

IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA

IN THE WARRI JUDICIAL DIVISION

HOLDEN AT WARRI

BEFORE HIS LORDSHIP HON. JUSTICE ANTHONY OLOTU AKPOVI (JUDGE)

ON THE 27TH DAY OF FEBRUARY, 2025

SUIT NO: W/311/FHR/2024

BETWEEN:

JOHN AIKPOKPO - MARTINS

... .. APPLICANT

(For and on behalf of all candidates born

On the 1st of September, 2009 to the

31st of December 2009 who wrote and

Passed the joint admission and matriculation

Board (JAMB) exams in 2024)

AND

1. JOINT ADMISSION AND
MATRICULATION BOARD

RESPONDENTS

2. EDWIN CLARK UNIVERSITY

3. DELTA STATE UNIVERSITY

4. UNIVERSITY OF DELTA

5. ADMIRALTY UNIVERSITY

PARTIES PRESENT

ABDUL WAHAB OYEDOKUN (1st RESPONDENT'S DIRECTOR OF LEGAL SERVICES)

FOR 1ST RESPONDENT

D.A URHIBO (2ND RESPONDENT'S REGISTRAR)

COUNSEL: J.O AIKPOKPO-MARTINS Esq. FOR THE APPLICANT

A.O MOHAMMED S.A.N with S.P SIKETI Esq. FOR 1ST RESPONDENT

A.A BEKEDEREMO Esq. with KESIENA URHIBO Esq. FOR 2ND RESPONDENT

O.G CLARKE Esq. FOR 3RD RESPONDENT.

THREE (3) CONSOLIDATED RULINGS/JUDGEMENT

RULING ON PRELIMINARY OBJECTION

The Applicant by a Notice of Preliminary Objection dated and filed on the 1st of November, 2024 is praying this Honourable court for the following reliefs:

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'to dismiss/strike out the Originating motion for being incurably defective and incompetent with substantial cost in favour of the 1st Respondent'

The grounds for this application are to wit:

1. *The Applicant has no locus standi to file the generalized originating motion for the purported breach of his daughter's right under **section 42 of the 1999 constitution**.*

2. *Admission into tertiary institutions in Nigeria is not a right within the scope or purview of **section 42 of the 1999 constitution**.*

3. *Educational guidelines and policies formulated by the Government for implementation by the 1st Respondent as per its circular letter of 16th October, 2024 to tertiary institutions to extend the period for calculating the age of JAMB candidates for admission cannot constitute an infringement on the rights of candidates under the **1999 constitution**.*

4. *The Applicant has not disclosed in his affidavit, grounds for the motion and written address any reasonable or justiciable cause of action against the 1st and 2nd Respondent.*

5. *The Applicant's action is majorly speculation, abstract and inexact as to whether cause of action is for human rights enforcement*

6. *1st Respondent's circular letter of 16th October, 2024 extending the period of attaining the 16 years minimum age for the purpose of admission enures to candidates seeking admission into tertiary institutions through the 1st Respondent including the Applicant's daughter and it is not in any way discriminatory or an infringement on **section 42 of the 1999 constitution**.*

In support of the application, the Applicant filed a written address dated and filed on the 1st of November, 2024.

Responding to the said Notice of Preliminary objection, the Applicant/Respondent filed a reply to the written address dated and filed the 5th of November, 2024.

In arguing the said Application, the 1st Respondent/Applicant raised two issues for determination in their written address, to wit:

1. *Whether the Applicant's complaint against the 1st Respondent's circular letter to tertiary institutions dated 16th October, 2024 extending the period of attaining the 16 years minimum age for admission into tertiary institutions is enforceable under **Section 42 of the 1999 Constitution and Fundamental Rights Enforcement Procedure Rules 2009**.*

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2. *Whether 2nd Respondent has the legal authority and capacity to offer and issue admission letter to Angel Abisola Aikpokpo-Martins having regards to the extant provisions of Sections 6.1 and 6.2 of the 2024 admission guidelines of the 1st Respondent, and whether the offer/letter of admission given to Angel Abisola Aikpokpo-Martins by the 2nd Respondent is not null and void and of no effect.*

In arguing Issue 1, the 1st Respondent's/Applicant's counsel submitted that a careful and dispassionate reading of 1st Respondent's letter of 16th October, 2024, to all tertiary institutions clearly reveals that it is neither discriminatory, vexatious, obnoxious, nor insensitive as grossly misconstrued, misrepresented and misunderstood by the Applicant.

Counsel submitted that the main theme of the letter is to adjust and extend the period within which candidates for admission would attain the minimum 16 years requirement up to the 31st August, 2025.

Counsel further submitted that the nine months extension period in the aforesaid letter will give more candidates opportunity for admission including the daughter of the Applicant.

Counsel argued that the unsubstantiated assumption or allegation by the Applicant that his daughter is adversely affected by the general directive meant to favour more candidates seeking admission for the 2024/2025 academic year cannot be a matter for the invocation of **Section 42 of the 1999 Constitution (as amended)**.

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Counsel submitted that the Applicant did not tell the court when his daughter was given birth to, to determine if the directive will affect her. Counsel further submitted that the Fundamental Rights guaranteed under **Chapter IV of the 1999 Constitution (as amended)** are not to be deemed breached on the basis of speculation, assumption or sentiment as done in this application but the actual infringement must be unequivocal and cognizable and protected under **Chapter IV of the 1999 Constitution**.

Counsel submitted that the 1st Respondent's directive contained in the circular did not directly point at the Applicant's daughter and as such did not breach any right protected under **Chapter IV of the 1999 Constitution**. Counsel relied on **OKAFOR V. LAGOS STATE GOVERNMENT (2017) 4 NWLR PT. 1550 PG. 404 @ 425, HASSAN V. EFCC (2014) 1 NWLR PT. 1389 PG. 607 @ 624, DIAMOND BANK PLC V. OPARA (2018) 7 NWLR PT. 1617 PG. 92, and UMOSEN & ANOR V. UDOKONG (2019) LPELR 46 & 49 CA** in support of his submission.

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On Issue 2, the 1st Respondent's/Applicant's counsel submitted that it is the 1st Respondent that has the statutory and legal authority to offer admission and issue admission letters to candidates.

Counsel further submitted that Section 6.1 and 6.2 of the 2024 admission guidelines are binding on all tertiary institutions in Nigeria including the 2nd Respondent and therefore, the letter of offer of provisional admission given to Angel Abisola Aikpokpo-Martins dated 2nd September, 2024 marked as **Exhibit JAMB 2** attached to the application is a breach of Section 6.1 and 6.2 and so it is null and void and of no effect. Counsel quoted both sections of the guidelines to wit:

SECTION 6.1: The 2024 admission exercise will be conducted on the Central Admissions Process System (CAPS). No Institution is to publish, announce, exhibit or paste any name(s) of admitted candidates without prior approval of the name on CAPS. INDEED, ALL ADMISSIONS EXERCISE ARE TO BE CONDUCTED ONLY ON CAPS.

SECTION 6.2: No offer of admission should be communicated to any candidate through any other means except CAPS unless the candidate had been initially approved for admission on CAPS. Individual Institution's website/platform can publish admission already approved on CAPS. Similarly, No candidate can be registered for any course other than the one HE/SHE had been offered and accepted on CAPS.

The Nigerian Lawyer submitted that parties to Rules and Regulations are bound by them and are liable to sanctions if they breach the Rules and Regulations they subscribed to. Counsel therefore urged this court to hold that the letter of offer of admission issued by the 2nd Respondent to Angel Abisola Aikpokpo-Martins was done without legal capacity and authority by the 2nd Respondent and is therefore a nullity.

In response to the Notice of Preliminary objection, the Applicant/Respondent submitted that the Respondent's/Applicant's grounds for the preliminary objections are frivolous and misconceived. He submitted that by virtue of Paragraph E of the preamble to the fundamental Human Rights Rules (FREP)2009, he has locus standi to institute the action. Counsel also distilled a sole issue for determination, to wit:

Whether the preliminary objection is competent and/or has merit?

Applicant/Respondent (who is a lawyer and appeared in Person) submitted that the preliminary objection lacks merit and must be dismissed with cost. On issue one, Counsel submitted that Paragraph 4.10 of the 1st Respondent's/Applicant's written address in support of the preliminary objection is tantamount to giving

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evidence via a written address in a preliminary objection that is not supported by affidavit evidence.

Counsel further submitted that a counsel cannot give evidence in his written address as a written address of counsel cannot be a substitute for evidence. Counsel cited the case of **UBA V. OZIGBO & ORS 2021 LPELR-56672 SC** in support of this submission. It is the argument of counsel that the court should take cognizance of the principle of law that the only facts the court can rely on in reaching any decision on a preliminary objection as to jurisdiction, are the facts as contained in the applicant's claim and not in the defence of the respondent or the written address of the respondent. Counsel therefore urged this court to discountenance the said submission same not being contained in the affidavit in support of the originating motion.

