

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON MONDAY, THE 13<sup>TH</sup> DAY OF OCTOBER, 2025**  
**BEFORE HIS LORDSHIP, THE HON. JUSTICE EMEKA NWITE**  
**JUDGE**

**SUIT NO. FHC/ABJ/CS/1536/2020**

**BETWEEN:**

**SESUGH AKUME**

=====

**APPLICANT**

**AND**

- 1. UNIVERSAL BASIC EDUCATION (UBEC)**
- 2. ATTORNEY GENERAL OF THE FEDERATION  
FEDERATION AND MINISTER OF JUSTICE**

**RESPONDENT**

## **JUDGMENT**

The Applicant commenced this action via an Originating Summons dated 16<sup>th</sup> November, 2020 and filed on the 17<sup>th</sup> November, 2020 seeking for the determination of the following questions:

- 1. Whether upon a solemn review of the Constitution of the Federal Republic of Nigeria, 1999, the local government system is part of the second tier of government as an appendage or extension of the state government?*
- 2. Whether section 11(2) of the UBE Act, 2004 is consistent with the contemplation, true construction, and meaning of the combined effect of the provisions of section 7(1) and (5); the 4<sup>th</sup> Schedule item 2(a) of the Constitution of the Federal Republic of Nigeria; as well as sections 1, 2(3), 9(b) and 13(1) of the UBE Act, 2004.*



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In the event that the questions is determined or resolved in the manner envisaged by the Applicant and favourable, he sought the following reliefs against the Respondents, to wit:

- 1. A DECLARATION that the local government system is the third and an autonomous tier of government originated by the Constitution and administered by laws enacted by the House of Assembly, in accordance with the Constitution and not an appendage and/or extension of the state government.*
- 2. AN ORDER and DECLARATION that section 11(2) and (3) of the UBE Act (2004) are inconsistent with sections 7(1) and (5), and the 4<sup>th</sup> Schedule item 2(a) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) as well as Section 1, 2(3), 9(b), and 13(1) of the UBE Act (2004), therefore constitutional, null and void.*
- 3. AN ORDER and DECLARATION that local governments shall individually through their respective Local Government Education Authorities (LGEAs) pay up their counterpart funds and access funds directly from the 1<sup>st</sup> Respondent without hindrance.*
- 4. AN ORDER compelling the Respondents to communicate (3) above with all 37 Universal Basic Education Board, and Local Government 774 Local Government Education Authorities and to report compliance with this order to this honourable court within ONE week of this judgment.*
- 5. ANY FURTHER ORDER OR ORDERS this honourable court may deem fit to make in the circumstance.*



The Originating Summons is supported by 8 paragraphs Affidavit deposed to by the Applicant himself with three annexures marked as Exhibits 1 to 3 with a Written Address. Upon receipt of the 2<sup>nd</sup> Respondent Counter Affidavit, the Applicant on 21<sup>st</sup> May, 2024 filed a Reply on Points of Law.

In opposition to the Originating Summons, the 2<sup>nd</sup> Respondent on 30<sup>th</sup> April, 2024 filed 16 paragraphs Counter Affidavit deposed to by Elizabeth Egboja with no Exhibit attached. There is a Written Address.

The 2<sup>nd</sup> Respondent also filed a Notice of Preliminary Objection on the 30<sup>th</sup> April, 2024 praying the court to not to exercise its jurisdiction in this suit and against the 2<sup>nd</sup> Respondent.

The grounds of the Notice of Preliminary Objection are:

- 1. That the Applicant lacks the requisite standing or the locus standi to institute this suit as none of his civil rights or obligations, according to section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended in 2011), have been affected by provisions of section 11(2) of the UBE Act, 2004 and its alleged perceived inconsistency with Section 7(1) and (5) and the 4<sup>th</sup> Schedule Item 2(a) of the Constitution of the Federal Republic of Nigeria (as amended) as well as sections 1, 2(3), 9(b), and 13(1) of the UBE Act, 2004.*
- 2. The Applicant has failed to institute this action under the required and stipulated procedure for review of this Honourable Court, according or Order 34 Rule 1(1)(a) & (2); Order 34 Rule 3 (1),(2),(3) and (4) of the*



*Federal High Court (Civil Procedure) Rules, 2019 which requires leave of this Honourable Court before this suit can be instituted.*

Accompanying the Notice of Preliminary Objection is a Written Address.

Responding the Notice of Preliminary Objection of the 2<sup>nd</sup> Respondent, the Applicant on 21<sup>st</sup> May, 2024 filed 7 paragraphs Counter Affidavit deposed to by himself. There is a Written Address. However, the Applicant's counsel on the 17<sup>th</sup> July, 2025 in open court withdrew the 7 paragraphs Counter Affidavit deposed to by the Applicant.

The 1<sup>st</sup> Respondent despite service of the Originating Summons and Hearing Notices failed to file any court process or enter appearance.

The matter came up for hearing before this Honourable Court on the 17<sup>th</sup> July, 2025 and the court processes were adopted with adumbrations by the parties.

I shall first determine the Notice of Preliminary Objection filed by the 2<sup>nd</sup> Respondent and if it succeeds, there will be no need to delve into the merit of the suit.

