourable Ehie Ogerenye Edison had been removed as the Majority Leader of the 1st plaintiff and suspended as a member of the 1st plaintiff with three (3) of his cohorts. The suspension is subsisting. Copy of the Hansard of the 1st plaintiff for 30-10-2023 is annexed and marked Exhibit 'E'.
- (vi) That in spite of the pendency of this suit, the motion for interlocutory injunction and the subsisting order on 13-12-2023, the 11th defendant surreptitiously arranged or organized the four (4) suspended members of the 1st plaintiff led by Rt. Honourable Ehie Ogerenye Edison in an hidden place outside of the precincts of the said House of Assembly where they held a sham or purported sitting of the 1st plaintiff.

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- (vii) That at the said purported sitting of the so-called Rivers State House of Assembly led by Rt. Honourable Ehie Ogerenye Edison they purportedly conducted proceedings and deliberations and purportedly passed resolutions.
- (viii) That at the said purported sitting of the so called River State House of Assembly, the 11th defendant purportedly presented to the Rivers State Budget (Appropriation Bill) to the said four (4) suspended purportedly considered, deliberated on and passed the budget into law few hours after the said purported presentation.
- (ix) That within twenty-four (24) hours of the purported presentation of the Budget, the 11th defendant purportedly signed the Budget (Appropriation Bill) into law.
- (x) That the 11th defendant, his servants, agents, hirelings and workmen have continued to restrict the plaintiffs; members and staff of the 1st plaintiff access to the said complex to perform their legitimate functions and duties.
- (xi) That the 11th defendant has resorted to self-help.

The Appellant, Governor of Rivers State was the 11th defendant at the trial against whom the above weighty

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allegations were made without resistance. As earlier pointed out, by withdrawing his counter-affidavit and other processes filed in opposition to the application the Appellant is deemed to have admitted these rather weighty facts. See *Controller, Nigeria Prison Service V Adekanye (supra)*, *Registered Trustees of the Prefecture Apostolic of Ibadan V Aare Latosa&Ors (supra)*, *Ogoejefo V Ogoejefo (supra)* and *Akiti V Oyekunle (supra)*.

The challenges faced by the Appellant in this appeal are self-inflicted and try as one may it is impossible to see the utilitarian value to be achieved by filing this appeal after withdrawing all processes contesting the action at the lower court and thereby conceding the action. It seems to be purely academic for a party to concede an action at the lower court and then turn around to challenge the same action without any indication of fraud or misrepresentation being responsible for the earlier concession. See *Octs Educational Services Ltd V Padson Industries Ltd and Anor (20120 LPELR-14069(CA))*, *DANA Impex Ltd &Anor V Aderotoye (2005) LPELR-5534(CA)* and *RACE Auto Supply Co. Ltd &Ors V Akib (2006) LPELR 2937 (SC)*.

The orders made by the lower court were predicated on the uncontested facts before it. Some of the relevant depositions earlier outlined touch on a fundamental aspect of constitutional democracy which must not be glossed over or trivialized. Pursuant to section 4 of the Constitution of the Federal Republic of Nigeria (as amended) (hereinafter referred to as 'the Constitution'), the

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power to make laws for the Federation or the subnational entities is vested in the legislature. As the history of this nation has shown since independence, the parliament which is the legislative arm of government has always been the primary subject of attack during military incursions into governance. Getting the legislature out of the way permits the enthronement of military dictatorship which then imposes its rule with decrees and edicts without any input from the people being governed. The Legislature by its very essence enables the people determine how they are governed through laws enacted by their elected representatives. Without mincing words, the legislature represents the fulcrum of democracy which must be jealously protected and guarded.

Pursuant to section 91 of the Constitution, representation in the House of Assembly of the State is based on constituencies delineated in such a manner and divided in a way to reflect, as far as possible, nearly equal population, to ensure that each part of the geographical entity involved is covered. It therefore implies that by encouraging four members of the Rivers State House of Assembly out of thirty-two to constitute the basis for legislative activities the Appellant as Governor of Rivers State was operating with 12.5% of the entity constituting Rivers State. In *Dapianlong & Ors V Dariye & Anor* (2007) LPELR-928 (SC) the Supreme Court deprecated a scenario where one third or eight members out twenty-four which constituted the Plateau State House of Assembly and purported to have carried out the very

grievous task of impeaching the democratically elected Governor of the State instead of two thirds of all the members of the said House of Assembly as constitutionally required. In a constitutional democracy, the foundation of every act must be located in the Constitution as the grund norm. Autocracy is out of place in a constitutional democracy. I therefore resolve this remaining issue against the Appellant and in favour of the 1st and 2nd Respondents.

