IN THE COURT OF APPEAL

HOLDEN AT ABUJA

APPEAL NO: CA/ABJ/CV/1460/2025
SUIT NO: FHC/ABJ/CS/1625/2024

BETWEEN:

INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE

(For and on behalf of its members operating Bank accounts in Nigeria) — **APPELLANT**

AND

1. **NIGERIA INTER-BANK SETTLEMENT SYSTEMS PLC.**
2. **CENTRAL BANK OF NIGERIA**
3. **ATTORNEY GENERAL OF FEDERATION**

— **RESPONDENTS**

2ND RESPONDENT'S BRIEF OF ARGUMENT

1.0 INTRODUCTION

1.1 This Brief of Argument is filed on behalf of the 2nd Respondent, the Central Bank of Nigeria (CBN), in response to the Appellant's appeal against the judgment of the Federal High Court delivered on 4th July 2025 ***coram: Hon. Justice J.K. Omotosho***. The 2nd Respondent opposes this appeal in its entirety and respectfully urges this Honourable Court to affirm the well-reasoned decision of the trial court.

1.2 The 2nd Respondent adopts the four Issues for Determination formulated in the Appellant's Brief (which directly correspond to the four Grounds of Appeal). These issues appropriately encapsulate the questions arising for determination. For clarity, the 2nd Respondent reproduces the issues (with some modest rephrasing for precision) in Section 3.0 below and will address each in turn.

2.0 STATEMENT OF FACTS

2.1 The Bank Verification Number (BVN) system was introduced in 2014 by the 2nd Respondent (CBN), in collaboration with the Bankers' Committee (an assembly of bank CEOs and regulators), as part of an initiative to enhance the security and integrity of the Nigerian banking system[8]. Under the BVN program, each bank customer is assigned a unique number linked to their biometric identifiers (fingerprints and photograph), which is used across the banking industry to verify identity and prevent fraud. The BVN system strengthens "Know Your Customer" (KYC) compliance and promotes a safe, reliable, and efficient payments system.

2.2 Pursuant to its statutory mandate to regulate banks and the financial system, the 2nd Respondent issued the ***Regulatory Framework for BVN Operations and Watch-List for the Nigerian Banking Industry (Revised, 2021)*** **("the BVN Framework")** in exercise of powers conferred by the CBN Act 2007 and BOFIA 2020. The Framework expressly designates the Nigeria Inter-Bank Settlement System Plc (NIBSS, the 1st Respondent) as the operator responsible for the day-to-day management of the central BVN database. NIBSS is a company jointly owned by the CBN and all licensed banks in Nigeria, established to provide inter-bank payments and settlement infrastructure. Under Clause 1.5.2 of the BVN Framework, NIBSS is charged with maintaining the BVN database, ensuring its security, and providing verification services to financial institutions.

2.3 The CBN, however, retains oversight. Clause 1.5.1 of the Framework provides that the CBN has regulatory and oversight functions over the BVN system and must approve all framework and operating guidelines. In effect, NIBSS serves as a technical agent of the CBN for implementing the BVN system, under CBN's supervision.

2.4 The Appellant, a public-interest advocacy organization, has been involved in prior litigations challenging various data practices on grounds of privacy rights. In the instant case, rather than waiting to be sued, NIBSS (1st Respondent) initiated an Originating Summons at the Federal High Court, Abuja **(Suit**

No. FHC/ABJ/CS/1625/2024) in October 2024. **NIBSS** sought declaratory reliefs affirming the legality of its role in managing the BVN database and a declaration that such role does not violate citizens' constitutional rights, particularly the right to privacy.

2.5 The CBN (as 2nd Defendant at trial) aligned with NIBSS's position. The 2nd Respondent filed a comprehensive Counter-Affidavit and Written Address dated 11th February 2025 aligning with the position articulated in NIBSS's Originating Summons. In its filings, the CBN affirmed that the delegation of BVN database management to NIBSS is firmly rooted in statutory powers conferred on CBN via the CBN Act 2007 and BOFIA 2020. The CBN's evidence outlined the objectives and legal basis of the BVN initiative, emphasizing that the BVN system was created to curb fraud and enhance the safety of the banking system. It was also averred that bank customers supply their personal data (for BVN enrollment) voluntarily as a condition of accessing banking services, pursuant to lawful regulation and contractual terms, and that such data is kept confidential and used only for legitimate banking security purposes.

2.6 Upon being served, the Appellant (as Defendant at the trial court) entered a Notice of Preliminary Objection challenging the court's jurisdiction, instead of filing any counter-affidavit on the merits of the Originating Summons. The Appellant's objection raised points of law, presumably arguing that the subject matter of the suit (alleged violation of privacy rights) was not appropriate for determination by Originating Summons and possibly questioning NIBSS's locus standi or the justiciability of the questions posed. The trial court, in a pragmatic move, heard the Appellant's preliminary objection together with the substantive Originating Summons so as to determine all issues holistically.

2.7 On 4th July 2025, the learned trial Judge, J.K. Omotosho, J. delivered judgment in favor of NIBSS and CBN. The trial court dismissed the Appellant's preliminary objection (implicitly affirming that the suit was competent) and granted all the declaratory reliefs sought by NIBSS. In summary, the Federal High Court held that: **(a)** the CBN, by virtue of the CBN Act and BOFIA has the power to

establish and regulate the BVN system, including delegating operational aspects to NIBSS; **(b)** NIBSS's management of the BVN database is lawful and does not violate citizens' right to privacy under Section 37 of the Constitution; and **(c)** given the importance of the issue and to forestall multiple suits, the judgment is one in *rem*, binding on all persons unless overturned on appeal. In fact, the trial court issued a *perpetual injunction* restraining the Appellant (and indeed any other person) from challenging NIBSS's role in managing the BVN database in the future.

2.8 Dissatisfied with this outcome, the Appellant initiated the present appeal. Two Notices of Appeal were initially filed on 12th and 13th August 2025; the Appellant has elected to proceed with the latter notice (dated 13/8/2025) which contains four grounds of appeal. In its Brief of Argument filed on 24th of October, 2025, the Appellant distilled four Issues for Determination from these grounds. These issues question, in substance: **(1)** the correctness of the trial court's reliance on CBN's enabling statutes vis-à-vis the National Identity Management Commission (NIMC) Act and the Exclusive Legislative List in the Constitution; **(2)** the propriety of the trial court treating the Appellant's failure to file counter-affidavit as an admission on points of law; **(3)** whether the trial court erred in holding that the BVN scheme does not infringe the constitutional right to privacy; and **(4)** whether the trial Judge was wrong to characterize his decision as a judgment in rem that precludes further litigation on the matter. These four issues form the basis of the arguments addressed below.