It is the submission of Applicant/Respondent that the 1st Respondent's/Applicant's submission in Paragraph 4.15 of her written address in support of preliminary Objection that the **EXHIBIT JAMB 4** was not directed at the Applicant's daughter but a general directive to all tertiary institutions, which enures to all candidates seeking admission for the year 2024/2025 is not helpful to the 1st Respondent's prayer that this court lacks jurisdiction to entertain this matter, ***'as the fact remains that the class or community discriminated against and represented by the applicant has been affected by the policy of the 1st Respondent contrary to Section 42 of the 1999 Constitution.'*** That ***'the fact is also discernable from the originating processes that the Applicant is representing a community and not his daughter alone. The question therefore is; did the general directive impact heavily on the said community by the very discriminatory act of the 1st Respondent?'***

Counsel submitted that though the action of the 1st Respondent might not be willful; it does not make the policy less discriminatory or less unconstitutional.

Counsel cited the case of **PDP V. EDEDE & ANOR (2022) LPELR-57480 (CA)** in support of his submission.

It is the further submission of counsel that the submission of 1st Respondent's/Applicant's counsel contained in paragraph 4.20 of their written address is greatly misconceived because as at the preliminary objection stage, the claimant does not have any burden to substantiate his claims but has to only show that there is no feature in Applicant's case that will rob the court of jurisdiction and at this stage, the court is not called upon to decide if the claim or case of the applicant can be substantiated.

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Counsel further submitted that though the '*1st Respondent seem to be fixated on the daughter of the Applicant whereas, the members of the community being represented by this action are stated to be for "all candidates born on the 1st of September, 2019 to the 31st December, 2009 who wrote and passed the Joint admissions & matriculation Board Jamb exams in 2024"* It is immaterial therefore when the applicant's daughter was born. However, the applicant stated clearly in his affidavit when his daughter was born. He also deposed to the fact that the 1st respondent has a copy of the certificate of birth of the applicant's daughter".

Counsel therefore urged the court to discountenance the issue of the date of birth of the applicant's daughter in the determination of whether the court has jurisdiction or not.

Counsel submitted that the cases cited by the 1st Respondent in support of the preliminary objection particularly **OKAFOR V. LAGOS STATE GOVERNMENT (supra)**, **HASSAN V. EFCC (supra)** and **DIAMOND BANK PLC V. OPARA (supra)** are all inapplicable to the determination of the preliminary objection.

In response to Issue 2 distilled by the 1st Respondent in their argument, the Applicant/Respondent submitted that issue 2 raised by the 1st Respondent is totally incompetent and should be struck out for being an abuse of the processes of this court, as an abuse of court process is defined to include when a process of court is used to irritate or annoy. Counsel cited the case of **ONUEGBU & ORS V. GOV. OF ANAMBRA STATE & ORS (2024) LPELR-62620 (SC)** in support of his submission that Issue 2 of 1st respondent's written address is annoying and used willfully to irritate the applicant. Counsel further submitted that it is trite law that in the consideration of a preliminary objection that the court lacks jurisdiction, it is the writ of summons and statement of claim that the court looks at and in this case,

it is the statement and affidavit in support of the originating motion and not the counter affidavit the court would consider. Counsel further submitted that it is an abuse of court process for the 1st respondent to be relying on paragraphs 5,6,7,8,9,10,11 and 12 of their counter affidavit to raise a preliminary objection against the case of the applicant. Counsel cited the case of **REPTICO S. A GENEVA V. AFRIBANK (NIG) PLC (2013) LPELR-20662 (SC)** in support of this submission.

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Counsel further submitted that this court lacks jurisdiction to determine whether the 2nd Respondent has the legal authority or capacity to offer and issue admission letter to Angel Abisola Aikpokpo-Martins as this is not a live issue submitted for adjudication by the Applicant and/or the Respondent. Counsel relied on the authority of **ALPHONSUS NKUMA V. JOSEPH OTUNUYA ODILI (2006) 4 SCM 127 at 135 and KRAUS THOMPSON ORG, LTD V. UNIV. OF CALABAR (2004) 18 NSCQR, 262, (2004) 9 NWLR (879) 631** in support of his submission.

Counsel argued that assuming without conceding that same is a live issue before this court it will still not amount to a ground to support the preliminary objection and as to whether the 2nd Respondent has power to grant admission, counsel argued it is not a fundamental rights issue and so totally irrelevant to this proceeding. Counsel submitted that the submission of the 1st Respondent that the 2nd Respondent has been queried vide **EXHIBIT A** attached to the counter affidavit amounts to bullying of the 2nd Respondent and a threat to the enforcement of the rights of the Applicant's daughter to be afforded admission into a tertiary institution by the 1st Respondent.

On the issue of the Applicant not disclosing his daughter's date of birth raised by the 1st Respondent/Applicant, I agree with the Applicant that he mentioned his daughter's date of birth in his affidavit. The date of birth is mentioned precisely in paragraph 6 of the Affidavit in support of his originating motion filed on 24th of October, 2024 which he relied on in support of his amended originating motion filed on 17th of January, 2025 to wit: *'that my said daughter, Angel Abisola Aikpokpo-Martins was born on the 27th of September, 2009, and will be officially 16 years in 2025. The fact of her birth is well-known to the 1st Respondent before she registered and sat for the exam'*

Before determining the other issues raised by both parties, it is pertinent to trash out the ground of objection as regards locus standi raised by the 1st Respondent/Applicant against the Applicant/Respondent. What is Locus Standi? Briefly, Locus standi means the right/legal capacity that a party has to institute a case.

On the issue of locus-standi let us see what the law provides. **Paragraph 3 (e) of the preamble to the Fundamental human rights enforcement procedure rules 2009** provides thus;

"The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, advocates,

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or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following" (italics mine).

This position has been given judicial backing in the case of **HUMAN RIGHTS & EMPOWERMENT PROJECT LTD/GTE v. PRESIDENT OF FRN & ORS (2022) LPELR-58230(CA)** where the court of Appeal stated:

"I therefore cannot but agree with the apt and unassailable submission of learned counsel for the Appellant, subject however to my consideration later of the subject matter of the Appellant's Suit as to whether the claims are founded on alleged infringement of any of the provisions of Chapter IV of the Constitution of Nigeria 1999 (as amended), that in public interest litigation for the enforcement of fundamental rights of the citizen there is in law, no longer any need for any express permission, authorization or consent from either the victim of human rights abuse or his relatives to validate an application for the enforcement of any of the fundamental rights as constitutionally guaranteed to the citizens. See Section 46 (1 – 3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

It is therefore very clear to me, and I so firmly hold, that the lower Court had, despite the clear provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009 which reduced to non-existence the requirement of locus standi as it operates and governs other civil proceedings in proceedings for the enforcement of any of the provisions of Chapter IV of the Constitution of Nigeria 1999 (as amended), unwittingly insisted on the application of the concept of locus standi in proceedings for the enforcement of Chapter IV of the Constitution of Nigeria 1999 (as amended) contrary to the very clear and unambiguous provisions of the governing rules of procedure.

I think that was a grave error on the part of the lower Court, and must have resulted from the failure to appreciate that the procedure for enforcement of Chapter IV of the Constitution of Nigeria 1999 (as amended) is a special procedure unique to only this procedure and none other. In other words, the provisions of the Fundamental Rights (Enforcement Rules) 2009 govern exclusively the proceedings in action for the enforcement of Chapter IV of the Constitution of Nigeria 1999 (as amended).

It follows, therefore, whatever procedure is validated under the said Rules is valid and should be given effect by the Court for the enforcement and protection of the fundamental rights of the citizen. The lower Court, regrettably missed this point when it proceeded to dismiss the Appellant's Suit merely on account of locus standi contrary to the provisions of the said Rules which validates public interest litigation

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for the enforcement of the fundamental rights of the citizen either by themselves or on their behalf. The Appellant's Suit was therefore, not rendered incompetent by reason of lack of locus standi as the Appellant is clothed with the requisite locus standi to institute and maintain the Suit against the Respondents." Per GEORGEWILL, J.C.A. (italics and underlining mine)"

Based on the above, I find that the issue of locus standi to institute this action for breach of fundamental human rights is of no moment because the normal rule of locus standi which ordinarily applies in civil suits has no place or footing in fundamental rights application. I therefore, agree with the Applicant that he has locus standi to institute this action.