In the Written Address in support of the Notice of Preliminary Objection filed by the 2<sup>nd</sup> Respondent, learned counsel formulated two issues for determination, to wit:

- 1. Whether by virtue of the provisions of Section 6(6)(b) of the 1999 Constitution (as amended) the Applicant has the requisite locus standi to institute this suit?*

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*2. Whether failure of the Applicant to obtain leave of this Honourable Court before instituting this suit for judicial review of this Honourable Court according to Order 34 Rule 1(1)(a) & (2); Order 34 Rule 3(1),(2),(3) and (4) of the Federal High Court (Civil Procedure) Rules, 2019, does not render this suit nugatory?*

Arguing the first issue, counsel submitted that the Applicant lacks the requisite standing to institute this action. That the Applicant has not show how is civil rights and obligations are offended by the provisions of Section 11(2) and (3) of the Compulsory, Free Universal Basic Education Act, 2004 (UBE Act) allegedly being inconsistent with Section 7(1) and (5) and the 4<sup>th</sup> schedule item 2(a) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) as well as Section 1, 2(3), 9(B) and 13(1) of the UBE Act, 2004 to warrant and confer him with legal rights to institute the public interest litigation action before this court. Counsel argued that the Applicant failed to establish how the autonomous nature of the Local Governments have severely affected him adversely to seek redress on behalf of all the 774 local government in Nigeria. He relied on the cases of **Attorney General of the Federation v. A.G. Abia State (2002) 6 NWLR (Pt. 764) at 134-135, Nworika v. Ononeze- Madu & Ors (2019) LPELR-46521 (SC), Taiwo v. Adegboro (2011) Vol 200 LRCN Page 72 at 882JJ and 89**

Counsel submitted that the Applicant has failed to establish any live dispute between the 2<sup>nd</sup> Respondent and the Applicant as well as proved any sufficient interest in the subject matter of the suit which is over and above the rest of the public to confer on him the requisite standing to institute this suit. **He**



cites **Gamioba & Ors v. Esezi & Ors (1961) All NLR 584 AT 588, Mr. Cyriacus Njoku v. Dr. Goodluck Jonathan & Ors (2015) LCN/7795 (CA), Barrister J.C. Uwazuruonye v. The Governor of Imo State & Ors (2012) LPELR-20604 (SC), Prince Abdul Rasheed A. Aderona & Anor v. Zenith International Bank Plc (2011) 12 SC (Pt. IV) 44 and Emezi v. Osuagwu (2005) 12 NWLR (Pt. 939) 340 @ 362.**

Arguing the second issue, counsel submitted that the subject matter of this suit ought to have been brought under Judicial Review in line with Order 34 Rule (1)(1)(a) & (2), 3(1),(2), (3) and (4) of the Federal High Court (Civil Procedure) Rules, 2019. That the Applicant refused to obtain leave of court before commencing this suit in order to enable the court to have jurisdiction to determine the suit. He cites **CITEC Int'l Estate Ltd v. Govt. of the Federal Republic of Nigeria & 2 Ors (Page 20-22), ACB Plc v. Nwaigwe & Ors (2011) LPELR-208 (SC) and Orupabo & Ors v. Opuambe & Ors (2014) LPELR-22673 (CA)**

Counsel concluded by urging the court to dismiss or in the alternative strike out the suit.

Responding to the Notice of Preliminary Objection filed by the 2<sup>nd</sup> Respondent, counsel to the Applicant adopted the two issues for determination formulated by the 2<sup>nd</sup> Respondent and added a third issue, to wit:

*Whether the notice of preliminary objection of the 2<sup>nd</sup> Respondent being filed out of time, and being caught up with the doctrine of res judicata/issue estoppels is not nugatory?*

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Arguing the first issue, counsel contended that the every person has the right to commence public interest litigation especially when same borders on constitutional matters. That the decisions cited by the 2<sup>nd</sup> Respondent are the former position of the law on the issue of locus standi. He cites **A.C.B. Agbazuere v. Attorney General of the Federation and National Assembly of Federal Republic of Nigeria with Suit No. FHC/ABJ/CS/889/2015 delivered on 24<sup>th</sup> April, 2017, Olumide Babalola v. Attorney General of the Federation (2018) JELR 42016 (CA) and Centre for Oil Production Watch v. NNPC (2019) 5 NWLR (Pt. 1666) 518**

Responding to issue two, counsel submitted that the failure to first obtain the leave of this court for judicial review before commencing this action is a mere irregularity and not fatal to the case. He cites **Order 51 Rule 1 of the Federal High Court (Civil Procedure) Rules, 2019, Ahmed v. Government of Gombe State (2021) LPELR-53367 (CA) and AGF v. Abubakar (2000) LPELR -9928 (CA)**

On the last issue, counsel submitted that the 2<sup>nd</sup> Respondent's process is out of time and also failed to pay the requisite fee in line with Order 55 Rule 1 of the Rules of this Court.