3.0 ISSUES FOR DETERMINATION

3.1 Having reviewed the Grounds of Appeal and the Appellant's formulation of issues, the 2nd Respondent submits that the appeal can be properly determined by resolving the following **four issues**, which correspond to the Appellant's issues (i)–(iv):

i) **Whether the trial court was correct in holding that, by the combined effect of Section 2(d), Section 32(1) and Section 47(2) of the CBN Act 2007, and Section 1(3) of BOFIA 2020, the CBN is empowered to establish, regulate, and administer the BVN system (including delegating its operation to NIBSS),**

notwithstanding the provisions of Item 28 of the Exclusive Legislative List to the 1999 Constitution and Section 14(2) of the NIMC Act 2007. (Distilled from Grounds 1 and 2 of the Notice of Appeal.)

ii) **Whether the learned trial Judge was right to treat the Appellant's failure to file a counter-affidavit as amounting to an admission of the facts averred by the 2nd Respondent and whether the court's reliance on uncontroverted facts (pertaining to CBN's statutory powers to manage the BVN database) occasioned any miscarriage of justice to the Appellant.** (Distilled from Ground 3 of the Notice of appeal.)

iii) **Whether the trial court was correct in law to hold that the BVN scheme and the 2nd Respondent's (CBN's) management/oversight of the BVN database do not infringe the constitutional right to privacy of bank customers under Section 37 of the 1999 Constitution, given the statutory and public interest justifications for the scheme.** (Distilled from Ground 4 of the Notice of appeal, in part.)

iv) **Whether the learned trial Judge was right to characterize his decision as a "judgment in rem" binding on all persons, and if so, whether this constituted a denial of the Appellant's or others' fundamental right of access to court.** (Distilled from Ground 4 of the Notice of Appeal, in part.)

4.0 ARGUMENTS ON THE ISSUES

Issue 1: Legality of the BVN System and CBN's Authority vis-à-vis the Constitution and NIMC Act

4.1 Under Issue 1, the Appellant argues that the trial court erred by holding that the CBN's enabling statutes empower it to set up and administer the BVN database (through NIBSS) without due consideration of Item 28 of the Exclusive Legislative List (which concerns identification and fingerprints) and Section 14(2) of the NIMC Act (which establishes the National Identity Database under NIMC). The Appellant suggests that the subject of biometric identification is exclusively within the legislative and administrative

domain of the National Identity Management Commission (NIMC) and that the CBN (or NIBSS) has no legal authority to maintain a parallel biometric identification database for bank customers. In essence, the Appellant challenges the legality of the BVN Framework, positing that it is ultra vires the CBN's powers and potentially in conflict with the NIMC Act.

4.2 My Lords, the 2nd Respondent submits that the learned trial Judge was correct in law to affirm the CBN's power to establish and regulate the BVN system. The BVN initiative and the designation of NIBSS as the database operator are solidly grounded in CBN's statutory mandate. The trial court's reliance on the CBN Act 2007 and BOFIA 2020 was well-placed. Furthermore, there is no conflict between the BVN scheme, and the constitutional or statutory provisions cited by the Appellant, indeed, the relevant laws operate harmoniously. We shall develop these points as follows.

4.3 First, the CBN Act, 2007, which is an Act of the National Assembly, explicitly charges the Central Bank with the responsibility of promoting and ensuring a sound financial system in Nigeria. Section 2(d) of the CBN Act states that one of the principal objects of the Bank is ***"to promote a sound financial system in Nigeria."*** This broad mandate undoubtedly encompasses the authority to introduce measures that enhance the integrity and security of banking operations. By creating a centralized identification system (the BVN) to curb fraud and identity theft in the banking sector, the CBN was acting squarely within its statutory purpose of promoting sound banking practices and protecting the banking public. It is settled that statutory grants of power to regulatory bodies are to be interpreted liberally, to enable the regulator to achieve the purposes of the law. See: **C.B.N. v. S.A.P. (Nig.) Ltd. (2005) 3 NWLR (Pt. 911) 152**, where the Court upheld actions of the CBN aimed at ensuring financial system stability as falling within its mandate.

4.4 Furthermore, in addition to its general mandate, the CBN Act and BOFIA contain specific provisions that empower the CBN to implement systems like the BVN. Notably, **Section 47(2) of the CBN Act 2007** provides that ***"notwithstanding the duty to facilitate***

***clearing of cheques, and in furtherance of Section 2(d) of this Act, the Bank shall continue to promote and facilitate the development of efficient and effective systems for the settlement of transactions (including the development of electronic payment systems).*"** This provision makes clear that CBN's role is not passive; the Bank is empowered and obliged to actively develop modern payment and transaction systems. The BVN system, which underpins the electronic payments infrastructure by providing a reliable means of verifying customer identities across banks, falls well within the scope of "efficient and effective systems for the settlement of transactions" that the CBN is to promote. The trial court was therefore correct to cite Section 47(2) as part of the legal foundation for BVN.

4.5 In addition to the above, **Section 32(1) of the CBN Act 2007** (titled **"Incidental powers"**) further buttresses the Bank's authority. It states that ***"The Bank may... do all such things as are incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act."*** These incidental powers clause is very broad. Even if the CBN Act does not mention a "Bank Verification Number" by name (as it could not have anticipated every modern innovation), Section 32(1) ensures that the Bank can take necessary incidental measures to fulfill its core functions. In this case, implementing a system to uniquely identify bank customers (for purposes of supervision, fraud prevention, and credit tracking) is certainly incidental to the CBN's duties of ensuring high standards of banking and curbing systemic risk. In **A.G. Federation v. Sode (1990) 1 NWLR (Pt. 128) 500,** the Supreme Court observed that where a statute gives a body a duty to achieve certain ends, it also gives by implication the powers reasonably necessary to achieve those ends. In the instant case, even by implication, CBN has the power to require banks to implement customer identification frameworks like BVN as part of their prudential obligations.