Issue one, raised by the 1st Respondent/Applicant is : ***"whether the Applicant's complaint against the 1st Respondent circular letter to tertiary institutions dated 16th October, 2024 extending the period of attaining the 16 years minimum age for admission into tertiary institutions is enforceable under section 42 of the 1999 constitution and Fundamental Rights Enforcement Procedure Rules 2009"*** and the sole issue distilled by the Applicant/ Respondent in his reply to preliminary objection of 1st and 2nd Respondents is: ***"whether the preliminary objection is competent and/or has merit"***. In my view an answer to one is as well an answer to the other, therefore for the two issues, I shall deal with them by distilling a sole issue which is: **Does this suit disclose a reasonable cause of action?** It is trite that the Plaintiff's action or claim is the relevant document to peruse in determining the above. In the case of **EFCC & ORS V. ODIGIE (2012) LPELR-15324** the Court held thus; "A CAUSE OF ACTION AND WHEN IT COMMENCES IS DETERMINED ONLY ON A PERUSAL OF THE PLAINTIFF'S ACTION OR CLAIM"

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Also in **MOBIL PRODUCING UNLIMITED VS LASEPA (2002)18 NWLR (Pt.798)1**, the Supreme Court held thus:

...it is now trite that in confirming whether there is reasonable cause of action in a suit, it is only the writ and statement of claim that are considered by our jurisprudence, once these documents discloses triable issues capable of leading to grant of reliefs, then the court holds that a reasonable cause of action exists. At this stage, the court does not look at the defence of the defendants, nor does it pay attention to the weakness in the case presented by the plaintiff, which is a matter to be trashed out at the trial of the case" (italics mine).

Clearly the originating summons before court, prima facie raises the issue of breach of right against discrimination which ordinarily falls within the ambit of fundamental human rights application as provided under **Chapter IV of the CFRN 1999** (as amended). This suit thus discloses triable issues which at this

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stage this Court is not required to delve into the strength or weakness or merits of the suit itself. I find that this suit discloses a reasonable cause of action and I so hold.

On issue of whether the 2nd Respondent has legal authority and capacity to offer and issue admission, I am of the view that in a case based on fundamental rights, what matters is whether the Applicant can show that the matter can fall under the Fundamental rights enforcement rules 2009. If it falls under it, then the preliminary objection fails. I agree with the Applicant's submission wherein he cited the Supreme court case of **REPTICO S.A GENEVA v AFRIBANK (NIG)PLC (2013) LPELR-20662** that *'the only and primary duty of court is to ensure that the plaintiff's claim or case is cognizable. That is, capable of being judicially tried or examined by the court. As a result, in considering whether or not a court has jurisdiction to try or examine a claim brought by a plaintiff, only the claim endorsed on the writ of summons and statement of claim should be considered. No reference is to be made to whatever defence, the defendant may put up against the plaintiff's claim'*.

The Applicant/Respondent herein did not base his case on whether it is the 1st or 2nd respondent that has the right to grant admission but on discrimination. I however disagree with the Applicant's submission that the date of birth of his daughter is immaterial though not material at this stage but the suit is based on discrimination centered on age and if this preliminary objection fails, the Applicant will have to show that his daughter whose story is the anchor of the facts in this case falls within the age that **EXHIBIT JAMB 4** affects which from my earlier findings the daughter's age was mentioned precisely in paragraph 6 of the Affidavit in support of paragraph 6 of the Affidavit in support of the originating motion filed on 24th of October, 2024. I however agree with the Applicant, that the issue herein falls within the purview of fundamental rights enforcement. I therefore hold that there is a reasonable cause of action.

I am also minded by the fact that certain issues raised in the grounds of the preliminary objection relate to and touch on the following issues to wit:

1. Admission into tertiary institutions in Nigeria is not a right within the scope or purview of Section 42 of the 1999 constitution
2. Educational guidelines and policies formulated by the government for implementation by the 1st Respondent as per circular letter of 16th October, 2024 to tertiary institutions to extend the period for calculating the age of JAMB candidates for admissions cannot constitute an infringement on the rights of candidates under the 1999 constitution.

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3. 1st Respondent's circular letter of 16th October, 2024 extending the period of attaining the age of 16 years for the purpose of admission enures to candidates seeking admission into tertiary institutions through the 1st Respondent including the Applicant's daughter and it is not in anyway discriminatory or an infringement on section 42 of the 1999 constitution. "

In my view, these are issues which are to be dealt with in the substantive application and as I have earlier said, this Court is not to deal with such issues at an interlocutory stage. In **NDALILE & ORS V NPUPE & ORS (2010) LPELR-4585** the court held that "*it is also trite that a court shall not at interlocutory stage delve into the merit of the substantive matter*"

In my considered view, I agree with all the legal argument of Applicant/Respondent in objection to the preliminary objection particularly on the fact that 1st Respondent cannot rely on his written address to give evidence on facts as an affidavit has to be filed for that purpose. I also agree that it is not proper to rely on 1st Respondent's counter affidavit dated 1st, November, 2024 and filed same day which was filed in counter to Applicant's originating motion dated 24th, October, 2024 filed same day as a Preliminary objection has to have its own affidavit in support if factual evidence is being relied on but to avoid technicality which should be avoided in fundamental rights enforcement matters, I have therefore waived the objection to my considering the counter affidavit and have looked at Same and still hold that the preliminary objection would fail. I agree with the Applicant/Respondent that the cases of **OKAFOR V. LAGOS STATE GOVERNMENT (2017)4 N.W.L.R.(Pt.1550)404@425 HASSAN V. EFCC (2018) 7 NWLR PT. 1389 PG. 607 @ 624, DIAMOND BANK PLC V. OPARA (2018) 7 NWLR PT. 1617 PG. 92**, cited by the 1st Respondent/Applicant

are not relevant, same applies to **UMOSEN & ANOR V. UDOKONG (2019) LPELR 46 & 49 CA** which was also cited by the 1st Respondent/Applicant.

In the cases of **OKAFOR V LAGOS STATE**, **HASSAN V. EFCC** and **UMOSEN & ANOR V UDOKONG** the Court held that for a matter to be enforceable under the **Fundamental rights enforcement procedure rules 2009**, it must come within the ambit of **Chapter IV of the 1999 constitution (as amended)**. The Applicant has not said anything different as **Section 42 of the 1999 constitution (as amended)** is part of Chapter 4 of the constitution. All types of discrimination cannot possibly be listed out in Chapter IV of the constitution. Precisely in The case of **OKAFOR V LAGOS STATE GOVERNMENT** the Court of Appeal per **OGAKWU J.C.A** stated thus: "*The lower court struck out relief 1.3 on the ground that it was not personal to the appellant and that it did not fall within the ambit of the fundamental rights. The said relief 1.3 is for:*

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"1.3 A declaration that the 1st respondent's directive for people in Lagos State to stay at home and not to move about thereby restricting movement of persons in Lagos State within the hours of 9.00 am to 10.00 am on the last Saturday of every month is unlawful, illegal and unconstitutional. "

I reiterate that for a cause of action to be cognizable under the Fundamental Rights Enforcement Procedure, the cause of action must come within the ambit of the enforcement of any right contained in Chapter IV of the Constitution in the sense that it alleges that any of the provisions of the chapter has been, is being or is likely to be contravened. Relief 1.3 is clearly an enforcement of the right to freedom of movement enshrined in section 41 of the Constitution. The reasoning of the lower court that the relief was not personal to the appellant seems to have overlooked the liberalization of the procedure and the overriding objectives for enforcement of fundamental rights and that anybody, not necessarily the person whose right has been infringed, can bring the application to enforce the right as stated in Paragraph 3 of the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009.

The lower court therefore got it wrong when it struck out relief 1.3 on the ground that it was not personal to the appellant and was not within the ambit of the Fundamental Rights Rules. The fact that I have held that the said reliefs 1.2 and 1.3 were wrongly struck out by the lower court does not perforce mean that the said reliefs would succeed. We will still interrogate whether on the affidavit evidence, the appellant established the evisceration of the right to fair hearing and freedom of movement."

The case of **DIAMOND BANK - V OPARA** also supports the Applicant's/respondent's case instead of that of The 1st Respondent/Applicant, as the Supreme Court agreed that a letter could be an infringement of fundamental rights to wit: **"Exhibit V, which is the letter of invitation from Economic and Financial Crimes Commission inviting 1st respondent also constituted likelihood of an infringement to the fundamental right of the 1st & 2nd respondents' Per Bage J.S.C.**

Having taken time to go through all of the arguments, it is my considered view that the entirety of the preliminary objection lacks merit and is thus struck out. I so hold!

