IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THURSDAY THE 23RD DAY OF JULY, 2026
BEFORE HIS LORDSHIP HON JUSTICE J. K. OMOTOSHO
[JUDGE]

SUIT NO.: FHC/ABJ/CS/721/2026

BETWEEN:

CHRISTIAN EGBUCHINEM NDUKA
(Carrying on business in the name & style - CLAIMANT
of Chris & Lawticus)

AND

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
2. **NATIONAL ASSEMBLY** - **DEFENDANTS**
3. **ATTORNEY GENERAL OF THE FEDERATION**

JUDGMENT

The Claimant filed an Originating Summons dated and filed 9th April, 2026 seeking the determination of the following questions:

1. Whether Section 83(6)(b) of the Electoral Act 2026, by imposing mandatory costs on Counsel fling suits concerning the internal affairs of a political party, derogates from the Constitutionally guaranteed right of audience of a legal practitioner under Sections 6(6)(a), 36(1) of the Constitution and Section 8(1) of the

Legal Practitioners' Act, and is therefore inconsistent with the Constitution?

2. Whether Section 83(6)(b) of the Electoral Act 2026 is inconsistent with the Constitution, particularly regarding the separation of powers and the inherent powers of the judiciary to regulate proceedings, including the award of costs, and is therefore null, void, and of no effect.
3. Whether the National Assembly can, by legislation, regulate the internal proceedings of the Federal High Court, including the award of costs, or whether such matters are exclusively reserved to the judiciary in line with the Constitution.
4. Whether the legislative powers of the National Assembly (2nd Defendant) extend to fixing or limiting the discretionary powers of a Judge of the Federal High Court, particularly regarding the award of costs, or whether such powers are exclusively within the judicial discretion pursuant to Sections 6(6) (b), 253, and 254 of the Constitution?
5. Whether Section 83(6)(b) of the Electoral Act 2026 constitutes an unlawful fettering of judicial discretion, interfering with the constitutional duty, functions, and inherent jurisdiction of the judiciary, contrary to Sections 4, 5, and 6 of the Constitution?

6. Whether the 1st Defendant (INEC), being a statutory body funded entirely through public funds and the INEC Fund established under Sections 3(1)-(4) of the Electoral Act 2026, administered pursuant to Section 4 (a) - (e) of the Act, and receiving allocations pursuant to its budget under the Constitution, is entitled to claim costs against any party or legal practitioner in Federal High Court proceedings, except in accordance with the discretion of the Court in appropriate circumstances?

Upon the determination of the above questions, the Claimant seeks the following reliefs:

1. A DECLARATION that pursuant to the combined effects of Sections 1(3), 6(6)(a), 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Section 8(1) of the Legal Practitioners' Act, which guarantees the right of audience in all courts or law sitting in Nigeria; Section 83(6)(b) of the Electoral Act 2026, which seeks to derogate from the Claimant's right of audience (or a legal practitioner) in the Federal High Court by imposing costs of not less than N10,000,000.00 on counsel who files any action concerning the internal affairs of a political party, is contrary to and inconsistent with Section 6(6)(a) of the

Constitution, which vests judicial power of the Federation in the courts, and includes the inherent discretion to regulate their proceedings, including the award of costs; and being inconsistent with Section 1(3) of the Constitution, the said provision is therefore null, void, and of no effect to the extent of the inconsistency.

2. A DECLARATION that, pursuant to the principle of separation of powers preserved under Sections 4, 5, 6(6)(b), 253, and 254 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the legislative powers of the 2nd Defendant do not extend to the exercise of discretionary power of a Judge of the Federal High Court, which are exclusively regulated under Sections 6(6)(b), 253, and 254, and, consistent with the Constitution, only the Chief Judge of the Federal High Court is empowered to make Rules of Court or Practice Directions governing the award of costs in proceedings before the Federal High Court, such that any legislative attempt by the 2nd Defendant to fix or limit such costs, including Section 83(6)(b) of the Electoral Act 2026 in favour of the 1st Defendant (who is entitled to yearly budgetary allocations for all its litigation cases). constitutes an unconstitutional derogation of the Court's

inherent judicial power and is therefore null, void, and of no effect to the extent of the inconsistency.