4.6 Moreover, **Sections 1(3) and 1(4) of BOFIA 2020** reinforces CBN's authority. Section 1(3) of BOFIA provides that ***"The Bank may authorize or instruct any officer or employee of the Bank to***

perform any of its functions or exercise any of its powers under this Act." More importantly, **Section 1(4)** states that ***"The Bank may, either generally or in any particular case, appoint any person who is not an officer or employee of the Bank, to render such assistance as it may specify in the exercise of its powers, the performance of its functions, or the discharge of its duties under this Act or the CBN Act, or to exercise, perform or discharge such functions and duties on behalf of and in the name of the Bank."*** This provision is directly on point. It means the CBN can **appoint an external entity to carry out certain tasks on its behalf** in furtherance of its statutory functions under BOFIA or the CBN Act. NIBSS's role in managing the BVN database is precisely such an appointment. The CBN (through the BVN Framework and other directives) has appointed NIBSS which notably is jointly owned by CBN and the banks to maintain the centralized BVN infrastructure and database on behalf of the CBN. In doing so, the CBN has not acted outside its authority; it has acted in accordance with BOFIA's express permission to enlist third parties to assist in executing its regulatory functions. The Appellant's argument that CBN "delegated" its power to NIBSS as if that were inherently improper is therefore unfounded. The law (BOFIA) permits CBN to delegate operational responsibilities to a qualified entity like NIBSS, while CBN retains oversight control (as evidenced by clauses in the BVN Framework requiring CBN approval for key processes).

4.7 My Lords, **Section 57 of BOFIA 2020** further empowers the Governor of the CBN to make regulations to give effect to the objectives of the Act. Pursuant to this, the CBN issued the BVN Framework as a form of subsidiary regulation to guide banks and NIBSS in BVN operations. The Framework's preamble cites the CBN Act 2007 and BOFIA 2020 as the enabling laws under which it is issued. Thus, the Framework itself has a legal imprimatur. The Appellant has not challenged the validity of the Framework via any claim of it being ultra vires; in any event, such a challenge would fail, given the clear statutory authorizations provided above.

4.8 It is our humble submission that **Item 28 of Part I of the Second Schedule to the 1999 Constitution** (Exclusive Legislative List) provides that the National Assembly has exclusive legislative competence over **"Fingerprints, identification and criminal records."** The Appellant appears to argue that because this subject is on the Exclusive List, only a specific Act of the National Assembly dealing with identification (such as the NIMC Act) can validly cover collection of biometric data, and that the CBN (by regulations) cannot intrude into this area. With respect, this argument is misconceived. Item 28 is not a limitation on the CBN's authority rather, it is a grant of legislative authority to the National Assembly. In fact, the CBN Act 2007 and BOFIA 2020 are themselves Acts of the National Assembly, enacted pursuant to several items on the Exclusive List, including banking, financial regulation, and indeed identification. To the extent that the BVN system involves the collection of fingerprints for identification of bank customers, it is covered by federal law specifically the CBN Act/BOFIA as implemented by duly issued regulations. There is no constitutional requirement that a single omnibus law (like the NIMC Act) must exclusively govern all instances of fingerprint or identity data collection in Nigeria. Therefore, different federal statutes can address identification in different contexts. For example, the **Police Act** and **Criminal Justice Acts** provide for fingerprinting of criminal suspects; the **Federal Road Safety Commission Act** provides for biometric data on driver's licenses; the **Immigration Act** covers biometric passports. Likewise, the CBN Act/BOFIA authorize the CBN to impose identification requirements within the banking sector. All are valid exercises of Item 28 (and related items) by the National Assembly.

4.9 Notably, the **NIMC Act 2007** itself anticipates a collaborative approach to identification across various sectors. Section 27 of the NIMC Act explicitly lists transactions for which the National Identification Number (NIN) shall be required and opening a bank account is one of them.

> ***Section*** *27. Mandatory use of the National Identification Number for transactions*

(1) As from the date specified in that regard in regulations made by the Commission, the National Identification Number issued to a registered individual must be presented for the following transactions, that is-

(a) .....

(b) ***opening of individual or personal bank account.***

4.10 In other words, the **NIMC Act** expects banks to request and use the NIN for customer identification. Far from suggesting that only NIMC may handle personal identification data, this demonstrates that the banking sector has its own role in collecting and verifying customer identity (albeit in coordination with NIMC's national database). The BVN system is in fact complementary to the NIN system. Initially, BVN filled a gap at a time when not all Nigerians had the NIN; subsequently, steps have been taken to harmonize the two, such as requiring linkage of BVN with NIN for bank customers (pursuant to CBN directives after the issuance of the Revised BVN Framework). There is therefore no conflict between the CBN's BVN initiative and NIMC's mandate. Both exist side-by-side, serving different but related purposes, one for financial security, the other for general national identification.

4.11 It is instructive that in **Incorporated Trustees of Digital Rights Lawyers Initiative v. NIMC (2021) LPELR-55623 (CA)**, a case the Appellant itself cited, the Court of Appeal upheld the power of NIMC to collect personal information and even charge fees for identity-related services, recognizing that such powers stem from statute and are aimed at legitimate state objectives. By the same token, CBN's power to collect (through banks) and utilize biometric identification of customers stems from statute and pursues the legitimate objective of preventing fraud and financial crimes. There is no authority for the proposition that only NIMC can maintain a biometric database. Indeed, to accept the Appellant's argument would call into question many essential services. For instance, the biometric voter register maintained by INEC or the SIM registration database maintained by the Nigerian Communications Commission, even though those are

created under the respective bodies' enabling laws. The courts have consistently favoured an interpretation that allows each statutory agency to operate within its sphere without unnecessary impediments.

4.12 In **A.G. Abia v. A.G. Federation (2006) 16 NWLR (Pt. 1005) 265 at 389**, the Supreme Court cautioned that while the Constitution's Exclusive List delineates powers, the implementation of those powers through statutes can result in multiple competent authorities so long as each is backed by law and there is no direct inconsistency. Here, both the CBN Framework and the NIMC framework are backed by Acts of the National Assembly and can be read together harmoniously. The trial judge, therefore, rightly "considered" Item 28 by acknowledging that the National Assembly had the competence to legislate on identification and that the National Assembly did so via the CBN Act/BOFIA in respect of banking, just as it did via the NIMC Act in respect of national Identity registration. There was no failure by the trial court to consider those provisions; rather, the court implicitly found that they did not negate CBN's authority. Therefore, no miscarriage of justice arose on this point.