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RULING ON AMENDMENT OF ORIGINATING MOTION

The Applicant filed a motion to amend his originating motion on 8/01/25 and the amendment sought by the Applicant introduces a new relief to wit;

"A declaration that by virtue of the combined effect of **sections 18(1) and 42 of the Constitution of the Federal Republic of Nigeria**, the restriction of the minimum admissible age into Nigerian universities fixed at 16 years by the 1st Defendant and/or any other person or authority violates the constitutional mandate/directive for equal educational opportunities at all levels for all citizens as provided under the said **section 18(1)** and the freedom from discrimination as guaranteed by **Section 42 of the Federal Republic of Nigeria 1999 as amended** and is therefore unconstitutional, null and void.

The 1st Respondent on 28/01/25 filed a Thirteen (13) paragraphs counter affidavit and a written address in opposition to the Applicant's application to amend Originating motion filed 24/10/24. 1st Respondent's counsel distilled one issue for determination to wit: **"whether the Applicant can invoke Section 18 of the constitution in aid of his defective originating motion for enforcement of fundamental right under section 42 of the 1999 constitution at this stage after obtaining several interim orders thereof"** He submitted that the amendment sought introduces a new relief which falls under **chapter II of the CFRN 1999 as amended** and hence non-justiciable in line with **section 6(6)C of The 1999 Constitution (as amended)**.

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He argued that the minister and The Jamb Board has enormous Power by virtue of the combined sections of section 5 (1) (a) of the 1999 constitution of Nigeria and Section 5 and 6 of The JAMB ACF CAP J1, laws of The Federation of Nigeria 2004 to determine, prescribe and fix the minimum 16 years age requirement for candidates seeking admission into tertiary institutions in Nigeria through UTME and cannot be interfered with by the court without an amendment by the National Assembly. He stated that the Applicant's attempt to invoke section 18 of the 1999 constitution in aid of his incompetent Originating Motion under section 42 of the 1999 constitution is a gamble taken too far as both sections are incompatible.

He stated that the Chapter II of the constitution will remain dormant until the actualization of paragraph 60(a) of the Federal Exclusive Legislative list of the 1999 constitution of Nigeria. He suggested to the court to refuse the Applicant's application for amendment as it is **"useless and unhelpful to his defective and incompetent originating motion for enforcement of his fundamental human right under section 42 of the 1999 constitution and must be refused"**.

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He further submitted that matters of admission into tertiary institutions in Nigeria are not protected rights under chapter IV of the constitution. It is either you meet the requirement set by the 1st Respondent and the candidates institution of choice or you did not meet it. and in the instant case, the Applicant's daughter did not meet the 16 years age requirement.

He argued that if the court grants the motion for amendment, it should be on the condition that all orders granted so far in the matter be vacated pursuant to the originating motion, that the 1st Respondent be allowed to make amendment to her process and that the case should start denovo. He concluded by urging the court not to grant the amendment sought as it will be unjust to the Respondent because interim orders have already been made and an amendment will make the case start denovo. He cited the following cases in support of his submissions:

BARRISTER J.C UWAZURUONYE V THE GOVERNOR of IMO STATE & ORS (2012) LPELR,20604 (SC), A.P.C V REALWAN OKPANACHI & ORS (2023) LPELR-60575 (CA), HRH EZE JACOB UZODINMA AKOMA & ORS V CHIEF OBINNA GINGER ONWUSIBE (2021) LPELR-55476(CA) and CBN v. DINNEH (2005) LPELR -11349 (CA).

The 2nd Respondent filed a Nine (9) paragraphs counter affidavit and a written address in opposition to the application to amend on 30/1/25. Counsel submitted that the Applicant rather than amending was in fact bringing in a new suit by substitution and also that **section 18(1)** which the applicant seeks to bring in has been adjudged non justiciable by the constitution.

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By leave of the court and consent of all counsel, the Applicant replied orally on Points of law and stated that on the First issue raised by both respondents as to the amendment which is on **Chapter II, section 18(1) of the constitution** which is not justiciable, counsel argued that it is not at this stage that the

Respondents can object to his amendment on this ground but only in the main suit if the court grants leave for the amendment.

On the second issue raised by the respondents, the Applicant stated that the amendment did not introduce new issues, facts, nor affidavits only law.

I have carefully gone through the said motion for amendment and the opposition to the said motion and I find that the amendment sought does not in any way change the nature of the case as the amendment still bothers on freedom from discrimination. Even though an aspect of the amendment touches on constitutional directives for equal educational opportunities under **section 18 CFRN 1999 as amended**, the said amendment is still on all fours with the existing originating motion prior to the amendment sought because the said existing originating

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motion is based on freedom from discrimination and age limit for admission into Nigerian universities which are educational institutions.

It is trite law that the Court at an interlocutory stage is not to delve into issues in the substantive matter and I shall say no more. The motion for amendment sought by the Applicant is granted as prayed and I so hold. I shall now proceed to determine the substantive application for enforcement of fundamental human rights.

JUDGEMENT IN THE MAIN APPLICATION

The Applicant on 8/01/25 sought an amendment to the originating motion filed on the 24/10/24. The amended originating motion, amended statement as well as a written address were all filed on 8/01/2025. There being no affidavit filed in support of the amended originating motion, Applicant's counsel sought the leave of Court and with the consent of all counsel which was granted, to rely on the 21-paragraphs affidavit in support of the originating motion filed 24/10/24.

Parties had agreed to consolidate the ruling on preliminary objection, this ruling on amendment of originating motion and depending on the outcome of the ruling on amendment to proceed to judgement based on the earlier originating motion or on the amended originating motion and rulings on all three applications were consensually consolidated to be delivered on same day.

The 1st Respondent did not file any reply to the amendment and by leave of court and with consent of all counsel relied on her counter affidavit and further counter affidavit to the Originating motion which she filed on 1st of November 2024 and 28th of November 2024 respectively. The 2nd Respondent did not file any reply to the amended originating motion but in her written address filed 30th January 2025 in support of her counter Affidavit filed in reply to Applicant's motion to amend his originating motion, Counsel for 2nd Respondent reacted to Applicant's Reliefs

A-G on Applicant's Paragraph 2 of his Amended originating motion and had also relied on her counter affidavit filed 31st, October, 2024 in reply to the Applicant's Originating motion filed on 24/10/24 by leave of court and consent of all counsel.

The major grouse of the Applicant is that his daughter, Angel Abisola Aikpokpo-Martins is part of the community of candidates born on the 1st of September, 2009 to the 31st of December 2009, who wrote and Passed the Joint Admissions & Matriculation Board (JAMB) Exams in 2024 for whom the Applicant brings this action on their behalf and in particular, his said daughter who was born on the 27th day of September, 2009 and obtained her West African School Certificate, sat for JAMB Exams and offered admission by the herein 2nd Respondent is on the verge of losing her admission because the 2nd Respondent is threatening to

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withdraw her admission and stop her from resuming school based on a directive from the 1st Respondent that candidates who would not be 16 years old by the 31st day of August, 2025 are no longer qualified to read their course of choice, despite sitting and passing the JAMB Exams whereas other candidates born in 2009 like the Applicant's daughter but born between January to 31st of August of 2009 are qualified and admissible into tertiary institutions.

The Applicant relies on Exhibit Jamb 4 dated 16th October, 2024 issued by the 1st Respondent to the effect that only candidates who will be 16 years old by 31st of August, 2025 are qualified for admission.

The 1st Respondent filed a 22 paragraphs counter-affidavit with one **Exhibit marked 'A' (Jamb letter of Query to Edwin Clark University)** to the originating motion and a written address on 1st November, 2024. The 1st Respondent also on 28/11/24 filed a further counter affidavit of 14 paragraphs with one exhibit, marked 'B' (Jamb Guidelines) in opposition to the originating motion of 24/10/24.

The 2nd Respondent on their own part filed an 11 Paragraphs counter affidavit and a written address in opposition to the originating motion on 31/10/24 and relied on **Exhibit Jamb 4** of the Applicant dated 16th October, 2024 issued by the 1st Respondent to the effect that only candidates who will be 16 years old by 31st of August, 2025, are qualified for admission and since the daughter of the Applicant does not fall within the age-limit category, she is thus not qualified for admission. In her averment, 2nd Respondent stated that she is not supposed to be a party in the suit as she is merely taking directives from the 1st Respondent and did not direct nor instigate the 1st Respondent to publish the circular '**Exhibit Jamb 4**'. She stated that she has already filed a motion for misjoinder praying the court to strike off her name as a party in the suit. In paragraph 5 of her affidavit, 2nd Respondent averred thus: **"that as in this case, and instance, the 2nd Respondent had already given admission on merit to the Applicant's**

daughter until a directive from the 1st Respondent was handed down the 2nd Respondent to take back and or withdraw the said admission to all and every students that were affected by the 1st Respondent's circular dated 16th October, 2024 as Exhibited by the Applicant herein"

In Paragraph 7 of her affidavit, 2nd Respondent averred to wit: **"That it is critical to stress the fact that the 2nd Respondent whose desire is to have students admitted within the extant Rules and Regulations is not and never privy, connected and party to the making and circulation of the said Circular, which is the kernel and crux of this matter. This is to the**

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extent that if the said circular is withdrawn today, the Applicant's daughter's admission will be revived.