In totality therefore this appeal is bereft of merit and it is accordingly dismissed. The Judgment of the lower court is hereby affirmed.

N500,000.00 cost is awarded in favour of each of the 1st-12th Respondents respectively and against the Appellant.

.....
Per **Abang, JCA-**

"However, I wish to add by way of contribution that the conduct of the Appellant, 13th, 14th, 15th Respondents from the time the suit was filed till the period the appeal was argued as regard the subject matter in dispute is to say the least most reprehensible to the extreme and contemptuous of the Order of the trial Court. The Appellant treated court's Order with disdain, levity, and resorted to self-help in the discharge of his functions in an unprecedented manner. I agree with the 1st and 2nd Respondents' counsel that these are acts of executive lawlessness which have repeatedly been deprecated by every court in this country. Rule of might has

no place in democratic setting. Having sworn to uphold the provisions of the Constitution, the Appellant was and is expected in his relationship with 1st and 2nd Respondents to apply the Rule of Law not the Rule of might in matters affecting the discharge of his functions as the Governor of Rivers State.

.....

The Appellant's show of force and might is ably demonstrated in the 1st and 2nd Respondents' unchallenged depositions in paragraphs 10 (i)-(x) of the Affidavit in support of the Motion on Notice filed by the 1st and 2nd Respondents on 15-12-2023 praying for various injunctive reliefs.

.....

From the facts deposed to be the 1st and 2nd Respondents in paragraphs 10 to 26 of the Affidavit in Support of Originating Summons at pages 14 to 18 of the record of appeal Volume 1, the 2nd Respondent was duly elected the speaker of Rivers State House of Assembly on 5/6/2023 and since then has been discharging the functions of his office in accordance with the law. The 2nd Respondent have since then in regular manner been transacting the business of the House in accordance with the established law.

That in order to forestall the impeachment proceedings which was initiated against the Appellant, that the Appellant took several

unlawful steps to frustrate the proceedings of the 1st Respondent from holding its meeting or transacting its business.

In paragraph 26 of the Affidavit in support of the Originating Summons, the 1st and 2nd Respondents stated that the Appellant (the Governor of Rivers State) has been making moves or efforts at the National Assembly to cause it to take over the functions of River State House of Assembly.

The above is the basis that led the 1st and 2nd Respondents approached the trial Court for interim injunctive relief that was made on 30/11/2023 and later extended on 7/12/2023 restraining the appellant and his agents from interfering in the running of the affairs of the Rivers State House of Assembly including withholding funds meant for it and also from removing the Clerk or Deputy Clerk of the Rivers State House of Assembly. The Appellant, 13th, 14th, 15th, 16th, Respondents neither applied for the Order to set aside nor appealed against same.

I agree with the trial Court that the implication of the said subsisting Order of Court is that any gathering purporting to be the Rivers State House of Assembly led by any other person apart from the 2nd Respondent sits in violation of the interim order of the trial Court which was extended by an Order dated 7-12-2023 and that person acts in vain.

Surprisingly on 13-12-23, in gross violation of the subsisting Order of the trial Court, the Appellant demolished Rivers State House of Assembly Complex at Moscow Road Port Harcourt and

secretly arranged 4 members of the 1st Respondent led by Rt. Hon. EhieOgerenye Edison to a place outside the premises of the said House of Assembly and held a sham sitting of the 1st Respondent. The Appellant also hurriedly presented the Rivers State Budget (Appropriation Bill) to the said 4 members purporting to sit as Rivers State House of Assembly. The 4 members thereafter considered, deliberated and passed the Budget into law few hours after the said purported presentation. The Appellant within 24 hours in an indecent haste signed the Budget (Appropriation Bill) into law.

The Appellant did not also place before the trial court the reason why he acted in this manner. Apart from the Appellant's conduct being strange in a democratic setting and in contempt of the subsisting Order of Court dated 30-11-2023 and 7-12-2023 respectively, he was clearly in violation of the mandatory provisions of Section 96 of 1999 Constitution as amended of which provides:

"The quorum of the House of Assembly shall be one third of the members of the House."

4 out of 31 members of the Rivers State House of Assembly cannot by any stretch of imagination constitute required quorum for transacting a legislative business of the Rivers State House of Assembly. The conduct of the Appellant in presenting the Appropriation Bill to 4 out of 31 members of the Rivers State House of Assembly is a gross violation of Section 91 of 1999

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Constitution as amended which he swore to uphold when he took the oath of office and oath of allegiance of the Constitution.