4.13 We submit further that **Section 14(2)** of the National Identity Management Commission (NIMC) Act, 2007 provides that the National Identity Database shall contain registered information of individuals, and that each registered person "shall be identified using unique and unambiguous features such as fingerprints and other biometric information". The Appellant seems to interpret this as giving NIMC an exclusive franchise over all biometric identification. This is not so. Section 14(2) simply describes how the NIMC's own database will identify people (by biometrics). It does not prohibit other databases or schemes from capturing biometric identification for their specialized purposes. The NIMC Act nowhere states that no other government agency or regulated institution may collect biometric data. In fact, Section 14(2) strengthens the 2nd Respondent's case, it underscores the importance of using fingerprints and biometrics for accurate identification. If anything, the spirit of that law supports the reasonableness of the BVN scheme

using the same method (fingerprints) to achieve accuracy in the banking sphere.

4.14 The Appellant's argument might also imply that CBN needed a specific amendment to the NIMC Act or a direct reference therein to create BVN. Respectfully, that is not required. The CBN did not create a national identity database; it created a financial industry identity database. There is a clear demarcation; the BVN database is limited to bank customers and is used for banking transactions and fraud prevention, whereas NIMC's database is for all citizens and residents for civil identity purposes. There is no duplication, all bank customers are in fact encouraged to obtain a NIN and link it to their BVN, aligning both systems. The existence of one does not nullify the other. Therefore, the trial court committed no error in not subordinating the CBN's powers to the NIMC Act.

4.15 It is noteworthy that under Section 13 of the NIMC Act, NIMC is tasked with harmonizing and integrating existing identification databases. In practice, NIMC has worked with various agencies (including CBN) to integrate data. For example, the requirement in recent years that BVN must be linked to NIN is a product of collaboration, not conflict. The Appellant's rigid view that only NIMC can manage any biometric data would render Section 13 nugatory and make such harmonization impossible.

4.16 My Lords, the Revised BVN Framework (2021) was tendered by both the first and second Respondents and relied on at trial. **(See: page 8 of the Record of Appeal.** The Framework itself elucidates the roles of stakeholders. Clause 1.5.1 assigns CBN the oversight and regulatory functions over BVN, while Clause 1.5.2 enumerates NIBSS's duties (maintaining the database, ensuring its security, providing verification services, etc.). The Framework was issued via a CBN circular dated 12th October 2021, under statutory powers. By virtue of Section 169(1) of the Evidence Act 2011, courts are bound to take judicial notice of official gazettes and regulations made by federal agencies. Thus, the BVN Framework has the force of law for banks and NIBSS. The Appellant has not alleged that the Framework was not properly issued or is inconsistent with any Act.

Therefore, the trial court rightly treated the Framework as a valid piece of subsidiary legislation that guides the legality of NIBSS's role. In **CBN v. S.A.P. (Nig.) Ltd** (supra), the Court of Appeal emphasized that guidelines and circulars issued by the CBN pursuant to its statutory powers are binding on banks and can be enforced as law.

4.17 In light of the foregoing, it is submitted that the CBN's regulatory authority fully covers the BVN system and its implementation through NIBSS. The combination of the CBN Act 2007 and BOFIA 2020 provides ample legal basis. The Appellant's invocation of the Constitution's Exclusive List and the NIMC Act does not reveal any illegality or overreach; on the contrary, all relevant laws support the lawfulness of CBN's actions. The trial court's decision on this point was grounded in a correct interpretation of the law, and no miscarriage of justice was occasioned thereby. We urge this Honourable Court to resolve Issue 1 in favour of the Respondents by affirming that the BVN system (and NIBSS's role under CBN's direction) is legally and constitutionally valid.

Issue 2: Whether Appellant's Failure to File a Counter-Affidavit Amounted to an Admission, and Effect (if any) on the Case

4.18 Under Issue 2, the Appellant contends that the trial court was wrong to hold (as it did) that the Appellant's omission to file a counter-affidavit in response to the Originating Summons amounted to an admission of the 2nd Respondent's assertions **"on a point of law"** specifically regarding the CBN's power to manage the BVN database. The Appellant argues that failure to file a counter-affidavit can only amount to admission of facts, not of law, and that the question of whether CBN has the legal power is a question of law that cannot be conceded by silence. The Appellant implies that the learned trial Judge improperly treated the Appellant's silence as resolving a legal issue, thereby occasioning a miscarriage of justice.

4.19 My Lords, it is trite that facts deposed in an affidavit which are neither contradicted nor challenged by the opposing party are deemed admitted and may be relied upon by the court in resolving the case (see: **Folorunso v. Shaloub (1994) 3 NWLR (Pt. 333) 413).** In the instant case, the Appellant filed no counter-affidavit; thus, all

factual averments in the 2nd Respondent's Counter-Affidavit and the 1st Respondent's supporting affidavit were uncontroverted. The trial court was therefore entitled to take those facts as established. However, we concede that pure questions of law (for example, the interpretation of a statute) are for the court and cannot be admitted by a party's silence. Our respectful submission is that the learned trial Judge did not relieve himself of the duty to decide the legal question; he did in fact consider the law independently. The reference to the lack of counter-affidavit was primarily in respect of factual issues and to underscore that the Appellant did not contest the evidentiary foundation of the Respondents' case. In any event, no miscarriage of justice occurred. Even if the Appellant had filed a counter-affidavit, the legal result would be the same, as the law clearly favors the Respondents' position. We elaborate as follows:

Facts Versus Law in Originating Summons

4.20 My Lords, we submit that in an Originating Summons procedure, the evidence is contained in affidavits. If a Defendant fails to file any counter-affidavit, all facts in the Plaintiff's affidavit stand unchallenged. The court will deem those facts admitted and may accept them (see: **Igwemma v. Obidigwe (2019) 16 NWLR (Pt. 1697) 117,** where the Supreme Court reiterated that unchallenged affidavit evidence ought to be deemed admitted and acted upon). In this case, some of the key facts averred by the 2nd Respondent included: **(a)** that the BVN initiative was launched by CBN in collaboration with banks in 2014 to combat fraud; **(b)** that the Revised BVN Framework (2021) explicitly authorizes NIBSS to manage the BVN database under CBN oversight; **(c)** that NIBSS is jointly owned by CBN and the banks and acts as a central switch for the financial system; **(d)** that BVN has significantly enhanced banking security and is integral to KYC/AML compliance; and **(e)** that bank customers provide their data voluntarily and with consent as part of opening accounts. **(See: page 89-91 of the Record of Appeal).** The Appellant's decision not to counter these facts means they are taken as true. The trial court was therefore entitled to rely on them in reaching its conclusions. For instance, the factual assertion that NIBSS's BVN operations are *explicitly authorized* by

the BVN Framework (a document before the court) was not disputed, so the court could treat it as a given that NIBSS wasn't acting rogue but under CBN's directive.