In his written address, Counsel for 2nd Respondent distilled one issue for determination: "***Whether from the affidavit evidence herein, there is any link or privity between the 1st Respondent and the 2nd Respondent to warrant the 2nd Respondent being joined and /or made a party to these proceedings***" He submitted that 2nd Respondent ought not to be a party in the suit as she is merely following directives from the 1st Respondent. He argued that the applicant has not discharged the burden as it relates the 2nd Respondent being a party to the suit. He urged the court to strike out the name of the 2nd Respondent from the proceedings for being a misjoinder.

In his written address in support of counter Affidavit to amend originating motion, Counsel for 2nd respondent reacted to Applicant's Reliefs A-G on Applicant's Paragraph 2 of his Amended originating motion. He argued that **section 18 (1)** which the Applicant wants to rely on is non justiciable. Furthermore, he stated that the Applicant's motion is on faulty foundation as the Applicant knew that his daughter was not up to the age to enroll for 1st Respondent's examination yet he went to enroll her. Counsel argued that the 2nd respondent is not in the position to give admission by the provisions of the law. He Urged the court not to grant the reliefs sought by the Applicant.

Before delving into the issue of **Exhibit JAMB 4** and non-justiciability of Section 18(1) supra, it is pertinent to state that this court has earlier today given a separate ruling to the effect that 2nd Respondent's application for misjoinder fails and this court has held that second respondent is a necessary party to this suit.

EXHIBIT JAMB 4 FILED BY APPLICANT

At the centre of the storm is Exhibit JAMB 4 dated 16th October, 2024 issued by the 1st Respondent to the effect that only candidates who will be 16years old by 31st of August, 2025 are qualified for admission.

Firstly, for Clarity, the said EXHIBIT JAMB 4 will be reproduced herein and also a Scanned copy:

16th October, 2024

The vice chancellor/Provost/rector

ADMISSION OF CANDIDATES WITH MINIMUM AGE OF SIXTEEN YEARS.

Recall that the minimum age for entry in the nation's tertiary institution was deliberated and decided at the 2024 policy meeting to be 16 years

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Assistant Director of Courts
17/10/2025

for the 2024/2025 academic session. Subsequently, the cut off was put on the 21st of December 2024.

2.The Board has taken cognizance that due to different reasons, some institutions expect the 2024/2025 admission to run through July 2025.Without compromising the standard or infringing on the individual institution admission policy, the Board has now decided to allow any willing institution to admit candidates who will be 16 by the 31st of August 2025, so long as the standards set by the institution qualify such candidate but couldn't be admitted only because of age.

3.This is without prejudice to the decision of any institution that might on its own, decided on the minimum age of not less than 16years which remains sacrosanct.

4.By this decision, you are requested to harvest from your CAPS and send the list of candidates who would be 16 years of age between 1st of January and 31st of August 2025 who are eligible for admission (if any) not later than a week after this letter to enable final decision.

Note:

(i) This effort is to ensure equity because those whose 2024 admission would last till August 2025 would not be unduly favoured.

(ii)Any institution that insists on its 16 years being within the year 2024 is completely free to do so.

5.As always, please accept the best regards from the Board.

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17/07/2025

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PROF. ISHAQ O. OLOYEDE, CON, FNAI
Registrar/Chief Executive



ADMISSIONS

JAMB/ADMS/139/V.III

16th October, 2024

The Vice Chancellor/Provost/Rector

ADMISSION OF CANDIDATES WITH MINIMUM ADMISSIBLE AGE OF 16 YEARS

Recall that the issue of the minimum age for admission in the nation's tertiary institutions was deliberated and decided at the 2024 Policy Meeting to be 16 years old for the 2024/25 academic session. Subsequently, the cut-off date was put on the 31st of December 2024.

2. The Board has taken cognizance that, due to different reasons, some institutions expect the 2024/2025 admission to run through July 2025. Without compromising the standard or infringing on the individual institution's admission policy, the Board has now decided to allow any willing institution to admit candidates who will be 16 years old by the 31st of August 2025, so long as the standards set by the institution qualify such candidate but couldn't be admitted only because of age.

3. This is without prejudice to the decision of any institution that might have on its own, decided on the minimum age of not less than 16 years which remains sacrosanct.

4. By this development, you are requested to harvest from your CAPS and send the list of candidates who would be 16 years of age between 1st of January and 31st of August 2025 who are eligible for admission (if any), not later than a week from the date on this letter to enable final decision.

NOTE:

- I. This effort is to ensure equity because those whose 2024 admission would last till August 2025 would not be unduly favoured.
- II. Any institution that insists on its 16 years being within the year 2024 is completely free to do so.
5. As always, please accept the best regards from the Board.


Mohammed A. Babaji
Director Admissions
For: Registrar

In determination of whether the 1st Respondent has lawfully issued the said **EXHIBIT JAMB 4**, recourse will be made to the enabling law covering

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JAMB. **SECTION 5** of **THE JAMB ACT** which provides for the functions of the Board states thus;

"5. (1). Notwithstanding the provisions of any other enactment, the Board shall be responsible for -

(a) the general control of the conduct of matriculation examinations for admissions into all Universities, Polytechnics (by whatever name called) and Colleges of Education (by whatever name called) in Nigeria;

(b) the appointment of examiners, moderators, invigilators, members of subject panels and committees and other persons with respect to matriculation examinations and any other matter incidental thereto or connected therewith;

(c) the placement of suitable qualified candidates in the tertiary institutions having taken into account-

(i) the vacancies available in each tertiary institution

(ii) the guidelines approved for each tertiary institution by its proprietor or other competent authority.

(iii) the preferences expressed or otherwise indicated by candidates for certain tertiary institutions and courses and

(iv) such other matters as the Board may be directed by the Minister to consider, or the Board itself may consider appropriate in the circumstances;

(d) the collection and dissemination of information on all matters relating to admissions into tertiary institutions or to any other matter relevant to the discharge of the functions of the Board under this Act; and

(e) the carrying out of such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under or pursuant to this Act"

A thorough look at the section above shows that the 1st Respondent relied on the Jamb Act to issue the said **EXHIBIT JAMB 4** by virtue of the power derived from subsection (1), (IV) of the said section. For the purpose of clarity, **Section 5, (IV)** of the JAMB ACT is reproduced herein: '**such other matters as the Board may be directed by the Minister or the Board itself may consider appropriate in the circumstances.**' This shows that the circular '**EXHIBIT JAMB 4**' has some form and level of legitimacy.

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Having cleared that, the next question is; "is **EXHIBIT JAMB 4** constitutional"?

Section 1(3) of the 1999 constitution (as amended) provides 'if any other law is inconsistent with the provision of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void.

The Applicant's case is that 1st Respondent's issuance of '**EXHIBIT JAMB 4**' is a violation of his daughter's right and the right of the community which she represents under **section 42 and 18(1) of the 1999 constitution (as amended).**

Is the said '**EXHIBIT JAMB 4**' inconsistent with **section 42 of the 1999 constitution (as amended)? IS IT CONSTITUTIONAL?** Let us see what **section 42 and 18(1)** of the constitution provide. **Section 18(1)** says:

Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

Section 42 provides as follows:

(1) A CITIZEN OF NIGERIA OF A PARTICULAR COMMUNITY, ethnic group, place of origin, sex, religion or political opinion, shall not by reason only that he is such a person

(a) BE SUBJECTED EITHER EXPRESSLY BY, OR IN THE PRACTICAL APPLICATION OF, ANY LAW IN FORCE IN NIGERIA OR ANY EXECUTIVE OR ADMINISTRATIVE ACTION OF THE GOVERNMENT TO DISABILITIES, OR RESTRICTIONS TO WHICH CITIZENS OF NIGERIA OF OTHER COMMUNITIES, ethnic groups, places of origin, sex, religions or political opinions are not made subject or

(b) BE ACCORDED EITHER EXPRESSLY BY OR IN THE PRACTICAL APPLICATION OF ANY LAW IN FORCE IN NIGERIA OR ANY SUCH ADMINISTRATIVE ACTION ANY PRIVILEGE OR ADVANTAGE THAT IS NOT ACCORDED TO CITIZENS OF NIGERIA OF OTHER COMMUNITIES, ethnic groups, places of origin, sex, religions or political opinions.