It is also the argument of counsel that the Notice of Preliminary Objection and the Written Address has four counsel without anyone indicating who signed the court process. He cites **SLB Consortium v. NNPC (2011) 9 NWLR (Pt.**

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1252), **Alawiye v. Ogunsanya (2013) 28 WRN 29** and **Skypower Express Airways Limited v. UBA & Anor (2022) LPELR-56590 (CA)**

Counsel submitted that all issues raised by the 2<sup>nd</sup> Respondent have already been determined and settled. That the 2<sup>nd</sup> Respondent is caught up with the doctrine of res judicata/ issue estoppel which forbids the raising the same issue. He cites **Adesoji v. FUTA (2017) 9 NWLR (Pt. 1578) 208**, **Aruba v. Aiyeleru (1993) 3 NWLR (Pt. 280) 126 at 142**, **Idris v. Agumagu (2015) 13 NWLR (Pt. 1477) 441** and **Ejiofor v. Apeh & Ors v. PDP (2017) 11 NWLR (Pt. 1576) 252 at 276**.

Counsel concluded by urging the court to dismiss the Notice of Preliminary Objection of the 2<sup>nd</sup> Respondent.

#### **RESOLUTION OF THE ARGUMENTS OF PARTIES ON THE PRELIMINARY OBJECTION.**

It is the strong argument of counsel to the 2<sup>nd</sup> Respondent that the Applicant lacked the locus standi to institute this matter on the ground that the Applicant has failed to show how his civil rights and obligations are offended by the provisions of Section 11(2) and (3) of the UBE Act, 2004 allegedly being inconsistent with Section 7(1) and (5) and the 4<sup>th</sup> schedule item 2(a) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) as well as Section 1, 2(3), 9(B) and 13(1) of the UBE Act, 2004 or how the autonomous



nature of the Local Governments have severely affected him adversely to seek redress on behalf of all the 774 local government in Nigeria.

Before resolving this issue if need be, counsel to the Applicant challenged competency of the Notice of Preliminary Objection for being filed out of time, being signed by an unidentified individual and being caught by the doctrine of res judicata. The law is well settled that jurisdiction is the life wire of any court and a party who disputes the jurisdiction of a court can raise same at anytime or at any stage of the proceedings and in some cases for the first time on appeal at the Appellate court. See **CONTROLLER GENERAL OF PRISONS & ORS v. ELEMA & ANOR (2021) LPELR-56219(SC)**

In the instant case, 2<sup>nd</sup> Respondent filed a Notice of Preliminary Objection challenging the jurisdiction of this court to entertain the suit. Therefore, it is wrong for the Applicant's counsel to argue that the Notice of Preliminary Objection was filed out of time when the issue therein being an issue of jurisdiction can be raised at anytime or at any stage of the proceedings.

Consequently, this issue is resolved against the Applicant for lacking in merit. I so hold.

On the issue that the Notice of Preliminary Objection was signed by an unidentified individual. It must be stated that the argument of counsel to the Applicant was once the law but the courts have moved away from that position of the law when it was held in the case of **Maina v. EFCC (2020) 2 NWLR**



**(Pt. 1708)230 at 251 to 252** that where there is a seal on a court process, it is otiose to tick the name of the counsel whose name is in the seal as the signatory on the document or process. The implication of this decision of the court is that the essence of having a seal or evidence of payment of bar practicing fee is to ensure that it is qualified lawyers that appear and sign court processes in line with 2(1) and 24 of the Legal Practitioners Act and the Rules of Professional Conduct for Legal Practitioners.

I have taken a careful look at the Notice of Preliminary Objection filed by the 2<sup>nd</sup> Respondent, and it is quite clear that four counsels' name were listed without identifying the counsel that actually signed the Notice of Preliminary Objection or tick the name of the counsel that signed. However, upon examining the said Notice of Preliminary Objection filed, there is in support of the said court process the payment of Nigeria Bar Association (NBA) Practicing Fee of Maimuna Lami whose name also appears on the counsel list. It must be noted that the essence of having the NBA stamp and seal is to ensure that fake lawyers don't practice a legal practitioner in Nigeria. The NBA practicing fee of Maimuna Lami attached to the Notice of Preliminary Fee is sufficient to show that it was Maimuna Lami that actually signed the court process. I so hold

Consequently, this issue is also resolved against the Applicant in favour of the Applicant.



On the issue that the Notice of Preliminary Objection is caught by the doctrine of res judicata. I must without wasting the time of this court dismiss the argument counsel on this issue, on the ground that the counsel to the Applicant woefully failed to show how the doctrine of res judicata is caught up in 2<sup>nd</sup> Respondent's Notice of Preliminary Objection. The blanket statement by counsel to the Applicant at paragraph 3.3.4 of his Reply on Points of Law without more is untenable and same is discountenanced. I so hold.