The worrisome aspect of the Appellant's conduct in this matter is that he has not explained why he acted in this manner. The court cannot speculate in this regard. 27 Constituencies by the Appellant's conduct were denied representation when the Appellant purportedly signed the appropriation Bill into law. The business of Rivers State House of Assembly cannot be conducted in secret. This is unknown to law.

.....

The Appellant did not also place anything before the trial Court borne out of record of appeal whether the 2nd Respondent has been lawfully removed from office as Speaker by the votes of not less than 2/3 majority of the members of the River State House of Assembly pursuant to Section 92 sub section 2© of 1999 Constitution as amended to warrant presenting Appropriation Bill to a forum other than Rivers State House of Assembly presided over by the 2nd Respondent.

The Appellant that has passion in violating the provisions of the Constitution that he swore to uphold with impunity, disobeying Court's order at all will using his immunity under Section 308 of 1999 Constitution as a cover is breaking the bridge over which he himself will cross. It is like someone living a glass house throwing stones. It is my humble view that it is act of indiscipline bordering on excessive use of executive might which

is unbecoming of someone with good moral culture, otherwise how else would one explain a situation where 4 out of 31 members of Rivers State House of Assembly without any lawful excuse placed before the Court sat in hidden place purporting to transact a legislative business of rivers State House of Assembly with the Appellant providing facility to enable his agents flout the provisions of the Constitution they swore to uphold. This is a joke taken too far. The situation in Rivers State is that of dictatorship and has nothing to do with democratic governance. This situation in Rivers State House of Assembly where 4 of out 31 members sit to conduct legislative business is similar to what took place in the case of Dapialong V Dariye (2007) 8 NWR (PT. 1036) P.332 AT P. 357 that 8 out of members sat to impeach a Governor. The apex Court condemned that act in a strongest term and then held that it cannot be the intendment of the framers of the Constitution that the decision to impeach a Governor be left in the hands of very negligible 8 out of 24 members of Plateau State House of Assembly.

In line with the decision of Supreme Court in DARIYE'S case, the deliberation of Rivers State Budget appropriation Bill by 4 members that was purportedly signed into law by the Appellant cannot be an action or decision of River State House of Assembly under 1999 Constitution as amended.

It is clear from the record of appeal in this matter that the situation in this case is similar to what looks like in the case of

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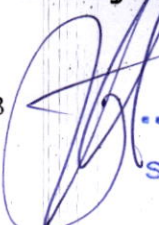
LAGOS STATE GOVERNMENT OJUKWU (1986) 1 NWLR (PT. 18)
when the apex Court held at page 629 thus:

"I think I should still stress that it is a matter of grave concern that the Military Government of Lagos State should be seen to disregard a lawful order issued by a court of law. If Government treat court's Order with levity and contempt, the confidence of the citizen in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement of the rule of law. If anyone should be wary of orders of Court, it is the authorities for they more than anyone else need the application of the rule of law in order to govern properly and effectively."

The Supreme Court's decision in Ojukwu's case captures the abnormal situation in Rivers State House of Assembly.

It is on this note that I agree with the 1st and 2nd Respondents that the learned trial Judge was right in granting their motion on notice filed on 15-12-23 in the exercise of his inherent and disciplinary jurisdiction to restore the Order it made on 30-11-2023 under the provisions of Section 6 subsection 6 (a) and (b) of 1999 Constitution as amended. It is settled law that the effect of non-compliance with a subsisting Order of Court will be devastating and earth shaking. There is no how there won't be a twist in the body chemistry of a person that flouts a subsisting Court's Order. A Court of law in its subsisting Order as in this case the Order made by the trial court in its judgment delivered on 22-

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1-2024 must not only bark but must bark and bite and if situation warrants break the bones. That is to teach a party or a person in disobedience that it was a joke taken too far to overlook the Court's Order and pretends that it does not exist.

My Lords, democracy is anchored on the rule of law not on the rule of might. A court system cannot be maintained without the willingness of parties to abide by findings and orders of a competent court until reversed on appeal.

The posture of the Appellant to the effect saying 'I do not like the Order made and I will not obey it' has to be condemned in the strongest terms if we are not to say good-bye to democracy predicated on the Rule of Law and not the rule of might.

Where a party or a person makes an attempt to disparage an Order of Court as in this case, the court that made the Order or another Court of competent jurisdiction that is seized of the proceedings where the alleged disobedience is raised should do everything possible to protect its Order. This is to maintain the integrity and sanctity of the Court of law. It is noteworthy to point out that the motion on notice filed on 15-12-2023 by the 1st and 2nd Respondents to restore the status quo and grant other injunctive reliefs was not challenged by the Appellant. The appellant (the Governor of Rivers State) on 8-1-2024 voluntarily withdrew his counter affidavit in this regards with other processes he filed at the trial court. The acts of the violation of the Orders of the trial court were not controverted or denied by the

Appellant. The appellant is non-challant and goes about in Rivers State as if nothing happened. Beyond this, the Appellant has not appealed the findings the trial court made about him.