(2) NO CITIZEN OF NIGERIA SHALL BE SUBJECTED TO ANY DISABILITY OR DEPRIVATION MERELY BY REASON OF THE CIRCUMSTANCES OF HIS BIRTH.

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police

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Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

To get a proper understanding of the Applicant's case, we have to examine **section 18(1) of the 1999 constitution** of Nigeria (as amended).

NON JUSTICIABILITY OF SECTION 18(1)

On the issue as to the non-justiciability of **Section 18 (1)** which the Applicant relies on in instituting this suit:

Section 18(1) of the 1999 constitution as amended is under **chapter II of the constitution** and **Section 6(6), (c) CFRN 1999 (as amended)** provides thus;

"the Judicial powers vested in accordance with the foregoing provisions of this section- (c) SHALL NOT EXCEPT AS OTHERWISE PROVIDED BY THIS CONSTITUTION, extend to any issue or question as to whether any act or omission by any authority or person as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the constitution" (underlining mine).

This is one of the grounds stated by both 1st and 2nd Respondents in their opposition to the amendment of the Applicant's originating motion. As stated earlier, 2nd respondent reacted to Relief 2 (a) of the Applicant's amended Originating Motion by stating thus ***'We submit most respectfully my lord that section 18(1) of the constitution of The Federal Republic of Nigeria, being a mere policy statement and not being justiciable, the Applicant's attempt to attach it to section 42 of the said same constitution which does not again accommodate a Fundamental Rights Enforcement Proceedings, Educational Rights not being one of the Guaranteed Rights, makes the entire suit as constituted and filed by the Applicant a non - starter and as such the suit without much ado should be dismissed for being what it is, an abuse of the process of this honourable court'***

With leave of court, after the objection by 1st and 2nd Respondent to the amendment of the motion, the Applicant stated that there is a judicial authority to the effect that the combination of sections in **Chapter II** and any other section of the constitution makes that section of **Chapter II justiciable** and in this case, **section 18(1)** being combined with **section 42** is justiciable. The authority cited by the Applicant is the case of **OLAFISOYE V. FEDERAL REPUBLIC OF NIGERIA (2005) 51 WRN 62**, where the Court held thus "in my humble view, the non-justiciability of **Section 6(6)(c) of the Constitution** is neither total nor

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sacrosanct as the subsection provides a leeway by the use of the words "**except as otherwise provided by this constitution**". This means that if The Constitution otherwise provides in another section, which make a section or sections of Chapter II justiciable, it will be so interpreted by the Courts'

The Applicant also cited the Supreme court case of **ATTORNEY GENERAL OF ONDO STATE V. ATTORNEY GENERAL OF THE FEDERATION (2002) 9, NWLR, (PT 772)222** where the court asserted that chapter II of the constitution offers governance guidance and directories that must be obeyed.

This is my take on this:

1. It is trite that to every rule there is an exception and **Section 6(6)(c)** has within itself provided an exception with the statement "**except as otherwise provided by this constitution**". It is the very **CFRN 1999 (as amended)** at **Section 27 of the Second Schedule, Concurrent Legislative list of the CFRN 1999' (as amended)** which provides in **Section 315 (B)** that all Military decrees and edicts enacted by the Military Government are deemed as existing laws which the Jamb Act happens to be one. The **JAMB ACT** was promulgated by the Act (No 2 in the year 1978 by the Federal Military Government precisely by the Supreme military council on 13th February, 1978, it was subsequently amended in August 1988 by the Federal Executive Council, same has been codified into Decree No.33 of 1989 which took effect from 7th December, 1989 and by **Section 315 (b)**, all Military decrees and edicts enacted by the Military Government are deemed as existing laws. It should be noted that the National Assembly is the successor of The Federal Executive Council which was in charge of making laws (though being controlled by the Provisional Ruling Council) during the last military regime of General Abdulsalami Abubakar in 1999.

It is still the same 1999 constitution (as amended) at **Section 27 of the Second Schedule, Concurrent Legislative list of the CFRN 1999' (as amended)** that provides that "the National Assembly shall have power to make laws for the Federation or any part thereof with respect to university education" The Applicant cited the case of **OLAFISOYE V. FEDERAL REPUBLIC OF NIGERIA, SUPRA**, where the Court held thus "in my humble view, the non-justiciability of **Section 6(6)(c) of the Constitution** is neither total nor sacrosanct as the subsection provides a leeway by the use of the words "**except as otherwise provided by this constitution**". This means that if The Constitution otherwise provides in another section, which make a section or sections of Chapter II justiciable, it will be so interpreted by the Courts'

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The Jamb ACT thus is a Product of **section 315 (B) of the 1999 constitution.**

The Federal Executive council during the Military regime while making the JAMB ACT did not deem it fit to put any age limit. The National Assembly which is a successor of the Federal Executive Council during the regime that is empowered by **section 5** of the 1999 constitution to make laws and Particularly by **section 27 of the second Schedule of Concurrent Legislative list of the CFRN 1999' (as amended)** that provides that the National Assembly should "*make laws for the Federation or any part thereof with respect to university education*" did not make any law that gives age limit but the constitution provides expressly in **Section 42** particularly in subsection 2 that **'NO CITIZEN OF NIGERIA SHALL BE SUBJECTED TO ANY DISABILITY OR DEPRIVATION MERELY BY REASON OF THE CIRCUMSTANCES OF HIS BIRTH.**

By the leeway given in section **6(6)(C), Section 18** which is based on education is therefore the guide to sections like **Section 315** that made JAMB a law today and **sections 27 of the Second Schedule** of the concurrent legislative list that gives the national Assembly Powers to make laws on university education. Whenever there is an issue based on education, and there is alleged discrimination, **Section 42** can be combined with **section 18** to make the Provisions of Section 18 (1) justiciable. This is not novel. In the case of **LEGAL DEFENCE AND ASSISTANCE PROJECT (LEDAP) GTE & LTD V. FEDERAL MINISTRY OF EDUCATION & ANOR SUIT NO FHC/ABJ/CS/978/15**, the Federal High Court based on the decision of the Court in the Supreme court case of **A.G ONDO STATE V. A.D FEDERATION (2002) 9 NWLR (Pt. 722) 222** held thus *"the essence of the decision of the Supreme court in A.G Ondo State v. A.G Federation (supra) is that the Courts cannot enforce any of the provisions of Chapter II of the constitution until the National Assembly has enacted specific laws for their enforcement, as done in respect of Section 15(5) of the 1999 Constitution by the enactment of the Corrupt practices and other related offences Act, 2000...in the instant case there is no doubt that the National Assembly enacted the Compulsory Free Universal Basic Education Act, 2004 based on the provisions of Section 18(1) and (3) of the CFRN 1999 (as amended)...I hold that with the enactment by the National Assembly of the Compulsory, free Universal Basic Education Act 2004, the specific provisions covered by that Act have become justiciable or enforceable by the courts"*.

In same way that the National Assembly enacted the Universal Basic Education Act 2004 based on the provisions of **Section 18** of the **1999 constitution**, so also,

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section 18 (1) becomes justiciable when combined with section 42 on issues of education.

Based on the reasoning above, **Section 18(1) of the 1999 constitution is justiciable as it regards this suit.**

Having determined that section 18 (1) is justiciable in this suit, the question that needs to be answered is; is the issuance of EXHIBIT JAMB 4 a breach of Section 18 (1) by virtue of Section 42 of the 1999 constitution?

MY ANSWER

Section 18 (1) clearly provides thus: "Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

The key words are; 'equal' and 'all levels'. This implies equal opportunity at the primary school level, secondary school level and university level without discrimination.

Section 42 (2) of the 1999 constitution states that "No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth". The circumstances of birth (based on the facts) in this case being those who happened to be born on the 1st of September, 2009 to the 31st of December 2009.

EXHIBIT JAMB 4 issued by the 1st Respondent however seeks to deny the Appellant's daughter and members of her community admission based on the circumstances of their birth contrary to the combined Provisions of **sections 18 (1) and section 42 of the constitution.**

Section 1 of the 1999 constitution states that the constitution is supreme and **Section 1(3) of it provides to wit: if any other law is inconsistent with the provision of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void,**

Having found that "**EXHIBIT JAMB 4**" is inconsistent with the combined provisions of **sections 18(1) and section 42 of the 1999 constitution**, it is hereby declared null and void.