Admission on Points of Law

4.21 It is correct, as a matter of principle, that parties cannot by admission confer jurisdiction or legal authority where the law does not. However, what the trial Judge held, in substance, was that by failing to counter the affidavit, the Appellant left the court with a one-sided narrative that already demonstrated the legal authority. The "point of law" (CBN's power) was evidenced by a combination of facts (the content of statutes and framework). The existence of a statutory power is a question of law, but the **evidence of that power** – i.e. the statutes and how the BVN was implemented under them was placed before the court by the 2nd Respondent and never contradicted. The Appellant's strategy was to rely solely on legal argument via a preliminary objection, which was dismissed. Thus, at the point of judgment, the affidavit evidence in support of the CBN's authority was unchallenged.

4.22 It is pertinent to note that the trial court did not simply say "since no counter-affidavit was filed by the Appellant, CBN has power, end of story." Rather, the court went further to analyse the statutory provisions (Sections 2(d), 32(1), 47(2) CBN Act; Section 1(3) BOFIA) and found that they indeed conferred the power as factually claimed by the CBN. In other words, the court's finding on CBN's power was not based on a deemed admission alone; it was based on the court's agreement with the legal argument of the Respondents, supported by the evidence of the statutes and framework before it. Even if we assume the court erred in phraseology by saying the Appellant's silence was an admission "on a point of law," that slip does not translate to a miscarriage of justice. This Court can evaluate afresh the legal issue, as we did under Issue 1, and will arrive at the same conclusion. Therefore, it is our respectful and firm view that the alleged mischaracterization did not affect the correctness of the final decision.

4.23 Moreover, the Appellant chose not to file any evidence rebutting the practical necessity or industry practice surrounding BVN. For example, had the Appellant introduced evidence that NIMC's infrastructure was fully capable of handling banking identification such that CBN's BVN was unnecessary, or evidence of any abuse in the BVN system, the court might have had more factual controversy to resolve. But the Appellant elected not to. Instead, they only raised legal objections. One cannot complain about a court relying on unchallenged facts when one had every opportunity to challenge them but failed to do so. **Folorunso v. Shaloub** (supra) remains instructive that courts must take uncontroverted facts as admitted, except perhaps in the most exceptional of cases where the facts are patently incredible (which is not the case here).

4.24 My Lords, among the uncontroverted facts in this case was the averment that ***"the delegation of BVN database management to (NIBSS) is in line with statutory powers vested in (CBN) by the CBN Act 2007 and BOFIA 2020."*** Admittedly, that statement is partly a legal conclusion, but it is also a factual assertion insofar as it refers to specific statutory instruments (the CBN Act and BOFIA). The Appellant could have filed a counter-affidavit denying that the statutes empower CBN or putting forward a different interpretation (while acknowledging that interpretation is for the court). By failing to respond at all, the Appellant left unrebutted the factual matrix that CBN had invoked those statutes and issued the Framework under them. At most, the trial Judge's comment can be seen as emphasizing that Appellant did not dispute CBN's reliance on those statutory provisions. Thus, the court proceeded to interpret those provisions (which it did correctly, as shown earlier). This approach is consistent with **Ejefor v. Okeke (2000) 7 NWLR (Pt. 665) 363,** where the Supreme Court held that where a party fails to file a counter-affidavit, the facts in the opposing affidavit are deemed admitted and the court can proceed to apply the law to those facts.

4.25 A miscarriage of justice in this context would mean that the trial court's reliance on the Appellant's silence led to a wrong decision or denied the Appellant a fair opportunity. That is not so here. The Appellant was heard; it made legal arguments in its written address

and even on appeal has fully ventilated why it believes CBN lacked power. The court considered and rejected those arguments on their merits. The reference to absence of counter-affidavit was an accurate observation of the record; it did not preclude the court from considering the legal arguments that were, in fact, raised in the written address. The trial Judge's ultimate ruling was based on an assessment of the law, not on any supposed concession by the Appellant.

4.26 It bears mentioning that at the hearing of the Originating Summons, the Appellant's counsel would still have had the chance to argue points of law even without a counter-affidavit (apart from the jurisdictional objection). The Appellant's predicament is entirely self-inflicted having chosen a strategy that left crucial facts unanswered. Nevertheless, the outcome was dictated by law, not by default.

4.27 In conclusion on this issue, we submit that even if the trial court's phrasing was imprecise, there is no reversible error. The correct legal position that unchallenged facts are deemed admitted, and that courts independently interpret law was not lost on the trial Judge. No substantial wrong or miscarriage of justice was occasioned, since the decision aligns with what the law provides. We urge this Court to also resolve Issue 2 against the Appellant.

Issue 3: Whether the BVN Scheme Infringes the Constitutional Right to Privacy (Section 37), or is Justified by Law

4.28 Under Issue 3, the Appellant argues that the trial court conflated a "breach" of privacy with a "derogation" from privacy. The Appellant's position appears to be that the compulsory collection and central storage of personal biometric data (via BVN) is a prima facie breach of citizens' right to privacy under Section 37 of the 1999 Constitution. The Appellant contends that the trial court too readily concluded that no breach occurred simply because the scheme is backed by law, instead of first recognizing the interference and then examining if it is justified. In other words, the Appellant suggests that the trial Judge failed to appreciate that an invasion of privacy did happen and needed justification, and by not doing so, the court downplayed the gravity of the rights violation.