3. A DECLARATION that Section 83(6) (b) of the Electoral Act 2026 enacted by the 2nd Defendant to favour the 1st Defendant who is entitled to yearly budgetary allocations for all its litigations unlawfully fetters the discretionary powers of a Judge of the Federal High Court, interferes with the constitutional duty and functions of the judiciary, thereby constitutes an unconstitutional intrusion into judicial proceedings, and is contrary to Sections 4, 5, and 6 of the Constitution, which collectively preserve the separation of powers between the legislature, executive, and judiciary.

4. A DECLARATION that, in view of the fact that the 1st Defendant (INEC) is a statutory body established under Section 153(1)(f) of the Constitution and Section 1(1) of the Electoral Act 2026, funded through the INEC Fund established under Sections 3(1)-(4) of the Electoral Act 2026 and administered pursuant to Section 4 of the Act, such that all of the 1st Defendant's funds, including for litigation, are derived from public funds and the federal budget, the 1st Defendant does not incur private financial liability for filing or defending suits and is therefore not entitled to claim costs from any legal practitioner claimant in proceedings

before the Federal High Court, except in accordance with the discretion of the Court in appropriate circumstances, and any attempt to award costs in its favor, including under Section 83(6)(b) of the Electoral Act 2026, is unjust, contrary to the principles of equity, judicial discretion, and the Constitution, and should be declared null, void, and of no effect.

5. AN ORDER of this Honourable Court striking down the provisions of Section 83(6)(b) of the Electoral Act 2026 (to the extent that they mandate automatic punitive costs or regulate judicial proceedings in a manner that removes judicial discretion), for being inconsistent with the Constitution and therefore null, void, and of no effect.

The Originating Summons is accompanied by a 27 paragraph affidavit deposed to by the Claimant. The Affidavit has a written address.

The 1st Defendant in opposition filed a Notice of Preliminary Objection dated 5th May, 2026 but filed 6th May, 2026 seeking the following reliefs:

1. AN ORDER striking out the suit for disclosing no reasonable cause of action.
2. AN ORDER striking out the suit on the ground that the Claimant lacks locus standi to institute this action.

3. AN ORDER striking out and/or dismissing this suit for lack of jurisdiction.

The Notice of Preliminary Objection has a 7 paragraph affidavit deposed to by Promise Nkwachi Elenwo, a legal practitioner in the law firm of Quid Juris Legal. The Notice of Preliminary Objection has a written address.

The 1st Defendant also filed a 17 paragraph Counter Affidavit deposed to by Promise Nkwachi Elenwo, a legal practitioner in the law firm of Quid Juris Legal. The Counter Affidavit has a written address dated 5th May, 2026 but filed 6th May, 2026.

The 2nd Defendant on its part filed a 27 paragraph affidavit deposed to by Temitayo Ogundana, Higher Executive Officer of the Litigation and Counselling Department of the Directorate of Legal Services, National Assembly. The Counter Affidavit has a written address filed 21st May, 2026.

The 3rd Defendant on its part filed a 11 paragraph Counter Affidavit deposed to by Godiya Titus, an Administrative Officer in law firm of E.F Bwacha Legal. The Counter Affidavit has a written address filed 2nd July, 2026.

The Claimant deposed to a 16 paragraph Further and Better Affidavit. The Further Affidavit has exhibits and a reply address filed 15th July, 2026.

The facts leading to the institution of this suit border on the enactment of the Electoral Act, 2026.

According to the Claimant, he is a legal practitioner and has brought this suit in the interest of the public. He particularly stated that section 83 (5) and (6) of the Electoral Act, 2026 makes provision stating that matters based on internal affairs of political parties cannot be entertained by any Court. further that where such internal affairs suit are filed, the Counsel and the Claimant in such matters would be made to pay cost of not less than N10,000,000.00 each in addition to the payment to the 1st Defendant of any costs and solicitor's fees. The Claimant stated that at no time was there information in the public space stating the intention of the National Assembly to impose costs for filing suits. He stated that he only got to know after the Act was passed.