Now to the issue of locus standi raised by the counsel to the 2<sup>nd</sup> Respondent. The term "*locus standi*" denotes the legal capacity to institute proceedings in court. It is the right of a party to appear and be heard on the question before any Court or tribunal. It is a threshold issue that goes to the root of the suit. Put in another way, *locus standi* denotes the capacity the Plaintiff has to institute proceedings in a Court of Law to seek a determination of civil rights against the defendant. It is on whether the Plaintiff has shown sufficient interest or legal right in the subject matter of the dispute. The locus standi the Plaintiff has to institute and maintain the suit does not depend on the success or merits of the case. All the plaintiffs needs to show either in the Originating Process is to demonstrate that they have a locus standi to prosecute the case by establishing that they have a justiceable dispute or a reasonable cause of action against the defendants. However, where by their Originating Process it is clear that the plaintiffs are busybody or an interloper, the court is entitled to hold that they lacks the locus standi to sue and the matter struck out. In other words, if he does not show sufficient interest in the matter, he has no locus to



sue. See the case **Emezi v. Osuagwu (2005) 12 NWLR (Pt.939)340** the court defined locus standi as:

*"The term locus standi: denotes the legal capacity based upon sufficient interest in a subject matter to institute proceedings in a court of law to pursue a specified cause. It is the legal capacity to institute an action in a court of law."*

The essence of locus standi rule is to protect the court from being used as a playground by professional litigants, busy bodies, meddlesome interlopers and cranks who have no real legal stake or interest in the subject matter of the litigation they pursue. See the case of **Umeh v. Ejike (2013) LPELR-23506 (CA)**

The Applicant's case against the Respondents in brief is that the local government is an autonomous tier of government, and primary education is the core and foundational responsibility of the local government system. That both Local Government and State Government are at once eligible recipient of assistance from the Federal Government of basic education. That Universal Basic Education Act does not state requirement of Local Government to qualify for the Federal Government block grants as it only provides requirements for the States Government by excluding the Local Government system from accessing finances from the 1<sup>st</sup> Respondent directly. That the provision of Sections 3, 11(2), 11(3) of the UBE Act, 2004 contradicts the provisions of Section 7(1) and (5) and 318 and 4<sup>th</sup> Schedule Item 2a of the Constitution of



the Federal Republic of Nigeria, 1999 (As Amended) which allows the administration of funds through the State Universal Basic Funds.

Having carefully examined the Applicant's case, it is quite clear that the Applicant is seeking the interpretation of the relevant provisions of the **Sections 1, 2(3), 3, 9(b), 11(2), 11(3) of the UBE Act, 2004 vis a vis the provisions of Section 7(1) and (5) and 318 and 4<sup>th</sup> Schedule Item 2a of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)** on the allegation that the local government system of Nigeria being a autonomous tier of government are denied access to the finance of the 1<sup>st</sup> Respondent by the State Government which has the core duty of providing primary education. Therefore, it is not in dispute that the issue raised by the Applicant is a constitutional matter, and the issue of locus standi on the ground of sufficient interest has been whittle down, and the narrow position taken by the courts earlier has been expanded when it comes to constitutional matters as argued by counsel to the Applicant. This is was the position of the court in the case of **ALHAJI SALIHU WUKARI SAMBO & ANOR V. CAPT. YAHAYA DOUGLAS NDATSE (RTD) & ORS CITATION: (2013) LPELR-20857(CA)** where the court held:

*"The Supreme Court and even this court have taken revolutionary and bold departures from the ubiquitous old concept of locus standi....In the latter case Aboki J.C.A. restated what Fatayi-William C.J.N. said in the Adesanya v. President F.R.N. most admirably inter alia:- "In this Country which establishes a Constitutional structure involving a tripartite allocation of power to the Judiciary,*



*Executive and Legislature as the co-ordinate organs of Government, judicial function most primarily aims at preserving legal order by confining the Legislative and Executive within their powers in the interest of the public and since the dominant objective of the rule of Law is to ensure the observance of the rule of Law, it can best be achieved by permitting any person to put the judicial machinery in motion in Nigeria where by any citizen could bring an action in respect of a public derelict. Thus the requirement of locus standi becomes unnecessary in constitutional issues as it will merely impede judicial functions." Even in the most conservative of common wealth or Common Law jurisdictions like Britain, or in liberal jurisdictions like the United States of America from where we derived our judicial system and our present Constitution, nay India and Bangladesh the concept of locus standi has been broadened and the courts have departed from the undue reliance on sufficiency of interest as the primary consideration for the conferment of locus standi in administrative and Constitutional Law*

See also the case **Fawehinmi v. President, Federal Republic of Nigeria (2007) 14 NWLR (Pt.1054) 275** where the court held:

*"I am of the opinion that in the Nigerian context and particularly under the Constitution of the Federal Republic of Nigeria, 1999, it would be wrong to slam the doors of the court against complaints on executing excesses and unconstitutionality under the guise of locus standi. Where this is done, the objective of the 1999 Constitution beautifully phrased as freedom, equity and justice may*



*not be attained. The Constitution or any other law can only be test in court; it is access to the courts for such tests that will give satisfaction to the people for who the Constitution or laws are made..."*

Relying on the above position of the courts, this court finds that the Applicant has the locus standi to commence this action and the argument of counsel to the 2<sup>nd</sup> Respondent on this issue is hereby discountenanced. I so hold.