The issue of age goes to the soul of the JAMB ACT. It is sacrosanct, in that it is a primary determinant of who to be admitted to school or not. It is something that affects everyone in the country. Thus it is not something to be left at the whims and caprices of the minister and the Board. Today, it is age 16, tomorrow age 18 (age of adulthood by the constitution) and another time 16 as at date of Jamb application or 16 as at date of Matriculation or Sixteen as at end of year session

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of year of Matriculation. It is something to be debated by the Hallowed National Assembly that is empowered by section 5 of the constitution to make laws. The law is trite that any enforcement and implementation of policies will not be allowed if it leads to a breach of any of the fundamental rights of a citizen. See **ADAMU V. A.G. BORNO STATE (1996) 8 NWLR (pt.465) 203.** THE EXHIBIT JAMB 4. It is ultra vires the powers of the Board and the Minister in my view and discriminatory towards the candidates on whose behalf the Applicant filed this suit contrary to the combined provisions of **Sections 18 and Sections 42 of the 1999 constitution.** I so hold.

INTERNATIONAL AND REGIONAL BILLS OF RIGHTS

The Fundamental Rights (Enforcement Procedure) Rules 2009, at Section 3(a) (of the preamble provides thus

"The overriding objectives of these rules are as follows;

The constitution, especially Chapter IV, as well as the African Charter shall be expansively and purposely interpreted and applied, with a view to advancing and realising the rights and freedom contained in them and affording the protections intended by them"

Section 3(b), (i), (ii) of the preamble further provides thus;

3(b) "for the purpose of advancing but never for the purpose of restricting the Applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the court is aware, whether these bills constitute instruments in themselves or form part of larger documents like constitutions. Such bills include;

The African Charter on Human and Peoples Rights and other instruments (including protocols) in the African regional human rights system

The Universal declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system"

Article 17 of the AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHT provides thus;

1." EVERY INDIVIDUAL SHALL HAVE THE RIGHT TO EDUCATION"

Article 26 of the UNIVERSAL DECLARATION ON HUMAN RIGHTS provides thus

"everyone has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall

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17-04-2025

be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit" (underlining mine).

A juxtaposition of this right to tertiary education (**Article 17 of the African Charter on Human and peoples Right and Article 26 of UDHR**) with the **provisions of Section 42 of The 1999 constitution of The Federal Republic of Nigeria(as amended)** which provides for a right to freedom from discrimination, is to the effect that no person in Nigeria shall be unlawfully discriminated from having access to education (including tertiary education) and this is precisely the case the Applicant has instituted before this Court.

The Applicant did not base his Application on this but **section 3** states '**the court shall respect municipal bills of right- - - brought to its attention or of which the court is aware**', so this court will respect it.

Article 17 of the African Charter on Human and Peoples Right and Article 26 of the Universal Declaration on Human Rights are included within the **Fundamental Rights Enforcement Procedure Rules, 2009** which in itself is based on **Section 46(3) of the CFRN 1999 (as amended)** and same being a Constitutional provision thus falls under the exceptions provided for in **Section 6(6),(c) CFRN 1999 (as amended)** and therefore makes **Section 18 of the 1999 constitution (as amended)** justiciable in the circumstances of this case.

It is on this basis that I hold that the issuance of **Exhibit JAMB 4** by the 1st Respondent is a clear violation of the combined provisions of **Section 18(1) and section 42 of the 1999 constitution of The Federal Republic of Nigeria (as amended).**

CHILD'S RIGHT ACT

The crux of this suit involves a child i.e. a person under the age of 18 years as is the case of the Applicant's daughter and other members of the community she represents in this suit. Children hold a special place in our society being the leaders of tomorrow and hence the Child's Right Act aptly captions and governs the rights of children.

Section 277 of the Child's Right Act (2003) defines a child as a person who has not attained the age of eighteen (18) years, while **Section 29(4)(a)** puts a person of full age to be eighteen (18) years. The merriam-webster dictionary defines a teenager to be someone who is 13-19 years old.

Section 1 of the Child's Right Act states thus;

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"In every action concerning a child, whether undertaken by an individual, public or private body, institutions or -service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration" (underlining mine)

Section 4 of the Child's Right Act provides thus;

"Every child has a right to survival and development"

The issue for this Court would then be to determine what is in the best interest of the child vis-à-vis the right of the child to survival and development and the right to freedom from discrimination.

It is pertinent to state here that setting a minimum age limit for admission into tertiary institutions is not inherently wrongful as it were but same must be done according to the due process of law and not in a way that is contrary to the rights of candidates.

The best interest of the child weighs heavily on my mind in reaching any decision herein. It is therefore my considered view that after 2nd respondent has given the daughter of the Applicant admission and she has gone to school and registered, and even celebrated, through no fault of hers, she is withdrawn, the same applies to other members of her community. It will be so heartbreaking and depressing to deprive members of that community of their admission just because of four months difference. We must do better as a people. The members of the community represented by applicant's daughter have committed no wrong although 1st Respondent averred in paragraph 7 of her affidavit in opposition to the Applicant's originating motion on Notice that ***"in response to the depositions at paragraph 5 of the affidavit, the 2nd Respondent has no statutory power to issue admission letter to any candidate but can only propose and recommend qualified candidates, who have made the institution their first choice to JAMB, which in turn will after due diligence, issue admission letters to such qualified candidates."*** 2nd Respondent averred in paragraph 5 of her counter affidavit/Response to the affidavit in support of The originating summons/statement in support of Application filed pursuant to Fundamental Rights Enforcement Procedure Rules 2009. thus: ***"that as in this case, and instance, the 2nd Respondent had already given admission on merit to the Applicant's daughter until a directive from the 1st Respondent was handed down the 2nd Respondent to take back and or withdraw the said admission to all and every students that were affected by the 1st Respondent's circular dated 16th October, 2024 as Exhibited by the Applicant herein"***

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In Paragraph 7 of same affidavit above, 2nd Respondent averred to wit: ***That it is critical to stress the fact that the 2nd Respondent whose desire is to have students admitted within the extant Rules and Regulations is not and never privy, connected and party to the making and circulation of the said Circular, which is the kernel and crux of this matter. This is to the extent that if the said circular is withdrawn today, the Applicant's daughter's admission will be revived.***

These two averments were not denied by the 1st respondent.

The issue of who gives admission is not in contention in this matter as this matter is chiefly premised on the fundamental rights of The Applicant's daughter and members of her community. Nevertheless, reading through section 5 of the Jamb Act, it is clear that admission is given by 1st and 2nd Respondent's joint collaboration. Nowhere is it stated in the Act as to who should issue the Admission letter but **Sections 6.1 and Sect on 6.2** (reproduced in the preliminary objection ruling) of the 1st Respondent gives the 2nd Respondent the Power to issue admission letter albeit such must have gone through CAPS. In this case, it was issued by the 2nd Respondent and they stated in the two paragraphs above namely paragraphs 5 and 7 of her affidavit in opposition to the originating motion that the Applicant's daughter was given admission on merit and it was only withdrawn based on issuance of "EXHIBIT JAMB 4" by the 1st Respondent. **The Applicant's daughter has no business with CAPS, neither is she privy to any communication between 1st and 2nd Respondents as regards admission for admission. In any case, 2nd Respondent said the Admission was given on merit.**

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Why even restrict the age of admission to school in the first place, when we see Children in other climes starting school early and becoming professors while still very young. Should the 1st Respondent be allowed to take advantage of minors?

At this juncture a peek into the positions in other jurisdictions will be explored to give a broader perspective, after all our Dear Great Nigeria ought to be in synergy with international best practices across board.

In the United Kingdom as an example there is no general requirement for age limit for admissions. The University of Cambridge at its website page at <https://www.undergraduate.study.cam.ac.uk/apply/before/entry-requirements> on admission requirements states the following;

"If you're under 18 when you start at Cambridge

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If you'll be under 18 when you join us, you should talk to a College Admissions Office as early as possible to discuss your application.

If you're considering Medicine, you should also read the advice about age requirements on the Medicine course page.

If you'll be under the age of 16 on admission, you may need to meet additional requirements and restrictions to comply with legislation" (italics and underlining mine):

It can thus be gleamed that even persons below 16 can get admissions in the UK subject to additional requirements and restrictions to "COMPLY WITH LEGISLATION".

Alongside the Ratio Decidendi for the foregoing holdings and together with the Provisions of the Child's Rights Act, I hereby hold that the issuance of "EXHIBIT JAMB 4 "is null and void.

THE LAW OF CONTRACT

It is to be noted that the Policy Meeting referred to by 1st Respondent in "Exhibit Jamb 4" was done on July 18, 2024 and in this meeting they deliberated on the age that the 1st Respondent in conjunction with the 2nd Respondent and other tertiary institutions will use as a criteria in granting admission. This was after the Applicant's daughter and members of her community had written their examination in April (Jamb Examination was written in April 2024). This shows that the 1st Respondent waived its right of stopping the Applicant's daughter and other members of her community from writing the examination to gain admission to university.