The Claimant further stated that the imposition of cost is fixed and mandatory without taking into consideration the circumstances of each case. Also, that the determination of costs was not left to the discretion of the judge and that it is capable of discouraging lawyers from filing suits on behalf of their clients. The Claimant further stated that the 1^{st} Defendant who is the beneficiary of the costs is a government body funded from public resources and tax payers' money and thus receives funds for all its operations including litigation. That it is improper to then award costs in favour of the 1^{st} Defendant which does not personally bear the cost of litigation like individual litigants.

According to the 1^{st} Defendant, the Claimant has not shown that he has suffered or is likely to suffer any injury arising from the provisions of the Electoral Act, 2026. Further that the National Assembly conducted public hearings on the amendment of the Electoral Act, 2022 prior to the enactment of the Electoral Act, 2026. That the Claimant never informed the 1^{st} Defendant of any of his grievance and that he has not shown that any costs has been imposed on him. The 1^{st} Defendant therefore urged the Court to dismiss the suit of the Claimant.

According to the 2^{nd} Defendant, there were public hearings before the Electoral Act was passed and that the 2^{nd} Defendant has powers to impose costs as penalty for wrongdoing. The 2^{nd} Defendant also stated that there is no law which prevents a government agency funded by public funds from receiving cost or fees for penalized acts.

The 2nd Defendant also stated that the Claimant failed to serve a 3 months pre-action notice on it before instituting this action. The 2nd Defendant therefore urged the Court to dismiss the suit against it.

The 3rd Defendant on his part stated that it is not saddled with the responsibility of law making. Also that the Electoral Act, 2026 does not bar access to Court and that the imposition of costs is not excessive as same is made to stem the tide of frivolous suits. 3rd Defendant urged the Court to hold that the making of the Electoral Act, 2026 followed due process of law.

Counsel to the Claimant in his written address adopted the questions for determination as issues for determination.

Learned Counsel submitted inter-alia that section 83 (6) (b) of the Electoral Act, 2026 which imposes mandatory costs on counsel for filing suits relating to internal affairs of political parties derogates from the constitutionally guaranteed right of audience of a legal practitioner under sections 6 (6) (a), 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). He submitted further that the imposition of mandatory costs is an attempt by the 2nd Defendant to regulate the internal proceedings of the Federal High Court including awarding of costs which is an exclusive preserve of a Judge of the Federal High Court. counsel also challenged section 83

(5) & (6) of the Electoral Act, 2026 arguing that it did not specify the kind of internal affairs suits which is prohibited by the law and that section 285 (14) of the Constitution has outlined the pre-election matters which can be entertained by the Court, hence section 83 (5) & (6) of the Electoral Act, 2026 is inconsistent with the provisions of the Constitution.

Learned Counsel relied on **EZENNAKA VS C.O.P RIVERS STATE & ANOR (2022) LPELR-59628 (SC) AT PP. 37 – 40 PARAS E** to submit that the award of costs is a discretionary power of the Court and same cannot be fettered by any statute. Counsel further submitted that sections 3 and 4 of the Electoral Act, 2026 makes provision for INEC fund from which the 1st Defendant draws funds to run its operations. That the existence of the INEC Funds precludes the 1st Defendant from benefiting from the imposition of costs from parties suing on internal affairs issues. Counsel therefore urged the Court to grant the reliefs of the Claimant.

Counsel to the 1st Defendant in his written address in support of Counter Affidavit formulated a sole issue for determination thus:

> **Whether by a community reading of the provision of the sections 1 (3), 36(1), 40, 285(14) and 251 of the Constitution of the Federal Republic of Nigeria (as amended); the provision of**

section 83 (5) & (6), 88 (2) of the Electoral Act, 2026 and section 8 of the Legal Practitioners Act, any of the reliefs sought by the Claimant in the Originating Summons is grantable and ought to be granted by this Honourable Court?