4.29 My Lords, the 2nd Respondent submits that the learned trial Judge was correct to hold that the BVN scheme ***does not amount to an unlawful or unconstitutional infringement*** of the right to privacy. Any minimal intrusion into personal privacy caused by the BVN requirement is justified, being backed by valid law and necessary in a democratic society for the protection of the public interest (specifically, the prevention of financial fraud and crimes). Therefore, it is not a "breach" in the constitutional sense. We address the elements of this issue as follows:

Scope of the Right to Privacy (Section 37)

4.30 Section 37 of the 1999 Constitution guarantees "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications." This right has been judicially interpreted to encompass the protection of personal information and data in certain contexts (see **Digital Rights Lawyers Initiative v. NIMC (supra)**, where the Court of Appeal acknowledged that data protection falls within the realm of privacy rights). However, like all fundamental rights (except those expressly stated as absolute), the right to privacy is not an absolute right. It can be subject to restrictions or regulations in accordance with law, as long as such restrictions are justified under Section 45(1) of the Constitution. Section 45(1) permits laws that derogate from Section 37 (and others) if they are ***"reasonably justifiable in a democratic society in the interest of defense, public safety, public order, public morality or public health, or for the purpose of protecting the rights and freedoms of other persons."*** Thus, the correct approach in privacy cases is determine if there is an intrusion into privacy; if yes, determine whether that intrusion is justified by a law aimed at a legitimate objective and is proportionate.

The Nature of the BVN "Intrusion"

4.31 My Lords, the BVN system requires bank customers to provide certain personal data specifically, biometric information (fingerprints and photo) and some demographic details to their bank, which is then stored in a central secure database (managed by NIBSS) accessible to banks and regulators for identity verification. This

undoubtedly involves the collection and processing of personal data, which engages privacy considerations. However, it is critical to note what the BVN system does not do; it does not involve surveillance of personal communications, it does not involve disclosure of one's private correspondence, and it does not involve law enforcement rummaging through one's home. It is a regulated data collection for a specific purpose. In **Medical & Dental Practitioners Disciplinary Tribunal v. Okonkwo (2001) 7 NWLR (Pt. 711) 206**, the Supreme Court observed that the right to privacy includes the right to make decisions about one's life free from unnecessary intrusion, but also acknowledged that public interest can justify intrusion in appropriate circumstances (e.g., quarantining a person with an infectious disease may violate their privacy/autonomy but is justified for public health). By analogy, requiring bank customers to submit to biometric identification is a minor intrusion justified by the public interest in preventing fraud and identity theft.

4.32 To frame it clearly; Yes, there is an interference with individual privacy in the sense that information personal to an individual (their fingerprint, etc.) is being collected. However, that interference is provided for by law, pursues a legitimate aim, and is proportionate. Thus, it is a *permissible derogation* under Section 45 supra, not an impermissible breach. The trial court's reasoning, though phrased as "no infringement," can be understood to mean "no unjustified infringement."

4.33 My Lords, a key consideration is that the BVN scheme is backed by laws (CBN Act, BOFIA, and the BVN Regulations made thereunder). It is not a whim or a policy without legal footing. The Constitution does not forbid the government or its agencies from collecting personal data; it forbids *unlawful* searches or invasions. Here, customers are aware and consent (contractually) to providing their BVN data as part of opening an account. Moreover, the recently enacted **Nigeria Data Protection Act 2023** provides a framework that governs how personal data (including BVN data) must be protected, used, and not abused. The existence of that Act underscores that data processing by institutions is envisaged, not barred, by our legal system subject to safeguards. The BVN program

operates within those safeguards. For instance, the BVN Framework itself mandates security and confidentiality of the BVN information, with NIBSS required to ensure adequate security and only grant access to authorized users. There has been no allegation that BVN data is being misused or improperly accessed.

4.34 The rationale for BVN is plainly to protect the banking public and the economy from fraud, identity theft, money laundering, and financial terrorism. Before BVN, Nigeria faced severe issues with individuals using multiple identities to open fraudulent bank accounts, perpetrate scams, or evade debts. The BVN introduced a way to uniquely tie accounts to real individuals, drastically reducing fraud incidence and enhancing the ability of law enforcement to trace criminals in the financial system. This falls under "public order" and "public safety" (protecting the financial system is a matter of public economic safety) and "protecting the rights and freedoms of others" (i.e., protecting depositors from fraudsters). The legitimacy of this aim is difficult to dispute. Indeed, preventing crime is a textbook example of a pressing social need.

4.35 Our courts have often held that where an act of government is necessary to achieve public safety or order, it may justify a restriction on a fundamental right. For instance, in **Incorp. Trustees, C.A.N. v. Kwara State Govt. (2020) 13 NWLR (Pt. 1740) 1**, a case involving purported restrictions on religious attire in schools, the Court of Appeal recognized that government regulations could limit individual practices if done for a proper purpose and within the law. By analogy, the BVN is a neutral requirement that applies to all bank customers for the good of the public. It is not targeted at violating privacy for its own sake, but to secure a safe environment for financial transactions.

4.36 Furthermore, the BVN scheme is narrowly tailored, it collects only information necessary for identity verification (basic biometrics and identifying information). It does not collect unrelated private detaiis about one's life. The data is stored under high security by NIBSS (which, as noted, is jointly owned by the CBN and banks and operates under strict oversight). Access to the data is limited to

verifying identity when a customer conducts a transaction or when needed for investigating fraud. In effect, the BVN serves almost like a social security number or national identification number, but solely within banking. Many democratic societies require citizens to have identification for banking (for example, under anti-money laundering laws, banks worldwide must obtain ID from customers. Indeed, Nigeria's ***Money Laundering (Prevention and Prohibition) Act*** and CBN's KYC regulations require this). BVN simply standardizes the identification method. This is proportionate to the risk it addresses. If a less intrusive means could achieve the same result, perhaps one could argue proportionality; but there is no equally effective alternative on the table, reliance on physical identity cards or documents in the past proved inadequate due to forgeries. Biometric verification is internationally accepted as the gold standard for accurate identification.

4.37 It is also worth mentioning that individuals voluntarily engage the banking service; by choosing to open a bank account, one accepts certain reasonable requirements. This is analogous to how one who chooses to get a driver's license accepts to give fingerprints and photo, it is a trade-off for access to the service. The law deems such requirements reasonable for the greater good.