The Appellant in effect admitted the act of executive lawfulness by the 1ST and 2ND Respondents against him based on the unchallenged evidence. It is my view that the trial court made the right conclusion in its judgment and granted the prayers sought. I agree with the 1st and 2nd Respondents that the Order was rightly made by the trial; court in its judgment delivered on 22-1-2024.

Ishaq Mohammed Sani JCA in his contribution also agrees.

What is clear from the above concurrent findings is that the 8th respondent started the prevention of the sittings of the Rivers State House of Assembly constituted by the number of members as prescribed by S.96 of the 1999 Constitution long before the issue of the remaining 27 members defecting to another political party arose. The said activities of the 8th respondent were adjudged by the concurrent holdings of the Court of Appeal in its Judgment in Appeal No. CA/ABJ/CV/133/2024 as illegal and unconstitutional long before the allegation of defection started. Against the background of these concurrent findings and holdings in the Court of Appeal Judgment in Appeal No.CA/ABJ/CV/133/2024, it is reasonable to conclude that the

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cross appellant's reliance on Ss.102 and 109 of the Constitution and the doctrine of necessity is to continue his brazen subversion of the Rivers State House of Assembly, The 1999 Constitution and legitimate government in Rivers State. Having by his own admission engaged in a series of illegal activities just to prevent the other 27 members of the Rivers State House of Assembly from participating in the proceedings of the House to carry out their legitimate legislative duties which they were elected to do, his resort to Ss.102 and 109 of the 1999 Constitution and the doctrine of necessity on the basis of his allegation that they have defected is a red herring to perpetuate his subversion of the Rivers State House of Assembly, the 1999 Constitution and democratic government in Rivers State.

The 8th respondent had collapsed the Rivers State House of Assembly. Therefore no question about any member having lost his seat in that House due to defection can validly arise. There must be a House of Assembly for any constitutional processes therein to take place. The claim that the 27 members are no longer members of the House on the basis of an alleged defection is a continuation of his determination to prevent them from participating in the proceedings of the House. It is an engagement in chicanery. What is clear is that the 2nd cross

respondent and the other 26 members of the Rivers State House of Assembly are still valid members of the Rivers State House of Assembly and cannot be prevented from participating in the proceedings of that House by the 8th respondent in cahoots with the 4 members of the Rivers State House of Assembly. Ss.102 and 109 of the Constitution cannot be invoked in aid of this unconstitutional enterprise. S.102. of the Constitution that provides that "A House of Assembly may act notwithstanding any vacancy in its membership and the presence of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate such proceedings", cannot be relied on to validate the proceedings of a House of Assembly in the absence of over 90% of the members or to justify a vacancy created by the illegal exclusion of a member of the House or to justify the contrived illegal exclusion of 27 members and officials from the House and illegal shutting down of the House by destroying the legislative building and House of Assembly complex and blocking access to the place by legislators and officials of the House.

A government cannot be said to exist without one of the three arms that make up the Government of a State under the 1999 Constitution. In this case, the Head of the Executive arm of the

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Government has chosen to collapse the Legislature to enable him govern without the Legislature as a despot. As it is there is no government in Rivers State.

The doctrine of necessity cannot be invoked to justify the continued existence of a deliberately contrived illegal or unconstitutional status quo. It cannot be invoked to justify and protect the illegal actions of the 8th respondent and his despotic rule of Rivers State without a House of Assembly. It applies to genuine situations that were not contemplated in the provisions of the Constitution or any law, which situations require the taking of some legitimate extra constitutional or extra legal actions to protect public interest. In *Nyesom V Peterside* (2016) NWLR (Pt 1492) 71 143 paras CD this court held that "the case at hand, no doubt calls for applicability, in the light of very serious security challenges not only in Rivers but elsewhere in the country. To my mind the doctrine will operate in circumstances where the Constitution itself cannot measure up to a situation which has arisen and where an organ set up under the Constitution is bereft of its power to function. The lower court rightly held that there was need to issue practice direction to tribunal to enable it function without hindrance in an environment with minimum guarantee of security of lives.

The 8th respondent's fear of impeachment by the House Assembly is no justification for his attacks on the House of Assembly, the Constitution, the Government of Rivers State and rule of law. Political disagreements cannot justify these attacks and contempt for the rule of law by the Governor of a State or any person. What the 8th respondent has done is to destroy the government because of his fear of being impeached.