Learned Counsel submitted inter-alia that section 83 (5) of the Electoral Act, 2026 was enacted to cure a mischief of persons filing frivolous suits which bother on internal affairs of political parties. That the provision is simply a codification of the pronouncements of the Supreme Court on the issue of internal affairs not being justiciable. Counsel also submitted that even though section 83 (5) of the Electoral Act, 2026 makes internal affairs non-justiciable, section 88 of the same Act specifies the internal affairs which are justiciable which means that contrary to the argument of Claimant's Counsel not all internal affairs and pre-election matters have been rendered non-justiciable. Counsel submitted also that the Electoral Act 2026 does not fetter the discretion of the Court in awarding costs but that it simply provides a platform upon which discretion in assessing costs can be made and that the provision does not interfere with the internal proceedings of the Court. Counsel submitted that the Act does not provide that the costs must be paid to the 1st Defendant only when it is joined as a party and costs is imposed accordingly. Counsel therefore urged the Court to dismiss the suit of the Claimant.

In his written address in support of Notice of Preliminary Objection, 1st Defendant's Counsel formulated a sole issue for determination:

> **Did the Claimant disclose a Cause of action; have the locus standi; and is this Honourable Court clothed with jurisdiction to adjudicate this case?**

Learned Counsel submitted that there is no controversy between the Claimant and the 1st Defendant to warrant the disclosure of a reasonable cause of action. Also, that the Claimant being a public interest litigation lawyer does not clothe him with locus standi to institute this action as he has not revealed injury done to him by the 1st Defendant. Counsel therefore urged the Court to dismiss the suit of the Claimant.

Counsel to the 2nd Defendant in his written address formulated two issues for determination:

1. **Whether the Honourable Court has the jurisdiction to entertain and determine the instant suit against the 2nd Defendant having regard to:**

   a. **Lack of cause of action;**

   b. **The Claimant's lack of locus standi against the Defendant on the issues raised in the suit;**

c. **Failure to issue pre-action notice in compliance with the mandatory provision of section 21 of the Legislative Houses (Powers and Privileges) Act, 2017.**

2. **Whether the Claimant has made out a case to be entitled to the reliefs sought in this suit.**

Learned Counsel submitted inter-alia that the Claimant has not shown that he has suffered any injury far and above any other person to warrant filing this suit and thus he lacks locus standi. Counsel also submitted that failure of the Claimant to serve pre-action notice on 2nd Defendant means that the Court cannot exercise jurisdiction over the 2nd Defendant. Counsel submitted that the 2nd Defendant have the powers to make law regarding the issue of internal affairs and same was done to deter Counsel from filing frivolous internal affairs suits. Counsel submitted that the National Assembly has powers to regulate the legal profession by virtue of Item 49 part 1 of the 2nd Schedule (Exclusive Legislative list) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Counsel submitted that the Claimant has not proved his entitlement to the reliefs claimed hence he urged the Court to dismiss the action.

Counsel to the 3rd Defendant formulated two issues for determination thus:

1. **Whether the Claimant has placed sufficient facts through his affidavit to warrant the grant of the reliefs sought.**
2. **Whether the Claimant has disclosed any cause of action against the 3rd Defendant.**

Learned Counsel submitted that the provisions of section 83 (6) (b) of the Electoral Act, 2026 has not yet been applied on the Claimant hence the suit is hypothetical and speculative. Counsel also submitted that the Claimant lacks locus standi to bring this action as he has not disclosed sufficient interest in the suit. Counsel argued that section 83 (6) of the Act only sets a minimum cost and the Court still has the discretion to decide on the costs to impose on offending parties. Counsel also submitted that there is nothing warranting the joining of the 3rd Defendant as no reliefs are sought against him or the federal government. Counsel urged the Court to dismiss the suit.

Counsel to the Claimant in his reply address submitted inter-alia that by virtue of being a legal practitioner, section 83 (5) and 83 (6) (b) directly affects him, hence he has locus standi. Also, that section 83 of the Electoral Act aims to fetter the discretion of the Court in imposing costs. He therefore urged the Court to grant the reliefs of the Claimant.

The Court formulates the following issues for determination thus:

1. **WHETHER THE CLAIMANT HAS LOCUS STANDI TO COMMENCE AND MAINTAIN THIS ACTION.**

2. **WHETHER FAILURE TO SERVE PRE-ACTION NOTICE ON THE 2ND DEFENDANT MAKES THE SUIT INCOMPETENT AGAINST IT.**

3. **WHETHER THE PROVISIONS OF SECTIONS 83 (6) (b) OF THE ELECTORAL ACT 2026 IS VALIDLY MADE.**

Counsel to the 1st Defendant have raised the issue of locus standi of the Claimant arguing that he has not shown sufficient interest nor suffered any injury to entitle him bringing this action. Counsel to the 2nd Defendant urged the Court to decline jurisdiction over the 2nd Defendant on the basis that a 3 months pre-action notice was not served on the 2nd Defendant before the suit was commenced against it.