On the issue raised by counsel to the 2<sup>nd</sup> Respondent, that the Applicant failed to obtain leave of court before bring this suit for judicial review in line with Order 34 of the Federal High Court (Civil Procedure) Rules, 2019. The law is well settled that where the law provides for the doing of an act, that procedure alone must be adhered to. See the case of **ILA ENTERPRISES LTD & ANOR v. UMAR ALI & CO. (NIG) LTD (2022) LPELR-58067(SC)**

It is the argument of counsel to the 2<sup>nd</sup> Respondent that suits of this nature ought to have been brought under judicial review in line with Order 34 of the Federal High Court (Civil Procedure) Rules, 2019. It must be stated that judicial review is a way for the High Court to supervise the lower court, tribunals and other administrative bodies to ensure that they make their decision properly and in accordance with the law. It is a means of securing control of administrative process and deterring abuse and excess. It is the power of the court to exercise supervisory jurisdiction over the acts of the executive and legislative arm of government. The High Court including this



Court has the inherent jurisdiction to supervise the proceedings and decisions of inferior courts or tribunal or those of a person or body of persons charged with the performance of a public duty. Therefore, where a party seeks to invite the court to review the decision of a lower court, tribunal or an administrative body, that party is essentially seeking a judicial review.

I have taken considerable time to examine the case of the Applicant, and it is quite clear to me that Originating Summons is the appropriate mode of commencing the present action by virtue of Order 3 Rule 6 of the Federal High Court (Civil Procedure) Rules, 2019. The Applicant is challenging the inconsistency in the provision of UBE Act when the provision of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) is examined. There is absolutely nothing in the rules of this court that prevents the Applicant from bring this action by way of Originating Summons which is the procedure allowed in law for the purpose of seeking the interpretation of any statute, constitution or document. The Applicant clearly invited this court to interpret the relevant provisions of the constitution and the statute.

Consequently, I am of the view that the argument of counsel to the 2<sup>nd</sup> Respondent on this issue lacks merit and is accordingly discountenanced. The Notice of Preliminary Objection filed by the 2<sup>nd</sup> Respondent is hereby dismissed. I so hold.



In the substantive suit, the learned counsel to the Applicant formulated two issues for determination in his Written Address in support of the Originating Summons, to wit:

- 1. Whether upon a solemn review of the Constitution of the Federal Republic of Nigeria, 1999, the local government system is part of the second tier of government as an appendage or extension of the state government?*
- 2. Whether section 11(2) of the UBE Act, 2004 is consistent with the contemplation, true construction, and meaning of the combined effect of the provisions of section 7(1) and (5); the 4<sup>th</sup> Schedule Item 2(a) of the Constitution of the Federal Republic of Nigeria; as well as Section 1, 2(3), 9(b) and 13(1) of the UBE Act, 2004.*

Arguing the first issue, counsel to the Applicant submitted that a dispassionate view at the Constitution and subsisting interpretation of the court will arrive at the inevitable conclusion that the local government system is not part of the second tier of government, the state government as an appendage or extension it. He cites **Attorney General of Abia & 2 Ors v. Attorney General of the Federation & 33 Ors (SC.99/2004, SC. 121/2005. SC.216/2005 Consolidated (2006) NGSC 79 (7<sup>th</sup> July, 2006) and Section 7(5) and Item 2 of the Fourth Schedule of the Constitution**

Counsel added that by the provisions of the Constitution, it is clear that the local government system is created and imbued with certain functions which no lesser legislation can erode. He cites **Ochala v. Federal Government of**



**Nigeria (2014) All FWLR (Pt. 758) at Page 872 and Okungbowa v. Governor of Edo State (2014) All FWLR (Pt. 753) at Page 1985.**

On issue two, counsel submitted that the UBE Act which established a system of free, compulsory and qualitative basic education in Nigeria and established the Universal Basic Education Commission confers and in turn tries to erode the distinct personality conferred on the local government system by the constitution and coasts them with a lesser mandate as a mere appendage for the states.

It is the submission of counsel that the provision of UBE Act provides that the local government is a distinct provider of primary (basic) education in addition to the role of the federal and state government, and mandated that the local government be the only government to enforce compliance with the UBE Policy and law. However, Section 11(2) and (3) excludes the local government from accessing the Federal grants and aids by not naming and giving same to only the State Universal Basic Education Board thereby putting the local government at the mercy and control of the state government.

Counsel submitted that the access to grant should not be through the state government being another tier of government. That the local government even though administered by the laws of the House of Assembly is not part of the state government to be administered by it. He cites **Governor of Ekiti State & Ors v. Prince Sanmi Olubunmi & 13 Ors SC: 120/2013 (2017) 3**



**NWLR (Pt. 1555) 1 and Doctrine of Mutual Non-D'Emdem v. Pedder  
(1904) 1 CLR 91 at 111**

Counsel contended further that by Section 13(1) of the UBE Act, it establishes the Local Government Education Authorities (LGEAs) to be in charge of the UBE in each local government thereby removing the need for the State Universal Basic Education Board (SUBEB) to usurp the powers of LGEAs. He cites **Military Government of Lagos State v. Ojukwu (1986) 1 NSCC (Vol. 17) 304 at 313.**

On the whole, counsel urged the court to grant the application as prayed.