4.38 We also wish to emphasize that Nigerian law has progressively put in place safeguards for privacy. The Nigeria Data Protection Regulation (NDPR) 2019 (in force at the time of trial) and now the Nigeria Data Protection Act 2023 provide mechanisms for individuals to complain if their data is misused and require data collectors to follow principles of data minimization, purpose limitation, and security. The CBN and NIBSS are bound by these regimes. There is no evidence of abuse of BVN data presented by the Appellant. The existence of these protections further tilts the balance in favor of the BVN's constitutionality, as citizens' data are not left in a lawless vacuum. They are protected by another set of laws which the Appellant curiously did not invoke in the trial (apart from tangential references, perhaps). In **Digital Rights Lawyers Initiative v. NIMC (supra)**, the Court of Appeal noted the significance of NDPR in safeguarding data privacy. Thus, even the judiciary acknowledges

that where data is collected in accordance with the law and protected, the privacy right is not unjustifiably violated.

4.39 **In conclusion on Issue 3**, the trial court was right to find that the Appellant's members (bank account holders) did not suffer an unlawful violation of privacy by reason of the BVN requirement. The interference with privacy is sanctioned by law, justified by overriding public interest, and narrowly tailored. The appeal on this point essentially invites this Court to declare a widely implemented and beneficial policy unconstitutional, a position that finds no support in our constitutional jurisprudence. Fundamental rights must coexist with the need to secure society. As the Supreme Court put it in **Medical & Dental Practitioners v. Okonkwo** (supra), even fundamental liberties may be restricted in the interest of the community, provided it is done lawfully. We urge this Court to uphold the trial court's finding and resolve Issue 3 against the Appellant.

Issue 4: Propriety of Treating the Judgment as in rem and the Injunction Against Future Challenges

4.40 In Issue 4, the Appellant argues that the trial Judge erred in declaring his decision a "judgment in rem" and using it to bar the Appellant and its "associates" (or indeed any other person) from further agitation on the BVN issue. The Appellant views this as the court granting reliefs not sought (since NIBSS had asked for declarations and maybe an injunction against the Appellant, but the wording made it bind non-parties) and as an undue restriction on the fundamental right of access to court for persons who were not parties. The Appellant essentially contends that a judgment in a suit between NIBSS, CBN, and DRLI cannot legally extinguish the right of other bank customers or other advocacy groups to sue in the future if they have cause, and that doing so amounts to a violation of those potential litigants' rights (and by extension, muzzling the Appellant's own activities).

4.41 My Lords, it is important to put in context what the learned trial Judge did. After thoroughly resolving the substantive questions in favour of the Respondents, the Judge noted the spate of previous

suits and the need for finality. He then pronounced that the judgment would be a judgment in rem (i.e., a decision on the legal status of the BVN scheme binding on all persons) and issued a perpetual injunction restraining the Appellant or anyone purporting to act on its behalf from challenging NIBSS's role in the BVN again. This pronouncement was within the court's discretion and aligned with well-established principles aimed at preventing abuse of court process and multiplicity of suits.

4.42 We submit that the trial court's characterization of the judgment as in rem is substantially correct. The declarations made for instance, that ***"the BVN database management by NIBSS does not violate any right"*** are universal in nature, not merely inter partes. A **judgment in rem**, by definition, is a judgment that determines the status of a thing or the disposition of a property or right against the whole world. Here, the "status" determined is the legality of the BVN scheme. Such a determination, especially by a court of competent jurisdiction, should indeed be regarded as binding generally (subject to appeal). This principle is not novel. For example, in **A.G. Abia v. A.G. Federation** (supra), the Supreme Court's judgment on resource control (though parties were limited to some states and FG) was recognized as binding on all other states effectively in rem because the subject was of general application. Likewise, a decision on the constitutionality of a statute is in rem.

4.43 Moreover, by virtue of the doctrine of stare decisis, even if the trial Judge had not used the words "in rem," the effect of his judgment would still be that any other High Court of coordinate jurisdiction would be expected to follow it (absent any distinguishing facts) if a similar suit was filed by another party. Declaring it in rem simply forewarns that the issue should be considered settled law unless the Court of Appeal or Supreme Court says otherwise. This is in line with public policy which disfavors repetitive litigation on the same subject.

4.44 Now, regarding the injunction against the Appellant "and their associates," the learned trial Judge foresaw the scenario where the same individuals behind Appellant's association might initiate

another suit under the guise of a different association or through a proxy individual (a practice not unheard of in public interest litigation). The injunction aims to prevent circumvention of the judgment by those effectively in privity with the Appellant. In **Salvador v. INEC (2012) 7 NWLR (Pt. 1300) 417**, the Supreme Court decried a situation where members of the same political party faction filed sequential suits over the same subject after one had been decided, calling it an abuse of court process. Similarly, here, once the issue of BVN's legality has been determined, it would be an abuse for the same circle of activists to recruit another person to file on the same issue hoping for a different outcome. The injunction is tailored to prevent that abuse.

4.45 It is crucial to note that no identifiable person who was not party to the suit is literally bound in the sense of being punishable for contempt, unless they act in concert with the Appellant to breach the injunction. The injunction specifically names the Appellant (and anyone acting for it). It doesn't say "all Nigerians are hereby prohibited from challenging BVN." It was directed at the Appellant and those who might represent the Appellant's interest (e.g., its trustees, members, agents). This is standard when granting a perpetual injunction to protect the successful party from re-litigation. For instance, if Mr. X sues Mr. Y and loses, the court can bar Mr. X, his privies, agents etc., from suing again on that matter. That does not take away Mr. Z's right to sue if Mr. Z has a wholly independent grievance (though Mr. Z would face stare decisis).

4.46 Thus, the trial court's order did not extinguish the rights of *bona fide* strangers with novel claims; it mainly precludes the Appellant and those in concert with it from wasting the court's time further on settled issues. This is consistent with the principle of *res judicata* (cause of action estoppel and issue estoppel). The case of **Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116** is instructive that once a matter is decided, the parties and their privies cannot reopen it in subsequent proceedings. The order of the trial court essentially gave effect to this, albeit in broad language.