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The 1st Respondent in their further counter-affidavit (filed on 25th day of November, 2024) to the originating motion, at paragraph 11 stated thus;

"in response to the deposition at paragraph 9 of the affidavit in support of the originating motion, the 2nd Respondent has no legal authority to offer or issue any letter of admission to candidates outside the Board Central Admission Processing System, as the Board exercises exclusive authority and right in the conduct of Matriculation examination into the nation's tertiary institutions and the issuance of letters of admission to successful applicants. It is for this reason that 2nd Respondent has been queried through a letter attached hereto and marked as Exhibit A"

The Admission given by the 2nd Respondent to the Applicant's daughter, is it valid? The 2nd Respondent in Paragraph 5 of her Counter affidavit /Response to the Applicant's **Affidavit in support of the Originating summons/statement**

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in support of Application filed Pursuant to Fundamental rights enforcement Procedure Rules 2009 stated thus;

"that as in this case, and instance, the 2nd Respondent had already given admission on merit to the Applicant's daughter until a directive from the 1st Respondent was handed down the 2nd Respondent to take back and

or withdraw the said admission to all and every students that were affected by the 1st Respondent's circular dated 16th October, 2024 as Exhibited by the Applicant herein". Was this admission given in error? Firstly,

from the paragraph quoted above, the 2nd respondent agreed the admission was on merit, the 1st respondent did not deny this averment as they did not respond to 2nd respondent's affidavit. Secondly, for us to get a firm stand, we have to ask ourselves the question; 'how did the candidate get 2nd Respondent's admission letter in the first place, who are the Gate keepers and Access way to the 2nd? The answer is the 1st Respondent. Without the 1st respondent's qualifying a candidate to write JAMB and also get the requisite score, a candidate cannot get the 2nd respondent's admission letter. This is because the 2nd Respondent is a private university in which to get admission, the candidates Jamb result, Waec and other documents are accessed on the merit before candidates are given admission. The first requirement is; such candidate must have written Jamb and passed the Cut off Mark set by the 1st Respondent. This is why it is correct to say that the 1st Respondent is the gate way to the 2nd Respondent.

Chapter one of the 1st Respondent 'Exhibit B' which is the JAMB BROCHURE 2024, ^{11/5/2024} 01 (3) states that ***'a candidate must have attained the age of sixteen (16) years or would have done so on the first day of October in the year of his or her candidature'***. We must move with the time, candidates no longer fill Jamb forms manually like it was done in the 70s, 80s, and 90s, now they fill it online and consideration is Paid for it online, thus the contract is sealed between the parties online. To whom much is given, much is expected, the 1st Respondent is a respectable organisation that is given the enormous job of regulating admission of students into Nigeria Tertiary institution. She must be upright. Contracts must be respected and Parties bound by the terms of their agreement. So if a waiver is given at the beginning of a contract, one party will not be allowed to vary it at the end and not keep to the terms of it. She is not a revenue generating agency, even if it were, revenue generation should not be done through what looks like deceit whether or not intended. The 1st respondent who stated a specific age in her brochure as to which candidates can qualify to write her examination, from all indices, impliedly gave the candidates who are not up to the age of 16 or will not be by October, a waiver by allowing them to register for the examination. Through technology which is now possible, immediately a

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candidate that is not up to the age of 16 or will not be so by October filled the form of the 1st respondent, it should have informed the candidate that such a candidate is not eligible (1st Respondent may want to implement that this year 2025 due to the legal issues that it is causing around the country but it was not done in 2024) and an applicant or student should not be allowed to pay for the examination, let alone sit for it and be given results. By allowing such candidates write her examination, it is clear that 1st respondent waived off her right of stopping them. By paying the fee the 1st Respondent requested during the registration and acceptance of same by 1st Respondent, a contractual relationship is entered between the 1st respondent and the Applicant's daughter and members of the Community which she represents (those candidates born between 1st of September, 2009 to the 31st December, 2009 who wrote and passed the Joint Admissions & Matriculation Board (JAMB) Exams in 2024).

The candidate (Applicant's daughter) scored up to the qualifying mark and therefore became eligible for the 2nd respondent to access on the merit for admission. By the 2nd Respondent's assessment, the candidate was qualified and therefore given admission, the same admission which the 2nd respondent has now withdrawn due to the issuance of 'exhibit Jamb 4' by the 1st respondent-the same 1st respondent that permitted the candidates to write the examination in the first place. Whatever methodology 1st respondent and 2nd respondent (which also affects other tertiary institutions) use in giving admission, it is not the business of the Applicant and the community of those born between 1st of September 2009 and 31st of December, 2009 who wrote and passed the Joint Admissions and Matriculation Board (JAMB) Exams in 2024.). After all, there is no law where it is stated that it is the 1st Respondent that must issue the admission letter rather Exhibit 2 of the 1st Respondent even gave the 2nd Respondent power to issue admission letter after the admission has gone through **CAPS**. How would a candidate know anything about **CAPS** when it is strictly an affair between 1st and 2nd Respondent? In any case, as stated earlier, the 2nd Respondent averred in Paragraph 5 of her counter affidavit that the Applicant's daughter was given admission on merit and the 1st Respondent did not deny it.

One of the roles of the court is to ensure sanctity of contracts in order to prevent chaos and anarchy in Society and to ensure that there is Justice. To my mind, the 1st respondent used the JAMB EXAMINATION as an avenue of collecting money from the candidates within the community the Applicant's daughter represents despite knowing that she does not intend to give them admission. Now 1st respondent turns around after allowing the candidates pay consideration and tries to use the law as a tool, to refuse to grant them admission.

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After implied waiver given by the 1st Respondent to the Applicants who would not be 16 by October 30 and contract entered between them, the 1st respondent cannot therefore choose specific date, and month of birth within those candidates and renege on their contract while keeping the contract of the others. This Court will apply the Principle of **PACTA SUNT SERVANDA**. While first respondent thinks "Exhibit Jamb 4" is a favour done to candidates by her, I consider it an affirmation of a contract to those that she gave admission who were not up to 16 and a breach

of contract to those she did not give admission and those whose admissions she has withdrawn, or are being withdrawn by 2nd respondents and other tertiary institutions by virtue of her issuance of EXHIBIT JAMB 4 or by The National Policy of Education which the said EXHIBIT JAMB 4 referred to and also discriminatory to them contrary to section 42 of the 1999 constitution as amended. Exhibit "Jamb 4" is a circular from 1st Respondent coming after jamb advert, jamb registration, jamb examinations, jamb letters of pass mark, jamb admission letter from University of admission and even payment of tuition fees. That is the vivid description of the contractual scenario. Exhibit Jamb 4 is being made retrospective by JAMB without the consent of the weak partner in the contract the student.

What is good for the goose is good for the gander so if you had an afterthought and extended admission up till 16 years old as at August 31st, 2025 why not up till December 31st, 2025, that is the equity Applicant seeks.

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Ordinarily, contracts do not fall within the ambits of fundamental rights, but issues of fundamental rights can arise from contracts and when this happens, the court is bound to look at them and this is one of such issues.

I therefore hold that the circular of the 1st respondent dated the 16th day of October, 2024 captioned "Admission of Candidates with Minimum Admissible Age Of 16 Years" signed by Mohammed A. Babaji to all Nigerian Universities including the 2nd defendant directing them to admit only candidates who will be 16 years old by the 31st day of August 2025 violently violates the fundamental right to freedom from discrimination of the candidates who will be 16 years from the 1st of September, 2025 to the 31st of December, 2025 guaranteed by **section 42 of the Constitution of the Federal Republic of Nigeria 1999** and is therefore unconstitutional, null and void and of no effect as it against equity, good conscience and natural justice.

In the whole the Applicant's action is determined pursuant to the following reliefs:

1. Relief 1 succeeds to the extent that the restriction of the minimum admissible age into Nigerian Universities fixed at 16 years is discriminatory to the extent of the class of persons which this Suit is brought for and on behalf of.

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2. Relief 2 succeeds to the extent that the circular of the 1st Respondent dated the 16th day of October, 2024 breaches the fundamental rights of the classes of persons whom this suit is brought for and on behalf of.
3. Relief 3 succeeds to the extent that the said circular dated 16th October, 2024 is set aside being discriminatory to the classes of persons whom this suit is brought for and on behalf of.
4. Reliefs 4 and 5 succeed as prayed.
5. Relief 6 is not granted as I will refrain from awarding damages because the restoration of the admission of the classes of persons whom this suit is brought for and on behalf of is adequate restorative remedy.
6. Relief 7 equally succeeds.
7. Parties shall bear their respective costs.


ANTHONY OLOTU AKPOVI
JUDGE
27/2/2025

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*Confirmation N500 to
The Hon.
ADC
17/04/2025*

*Paedophile RRRAB
2016-2025-2026
17-4-2025*



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