In the Written Address of the 2<sup>nd</sup> Respondent, counsel formulated three issues for determination, to wit:

- 1. Whether upon a solemn review of the Constitution of the Federal Republic of Nigeria, 1999, the local government system is part of the second tier of government as an appendage or extension of the state government?*
- 2. Whether section 11(2) of the UBE Act, 2004 is consistent with the contemplation, true construction, and meaning of the combined effect of the provisions of section 7(1) and (5); the 4<sup>th</sup> Schedule.*
- 3. Whether the Applicant is entitled to the reliefs sought against the 2<sup>nd</sup> Respondent in this suit.*

Arguing the two issues together, counsel submitted that the local government enjoins autonomy in some certain areas but the autonomy is not absolute



having regard to items 2(a) to (d) of the fourth schedule of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) which sets forth the functions of the Local Government to participate in the Government of the State. That paragraphs 2a of the fourth schedule of the Constitution is under the second arm of the functions of the local government which is not within the exclusive reserve of the local government

It is the submission of counsel that the mention of local government in Section 1(1) of the UBE Act does not indicate the sharing formula of such a grant from the Federal Government but to indicate the recognition of each local government in their participation in the primary education in each state. That the funding of administration and management of primary education in local government is disbursed through the state education board referred to as the Education Board in the same Act bearing in mind the provision of Section 7(1) of the 1999 Constitution

Counsel argued that Section 11(2) of the UBE Act specifies that the Federal Government block grant is solely dependent on the contribution of the state which must be 20% of the total cost of projects embarked on as their commitment in execution of project. That the argument of the Applicant failed to capture the fact that the LGEAs must contribute 50% of the total cost of the local government project independently to warrant accessing grant directly from the Federal Government. Counsel added that in the areas of funding, management and administration of primary education, the local government is under the control albeit not absolute control of the government of the stated.



He referred the court to Item 30 of part 11 of the Concurrent Legislative List of the Constitution.

Arguing the third issue, counsel contended that the Applicant has not proved that his is entitled to the reliefs sought from this court and cannot rely on the weakness of the Respondents especially in the face of declaratory reliefs. Counsel also urged the court to strike out the name of the 2<sup>nd</sup> Respondent when taking into account the affidavit evidence. He cites **Section 131 of the Evidence Act, 2011, Owen Mass Transportation Co. Ltd v. Okonogbo (2018) LPELR-45221 (CA), Odunze v. Nwosu (2007) LPELR-2252 (SC), Central Bank of Nigeria v. Jacob Oladele Amao & 2 Ors (2011) Vol. 201 LRCN, INEC v. Ituma (2013) 11 NWLR (Pt. 1366) 494, Hon. Chief Ogbuefi Ozomagbachi v. Mr. Dennis Amadi & Ors (2018) LPELR-45152 (SC), Mohammed v. Wammako (2018) NWLR 7 NWLR (Pt. 1619) Page 573 and Aerobell (Nig) Ltd v. NDIC (2017) 5 NWLR (Pt. 1558) Page 203 at 283 -284**

Counsel urged the court to dismiss this suit in its entirety as it lacks merit.

## **RESOLUTION OF THE ARGUMENTS OF THE PARTIES ON THE MERIT**

Before proceeding, counsel to the 2<sup>nd</sup> Respondent submitted that name of the Attorney General of the Federation be struck off because there is no justification to be in this suit. The law is well settled that the Attorney General of the Federation is a proper party to represent the Federal Government or its



agencies or appear alongside the agency, in court proceedings, especially where constitutional issues are involved. This is because the Attorney General of the Federation is the legal personality through which the Federation is sued or sues in civil matters affecting the Federal Government or its agencies. See **SAMBO v. BELLO & ORS (2017) LPELR-43022(CA)** where the court held:

*"It is settled law that the Attorney General is the Chief Law Officer of the State. He is the person vested with the responsibility under the Constitution for bringing and defending actions on behalf of the State. The Attorney General can be sued as a defendant in all civil matters in which a claim is properly made against the Federal Government or the State Government or any of its authorised agencies arising from any act or omission complained of:*

In the instant case, the 1<sup>st</sup> Respondent is a Federal Government agency and the issue before this court is a constitutional matter which I have noted while resolving the issue of locus standi. See **Section 150(1) and 251(1)(q) of the Constitution of the Federal Government of Nigeria, 1999 (As Amended)**. The issue before this court seeks for the determination as to whether some of the provisions of the UBE Act are inconsistent with the provisions of Constitution as it affects the local government. Therefore, the 2<sup>nd</sup> Respondent (AGF) is a proper and necessary party to this suit and there is every justification to make it a party to this suit.

Consequently, this issue lacks merit and is accordingly discountenanced. I so hold.



Now to the merit of this suit. I have examine the arguments of both parties on the constitutionality or otherwise of some of the provisions of UBE Act in respect of the local government.

The law is well settled that the Constitution is the Supreme Law of Nigeria. It is the organic or fundamental Law, from which other laws or actions of government either executive or legislative or judicial derive their legitimacy. It is the grundnorm, consequently its provisions are supreme, and any action taken either by executive, legislative or judiciary which infringes or runs contrary, to any of its provisions will be deemed void or a nullity, as it will be inconsistent to the Constitution. Put in another way, the Constitution is the highest law of the land and therefore all other laws owe their legitimacy to it. Accordingly, any law which is inconsistent with it cannot survive. In other words, all laws made by the National and State Assemblies owe their survival to it, and therefore any law that conflict with any of its provisions will be a nullity. However, the Court will not hold an Act to be inconsistent with the Constitution where there is no provision of the Constitution relating to the matter whatsoever, expressly or by necessary implication. See the case of **EKITI STATE INDEPENDENT ELECTORAL COMMISSION & ORS v. PDP & ANOR (2013) LPELR-20411(CA)** where the court held:

*"The Constitution of the Federal Republic of Nigeria is the basic norm of the land. By Section 1(3) of the 1999 Constitution (as amended), the Provisions of the Constitution are superior to all provisions made in any other Act or Law. The validity of all laws is tested against this basic norm. In order of hierarchy and*



*precedence, we have the provisions of the Constitution, the law made by the national Assembly and then, the law made by the House of Assembly of a State. The Constitution is the law from which all other laws in the land derive."*

It is well known that Nigeria operates a federal system of government with three constitutionally recognized tiers — Federal, State, and Local government. The 1999 Constitution (as amended) expressly guarantees the existence of democratically elected local government under Section 7(1). These local governments are not merely administrative appendages of the States but constitutionally entrenched units of governance with functions listed under the Fourth Schedule of the Constitution. One of their most critical responsibilities is participation in the provision and maintenance of primary, adult, and vocational education. The word "guarantee" used in Section 7 of the Constitution implies a level of independence and constitutional protection that should not be casually overridden by ordinary legislation. In addition, Section 162 (5) to (8) of the Constitution provides for direct financial allocation to the local government from the Federal Account, further reinforcing the idea of the local government autonomy. This position was recently held by the Supreme Court of Nigeria, in the case of **A.G. Fed v. A.G. Abia State (2024) 17 NWLR (1966) 1 at 113 to 115** where it was held:

*"Section 162(5) and of the 1999 Constitution merely provides for a method or procedure of getting the amount distributed to the Local Government Councils under section 162(3). Subsection provides that it should be given to the States to take to them and*



*subsection provides that for this purpose the States shall maintain a special account called State Joint Local Government Account into which the State shall pay the allocation to Local Government Councils from the Federation Accounts and revenue from the Government of the State. Thus, section 162(5) and merely appointed the States agents of the Federation to collect local government allocations from the Federation account and pay to them, but does not give the States any right or interest in the said allocations to the Local Government Councils from the Federation Account. The duty of the State is to simply convey to the Local Government Councils their allocations from the Federation Account. The Constitution does not give the States any right or interest in the allocations to a Local Government Council from Federation Account. The claim of right by States to keep and use the Local Government allocations from the Federation Account for the benefit of Local Government Councils and the refusal to deliver same to the Local Government Councils has gone on for over two decades and has deprived the Local Government Councils the right to be paid their allocations from the Federation Account and defeated the intention of the Constitution that their allocations from the Federation Account be paid to them. As it is the method or procedure put in place by the Constitution to enable the States collect and pay to the Local Government Councils their allocations from the Federation Account is completely defeated and made unworkable and useless by the refusal of the States to pay to the*



*Local Government Councils their allocations from the Federation Account collected for them by the States. The States are exploiting the role given them by the Constitution to create an unconstitutional status quo that has endangered the continual existence of Local Government as a third tier of government in the federal governance structure. In the instant case, the plaintiff's case was that in the prevailing circumstances, the Federation should pay directly to Local Government Councils their allocation from the Federation Account so as to save the local government from going extinct as a tier of governance. The defendants argued that such direct payment would violate section 162(5) and of the 1999 Constitution which the defendants have continued to breach. The obvious implication of the position of the defendants is that the unconstitutional status quo should continue as they are unwilling to handover local government allocations from the Federation Account to the local government councils that own them. In the circumstance, the approach of a direct payment to the Local Government Councils would achieve the intention and purpose of the Constitution and accord with the smooth running of the system of paying Local Government Councils their allocations from the Federation Account since the person or body saddled with the constitutional responsibility to implement a method or procedure for the enjoyment of a right created by the Constitution is using that role to destroy that right. The Constitution should not*



*be applied in a manner as to support the destruction of the said right.*

The National Assembly enacted the Universal Basic Education (UBE) Act with the primary aim of making basic education free, compulsory, and universal for Nigerian children in line with provisions of the Constitution. The local government by virtue of paragraph 2 of the Fourth Schedule of the Constitution clearly shall participate in the provision and maintenance of primary, adult and vocational education. The key word there is "*participate*" not "*control exclusively*" which means the responsibility is shared between the State and the Local Government. However, the crux of the argument of the Applicant is that by virtue of the provisions of Section 11 and 13 of the UBE Act, it undermines the autonomy of the local government to receive grants directly from the Federal Government.

**Section 11(3) of the UBE Act** provides:

*"The administration and disbursement of funds shall be through the State Universal Basic Education Board"*

The above provision is what the Applicant regarded as highly vexatious and by extension violates the spirit and letter of the Constitution by making the local government system a department under the State Government which the State Government applies for grants on its behalf and administers it on its behalf. In order to appreciate the argument of the Applicant's counsel, this is what the case held in the case of **A.G. Fed v. A.G. Abia State** (*supra*):



*"After prescribing that local governments shall be by democratically elected local government councils, section 7(1) of the 1999 Constitution imposes a constitutional duty on the Government of every State to ensure their existence under a law. The word 'existence' in section 7(1) include their election and tenure. Section 7(1) also requires that the said law provides for the establishment, structure, composition, finance and functions of such councils. A law made by the Government of a State to ensure the existence of a local government council in accordance with section 7(1) of the 1999 Constitution must not contain any provision that undermines or destroys the democratic nature of the Local Government Councils or that renders them departments or mere appendages of a State Government. Such law must provide for their establishment, structure, composition, finance and function as government of the local Government area independent of the State Government. Any interference by the State Government or the Governor of a State with the independent functioning of the local government councils including the tenure of office of democratically elected Local Government Councils is unconstitutional and illegal'*