In the light of the foregoing, I hold that Cross-appeal No SC/CV/1175A/2024 lacks merit and is hereby dismissed.

The part of the judgment of the Court of affirming the judgment of the Federal High Court in Suit No. FHC/ABJ/CS/984/2024 is hereby affirmed. The said judgment of the Federal High Court in Suit No.. FHC/ABJ/CS/984/2024 is hereby restored.

For avoidance of doubt it is hereby ordered that-

1. The Central Bank of Nigeria and the Accountant General of the Federation should forthwith stop releasing and paying to the Government of Rivers State, its organs, departments and officials any money belonging to Rivers State until an Appropriation Law is made by Rivers State House of Assembly constituted as prescribed by the 1999 Constitution.
2. The Right Honorable Martin Chike Amaewhule and the other 26 members should forthwith resume unhindered

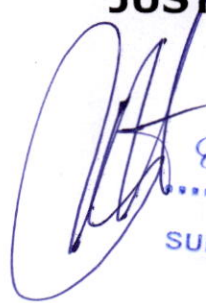
sitting as Speaker and members respectively of the Rivers State House of Assembly.

3. The Rivers State House of Assembly Should resume sitting with all elected members forthwith.

The decision in SC/CV/1174/2024 will bind Appeal No.SC/CV/1174A/2024, Appeal No.SC/CV/1174B/2024, Appeals Nos.SC/CV/1175/2024, SC/CV/1177/2024, Appeal No.SC/CV/1175A/2024, Appeal No.SC/CV/1176/2024 and Appeal No.SC/CV/68/2024.

The 1st ad 8th respondents shall pay costs of 5 million naira to the appellants.


EMMANUEL AKOMAYE AGIM
JUSTICE, SUPREME COURT


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Appearances:

J.B Daudu SAN, Prof S.T. HON SAN, Dr. O.J. Onoja SAN, M.A Ebute SAN, Adedayo Adedeji SAN, Paul B. Daudu SAN with Shallom Emmanuel Esq, Precious Andrew Esq, E.C. Onyekwere Esq, Aishetu Isa Esq and Shuaibu Mohammed for the Appellants

Chief Chris Uche SAN, Gordy Uche SAN, Jeph C. Njikonye SAN, Samuel Atung SAN and Damian Okoro SAN with Chiamaka Amagwu Esq, Olakunle Lawal Esq, Abdul Musa Esq and Mike Uche ESq for 1st Respondent in SC/1174 10th Respondent in SC/CV/1175, SC/CV/1176, SC/CV/1177 and Cross appellant in SC/CV/1174a.

Tayo Oyetibo SAN for 2nd – 3rd Respondents in SC/1174, Cross appellant in SC/1174b, **for 2ND and 3RD Respondents** in SC/CV/1175, SC/1176 and SC/1177 with Femi Falana SAN, O.M Atoyebi SAN, Mofesomo Tayo Oyetibo SAN with Paul C. INBU Esq and T.D. Mogbo Esq.

J.J. Usaman SAN **for 4th respondent** in SC/CV/1174, SC/1175 and SC/1177, 1174A and SC/1175A with C.O Ochu, J.I. Machianan and N.E Nwoba JNR.

Chief Emeka Obegolu SAN, **for 5th Respondent** in SC/1174, SC/1175 and SC/1174, **4TH Respondent** in SC/CV/1176 for 5th Respondent in SC/1174A and SC/1175A and Appellant in SC/CV/68/2015 with Grace Ehussani Esq, Chinomso Christian Osunmune Esq and Kamal Olamide Olamilekan Esq.

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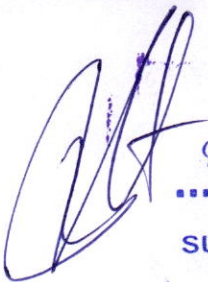
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Prof. Ali SAN for 1st Respondent in SC/1174, **1ST Respondent** in SC/1175, Cross Appellant in SC/1175A and **7th respondent** in SC/1177 and **8th respondent** in SC/1174B with Adebayo Adelodu SAN, Paul Erokoro SAN, K.K Eleja SAN, LukmanFagbemi SAN with S.B. Sambo Esq, Alex Akoja Esq and K.T. SulymanEsq and Kehinde O. IjatuyiEsq

I. A. Adedipe SAN, for **9th Respondent** in SC/1174, SC/1175, **8th Respondent** in SC/1174 and Tuduru U. Ede SAN, Yemi Adeshina SAN, T.J. Aondo SAN

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