4.47 To the extent the Appellant argues that calling it a judgment in rem is error because only certain traditional judgments (like probate, marital status, etc.) are in rem, we respectfully disagree. Constitutional declarations can be in rem. Regardless, even if one considered that aspect **obiter**, it does not affect the core holding about BVN's legality. At most, it affects the scope of the injunction. And here, on appeal, this Court can simply note that the declarations of law are generally applicable, but any person with a distinct cause of action (for example, a data breach claim) is not barred by this judgment, which is a truism anyway.

4.48 The Appellant's alarm that their fundamental right (and that of others) to approach the court has been blocked is unfounded. Individuals still retain the right to approach a court if there is a *new* cause of action. For instance, if NIBSS were to misuse someone's data, that individual could sue for that specific violation. What they cannot do (and should not do) is sue again to say "BVN is illegal" when that question has been asked and answered. That is not a denial of a fundamental right; it is upholding the finality of judgments. There is no fundamental right to abuse the court process or to endless re-litigation.

4.49 Indeed, the Supreme Court has emphasized in a long line of cases that public policy requires an end to litigation (interest rei publicae ut sit finis litium). After a right or status has been declared by a competent court, especially in public interest matters, it is desirable that everyone respects that decision. The trial court's statement that the judgment applies to all "unless it is overruled on appeal" shows the Judge's awareness that the Court of Appeal (and ultimately Supreme Court) have the final say. It was basically a prompt that unless a higher court says otherwise, treat this as the law of the land. We submit that there is nothing perverse or improper in that.

4.50 If one must be technical, perhaps the trial court could only validly restrain the named Appellant (and those represented by it). But even if any portion of the injunction were thought to be too wide, that would not overturn the substantive decision; the proper remedy would be to narrow the wording. We submit, however, that no such

modification is necessary because, properly understood, the injunction is limited to the Appellant (which is an incorporated trustee representing a class of persons) and those acting in its stead. Since the Appellant brought the action in a representative capacity ("for and on behalf of its members operating bank accounts in Nigeria"), it is fair that the outcome binds those members as well. They had their day in court through the Appellant. They cannot tomorrow splinter off and try again. That is the essence of representative action, it binds those represented.

4.51 Therefore, the trial Court's approach does not violate anyone's rights. On the contrary, it protects the judicial process from abuse and upholds the rights of the Respondents to enjoy the fruit of a favorable judgment without harassment by repetitive suits.

4.52 We urge this Honourable Court to hold that the learned trial Judge did not err in marking the judgment as having general binding effect (in rem) and in restraining the Appellant (and privies) from re-litigating the issue. Issue 4 should be resolved against the Appellant. Even if this Court were to find that the injunction was too broadly couched, the appropriate order would simply be to clarify its scope, not to disturb the sound conclusions on the legality of the BVN system. Ultimately, nothing in the trial court's handling of the post-judgment effect caused any miscarriage of justice; rather, it served the cause of justice by bringing certainty and finality.

5.0 CONCLUSION

5.1 Considering the foregoing arguments, the 2nd Respondent respectfully submits that the Appellant's appeal is wholly lacking in merit. The trial Court's judgment delivered on 4th July 2025 was correct in fact and law. The Appellant has not demonstrated any reversible error or violation of rights that would warrant appellate interference.

5.2 We therefore urge this Honourable Court to **dismiss the appeal in its entirety**, with substantial costs against the Appellant, to serve as a deterrent against frivolous or repetitive litigation that needlessly

expends judicial time on issues that have been settled and to affirm the judgment of the trial Court which:

a. Declared that the Bank Verification Number (BVN) system and the role of NIBSS in managing the BVN database are lawful and within the statutory powers of the Central Bank of Nigeria under the CBN Act 2007 and BOFIA 2020.

b. Declared that the implementation of the BVN scheme does not violate Section 37 of the 1999 Constitution (right to privacy) or any other fundamental right of the Appellant's members or the Nigerian public; and

c. Granted an injunction to give effect to these declarations, restraining the Appellant (and those represented by or acting under it) from instituting further actions on the same subject matter.

5.3 Finally, we commend the industry of the learned trial Judge and submit that his judgment has set the correct precedent reinforcing the Central Bank's authority to carry out its mandate for the good of the financial system, while also respecting citizens' constitutional rights within the bounds of law. Upholding this judgment will further entrench the principle that regulatory measures taken for public safety and order when grounded in law will receive the strong backing of our courts.

DATED THIS 27th **DAY OF** January**, 2026.**

O.M. ATOYEBI, SAN, FCIArb (UK)
ADE IPAYE OFR, FCTI, FCArb
SIRAJUDDIN KOFO ABDUS-SALAM ESQ.
ABDULFATAI OYEDELE ESQ. FCIArb(UK)
A.A. OKURIBIDO ESQ. FCIArb (UK)
OMOWUMI ADEOYE ESQ..
RIDHWAN BABATUNDE ESQ.
LUKE OKPALIKE ESQ.
DEBORAH M. ANYANG ESQ.
N.A. UTHMAN ESQ.

O. SUSAN AFOLABI-AJAYI ESQ.
MARYAM S. ABBA ESQ.
(2nd Respondent's Counsel)
O.M. ATOYEBI (SAN) & Co./Vantage Attorneys LP
No 30, Libreville Street,
Off Aminu Kano Crescent,
Wuse 2, Abuja, FCT.
Tel: 08037172401
Email: info@vantageattorneys.ng
Legal Mail: abdulfataioyedele@nigerianbar.ng

FOR SERVICE ON:

1- APPELLANT

INCORPORATED TRUSTEES OF DIGITAL
RIGHTS LAWYERS INITIATIVE
Aggey House, (6th Floor)
12 Berkeley Street,
Off King George V Road,
Moloney, Lagos Island,
Lagos State.
09061404306

2- 1ST RESPONDENT

Nigeria Inter-Bank Settlement System Plc (Plaintiff)
c/o Counsel
Ademola Oluwawolemi Esan, SAN
Babatunde Ige Esq.
Collins Akinade Esq.
Olaniwun Ajayi LP
Plot L2, 401 Close
Banana Island
Ikoyi Lagos
drp@olaniwunajayi.net|07087094799,08029305505

THE 3RD RESPONDENT

c/o Federal Ministry of Justice
Plot 71B Shehu Shagari Way, Maitama
FCT, Abuja.