It is worthy of note that the Universal Basic Education Commission (UBEC) is the Federal Body. The State Universal Basic Education Board (SUBEB) is at the State Level while the Local Government Education Authorities (LGEAs) is at the local level. For the avoidance of doubt, let me reproduce Sections 11, 12 and 13 of the UBEC Act, thus:



11. (1) *The implementation of the Universal Basic Education shall be financed from-*

*(a) Federal Government block grant of not less than 2% of its Consolidated Revenue Fund;*

*(b) funds or contributions in form of Federal guaranteed credits; and*

*(c) local and international donor grants.*

*(2) For any State to qualify for the Federal Government block grant pursuant to sub-section 1(1) of this section, such State shall contribute not less than 50% of the total cost of projects as its commitment in the execution of the project.*

*(3) the administration and disbursement of funds shall be through the State Universal Basic Education Board.*

12. (1) *There shall be established for each State, a State Universal Basic Education Board (in this Act referred to as the "Education Board").*

*(2) The structure, functions, composition and tenure of office of the Chairman and members of the Education Board shall be prescribed by a law enacted for that purpose, by the House of Assembly of the State.*

13. (1) *There shall be established, for each Local Government Area of a State and each Area Council of the Federal Capital Territory, Abuja, a Local Government Education. Authority (in this Act referred to as "the Local Education Authority") which shall be subject to the supervision of the Education Board. (2) The*



*structure, functions, composition and tenure of office of the Chairman and members of the Education Board shall be prescribed by a law enacted for that purpose, by the House of Assembly of the State.*

A careful examination of the above sections at a first glance, would appear to reflect the Nigerian Federal arrangement which calls for collaboration amongst the tiers of government. But a closer reading of the Act reveals that the real power and control resides with the state-level SUBEBs rather than the LGEAs. Section 11(3) empowers SUBEBs to manage and control the affairs of the LGEAs, and Section 13(1) clearly makes the LGEAs subject to the supervision or oversight of SUBEBs. The implication of this arrangement clearly makes the LGEAs to be subservient to the State Government through SUBEB by not having a direct control of the funds that comes from the Federal Government. By making LGEAs subject to the control of SUBEBs, the UBE Act effectively removes primary education from the independent purview of the local government. What the Constitution guarantees as participatory role is reduced to subordinate administrative duty. This is contrary to the clear wordings of Section 162 of the Constitutions which recognizes local government as direct beneficiaries of the Federation Account. The provisions in UBE Act as noted earlier withheld funds meant for the local government at the State level and only disbursed to the LGEAs through SUBEBs. This creates a scenario where the local governments or its body cannot independently implement their educational responsibilities line with the recent decision of the Supreme Court in the earlier cited case of **A.G. Fed v. A.G. Abia State** (*supra*).



I am not unmindful of the argument of learned counsel to the 2<sup>nd</sup> Respondent that the local government are not under the absolute control of the State Government and the fact that Federalism is not about rigid autonomy but participation or collaboration which the UBE Act intends to reflect. However, that does not in itself gives the National Assembly the right to undermine the clear wordings of the Constitution by enacting the UBE Act in such a way as to make the Local Government an appendage of the State Government. Exhibits 1 to 3 but particularly Exhibit 2 gives a clear implication of the lack of independence of Local Government (LGEA) wherein about 13.5million children are out of school which as noted by the UBEC chairman is very worrisome. By subordinating the local government (LGEAs) to state-controlled boards and denying the LGAs direct financial control, the Act dilutes their constitutional mandates in primary education.

Having carefully examined the arguments of both parties, I am inclined to agree with the position of the Applicant to an extent and consequently grant the following reliefs:

- 1. A DECLARATION is hereby made that the local government system is the third and an autonomous tier of government originated by the Constitution and administered by laws enacted by the House of Assembly, in accordance with the Constitution and not an appendage and/or extension of the state government.*
- 2. AN ORDER and DECLARATION is hereby made that section 11(3) and 13(1) of the UBE Act (2004) are inconsistent with sections 7(1) and (5),*



*and the 5<sup>th</sup> Schedule item 2(a) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and therefore constitutional, null and void.*

- 3. AN ORDER and DECLARATION is hereby made that local governments shall individually through their respective Local Government Education Authorities (LGEAs) pay up their counterpart funds and access funds directly from the 1<sup>st</sup> Respondent without hindrance or through the State Universal Basic Education Board.*
- 4. AN ORDER is hereby made compelling the Respondents to communicate (3) above to all 37 Universal Basic Education Board, and Local Government 774 Local Government Education Authorities within three months of this judgment.*

This is the judgment of the court.

  
**HON. JUSTICE EMEKA NWITE**  
**JUDGE**  
**13/10/2025**

**COUNSEL REPRESENTATION:**

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**NO REPRESENTATION FOR THE 1<sup>ST</sup> RESPONDENT**

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