

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY, THE 28TH DAY OF FEBRUARY, 2025

BEFORE THEIR LORDSHIPS

UWANI MUSA ABBA AJI

JUSTICE, SUPREME COURT

IBRAHIM M. MUSA SAULAWA

JUSTICE, SUPREME COURT

EMMANUEL AKOMAYE AGIM

JUSTICE, SUPREME COURT

CHIOMA EGONDU NWOSU-IHEME

JUSTICE, SUPREME COURT

JAMILU YAMMAMA TUKUR

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/68/2024

Hon. Justice U. M. Abba Aji, JSC

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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 GOVERNOR OF RIVERS STATE
2. RIVERS STATE INDEPENDENT ELECTORAL COMMISSION
3. HON. JUSTICE ADOLPHUS ENEBELI (RTD) (CHAIRMAN, RIVERS STATE INDEPENDENT ELECTORAL COMMISSION)
4. CENTRAL BANK OF NIGERIA
5. ZENITH BANK PLC
6. ACCESS BANK PLC
7. ACCOUNTANT GENERAL OF THE FEDERATION
8. THE GOVERNOR 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)

Hon. Justice U. M. Abba Aji, JSC

..... RESPONDENTS
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Elsmar B. Bature Esq.
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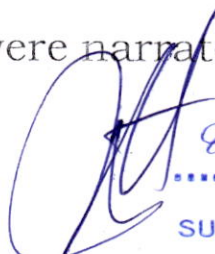
JUDGMENT

(DELIVERED BY UWANI MUSA ABBA AJI, JSC)

My learned and noble brother, **Emmanuel Akomaye Agim, JSC**, who delivered the lead judgment, made available to me a copy thereof in advance. I must say that I have not beheld or discovered the need for dissension and discordance with the lead judgment.

Although 8 appeals, in the wisdom of this court, were consolidatedly considered in a single swoop, I will want to highlight on the issue of the doctrine of necessity, which gave a greater chunk of impetus and power to the 8th Respondent and his train.

The well-grasped facts of what transpired and played out in the Rivers State were narrated by my learned brother,


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Hon. Justice U. M. Abba Aji, JSC

SC/CV/1174A/2024

Emmanuel Agim, JSC, in his lead judgment and I am much interested in reproducing it herein.

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...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.

A government cannot be said to exist without one of the three arms that make up the Government of a State

Hon. Justice U. M. Abba Jii, JSC

4
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SC/CV/1174A/2024
6/3/23

under the 1999 Constitution. In this case, the Head of the Executive arm of the Government has chosen to collapse the Legislature to enable him govern without the Legislature. 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...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 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.

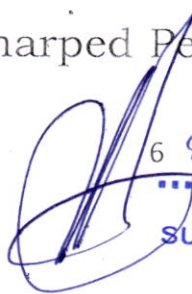
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5
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6/3/23
SC/CV/11741/2024

The doctrine of necessity hinged upon by the 8th Respondent and his allies cannot be sustained nor applied in the midst of an illegality and constitutional aberration. It is trite in law that you cannot put something on nothing and expect it to stand! See Per MUHAMMAD, J.S.C, in **NYESOM V. PETERSIDE & ORS (2016) LPELR-40036(SC) (PP. 89 PARAS. D).**

The political brouhaha and anarchy that erupted and busted out in Rivers State, especially the House of Assembly, leaves much to be desired in our maturing democracy; and to slot in and apply the doctrine of necessity to it will be more chaotic and messier. Since the center could no longer hold, things fell apart. Where there is apparent and perceived illegality, it is for the court to refuse to apply the doctrine of necessity. It is to nib it to the bud and not allow it to exacerbate. This was harped Per ESO, JSC, in **OGUEBIE &**

Hon. Justice U. M. Abba Aji, JSC

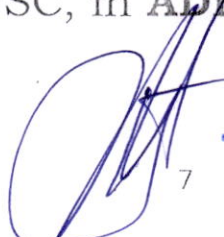
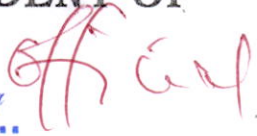

6
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6/3/25
SC/CV/1174A/2024

**ANOR V. ODUNWOKE & ORS (1973) LPELR-2315(SC) (PP.
31-33 PARAS. E):**

*Where however, it is shown that the policy of the legitimate government is expressly or by necessary implication against such application, it is not for this Court to question the wisdom of such policy. **The Court will simply refuse to apply the doctrine.** I do think that in an appropriate case, our Courts will recognize the validity of judicial acts even though they be acts of a Judge not lawfully appointed or derive their authority from an unlawful government...all executive, legislative and judicial acts of a rebel government during the period of a rebellion were illegal in so far as they were made in furtherance of the rebellion or for the sustenance of the rebel regime...We think that apart from this restraint, where there is evidence of any act whatsoever, the lawful sovereign, signifying opposition as a matter of policy to the application of the doctrine of necessity or implied mandate, **the Court will not apply it.***

On the solemn role and function of the court in the face of any dispute between the three arms of government, Per
FATAYI-WILLIAMS, JSC, in **ADESANYA V. PRESIDENT OF**

Hon. Justice U. M. Abba Jji, JSC


7
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6/3/25
SC/CV/1174A/2024


THE FRN & ANOR (1981) LPELR-147(SC) (PP. 12-13

PARAS. A), emphasized thus:

The duty of the court to declare on a violation of the provision of the Constitution arises only where there is a dispute before it brought by legitimate disputants who would be affected by the illegality complained of... Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any act of any legislature, State or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the act be constitutional or not; but such an exercise of power is the ultimate and supreme function of courts. It is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals...

Similarly, the media was agog also with the charade and façade of defection from PDP to APC by the Hon. Martin Amaewhule-led members of the Rivers State House of Assembly. However, while the media most times may deal

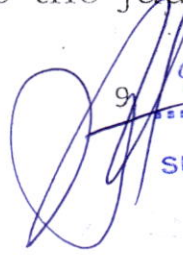
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8
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SC/CV/11741/2024
6/3/23

with public opinions and comments, the court of law deals with facts, which are sacred. Indeed, facts are sacred to the court of law but opinions are free to the media or public. Similarly, the media may deal with speculations but the court of law does not condescend into that. The court of law must confine itself to evidence! The facts presented to the court will make up the body of evidence to use to adorn the case of a party. In the instant case, the evidence of defection of the 27 lawmakers of Rivers State Assembly to APC has been left in the limbo or completely not present for this court to act upon. In fact, there was an act of illegality before the said defection, which cannot give a place for sanction or approval by this court.

In sum, this appeal succeeds. The judgment of the Court of Appeal affirming the judgment of the Federal High Court is affirmed, while the judgment of the trial Federal

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 9
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High Court is hereby restored. The cross appeal consequently is dismissed. I agree with the orders made in the lead judgment and the award of costs in favour of the Appellants.

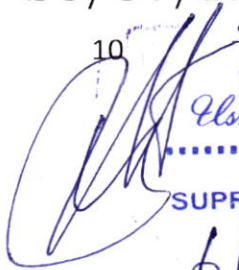

UWANI MUSA ABBA AJI
JUSTICE, SUPREME COURT

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,

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10

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SC/CV/1177 AND **CROSS APPELLANT** IN
SC/CV/1174A.

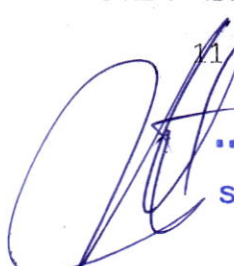
TAYO OYETIBO, SAN, **FOR 2nd – 3rd RESPONDENTS** IN
SC/1174, **CROSS APPELLANT** IN SC/1174B, **FOR 2ND
AND 3RD RESPONDENTS** IN SC/CV/1175, SC/1176 AND
SC/1177 WITH FEMI FALANA, SAN, O.M ATOYEBI SAN,
MOFESOMO, TAYO OYETIBO, SAN, WITH PAUL C. INBU,
ESQ AND T.D. MOGBO ESQ.

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.

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, LUKMAN
FAGBEMI, SAN, WITH S.B. SAMBO, ESQ, ALEX AKOJA,

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11
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ESQ AND K.T. SULYMAN, ESQ, AND KEHINDE O. IJATUYI, ESQ.

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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