The issue of jurisdiction whenever it is raised must as a matter of necessity be determined as soon as possible. Jurisdiction in general terms refers to the extent of powers or authority exercised by a Court over a particular matter. It is seen as a threshold issue which determines how a Court should handle a matter. Where jurisdiction is lacking, any further action taken by a Court amounts to a nullity.

In **NIMR v. AKIN-OLUGBADE &ORS (2025) LPELR-80313(SC)**, the Supreme Court per Abiru JSC held:

> *"Now, jurisdiction is the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. It is the power of the Court to decide a matter in controversy and presupposes the existence of a duly constituted Court with control over the subject matter and the parties. Jurisdiction defines the power of Courts to inquire into facts, apply the law, make decisions and declare judgment. It is the legal right by which Judges exercise their authority. It is trite that jurisdiction is a hard matter of law that can only be determined in the light of the enabling statute. A Court of law cannot add to or subtract from the provisions of a statute. As a matter of law, a Court must blindly follow and apply the jurisdictional limits and limitations as contained or provided in a statute."*

My noble Lord, Adah JSC in **HABU v. SULE & ORS (2024) LPELR-63002(SC)** on the issue of jurisdiction held thus:

> *"It is obvious in our law that jurisdiction is the cord of adjudication. It is the threshold and livewire that determines the authority of a Court to entertain a case before it. When a Court*

lacks jurisdiction, its judgment no matter how well written is a nullity. Consequentially, the appeal and the decision of the Court of Appeal on such a judgment would be a nullity. See Martins v. Nicannar Food Co. Ltd &Anor. (1988) LPELR-1844(SC), Petrojessica Enterprises Ltd &Anor v. Leventis Technical Co Ltd (1992) LPELR-2915 (SC), Katto v. CBN (1991) 9 NWLR (Pt. 214) 126, Utih v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166. Due to the importance of jurisdiction, issues of jurisdiction can be raised at any stage of a case, be it at the trial or on appeal to the Court of Appeal or to this Court; a fortiori, the Court can suo motu raise it. Once it is raised, it is of utmost necessity to have it determined early."

Kindly see also **APC & ORS v. ENUGU STATE INDEPENDENT ELECTORAL COMMISSION & ORS (2021) LPELR-55337(SC); PETROLEUM (SPECIAL) TRUST FUND v. FIDELITY BANK & ORS (2021) LPELR-56625(SC); MUYIDEEN v. NBA &ANOR (2021) LPELR-55885(SC).**

With respect to the issue of locus standi, locus standi checkmates frivolous suits and tests what connection the Claimant has with the Defendants to be entitled to any of the reliefs sought. It is also intrinsic to jurisdiction as held by the Supreme Court in **AJAYI v. ADEBIYI & ORS (2012) LPELR-7811(SC)** the Apex Court held thus:

"Locus standi and jurisdiction are interwoven in the sense that locus standi goes to affect the jurisdiction of the Court before which an action is brought. Thus where there is no locus standi to file an action, the Court cannot properly assume jurisdiction to entertain the action. Locus standi being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal by any of the parties without leave of Court or by the Court itself suo motu. The issue can be raised, after the Claimant has duly filed his pleadings by a motion and or in a statement of defence. Locus standi to institute proceedings in a Court is not dependent on the success or merits of a case; it is a condition precedent to the determination of a case on the merits."

To underscore the importance of locus standi to the competence of a suit, the Supreme Court in **CITEC INTL ESTATES LTD &ORS v. FRANCIS &ORS (2021) LPELR-53083(SC)** held as follows:

"'Locus standi' (or standing) denotes the legal capacity to institute proceedings in a Court of law. Standing to sue is not dependent on the success or merits of a case; it is a condition precedent to a determination on the merits. It follows therefore, that if the Claimant has no locus standi or standing to sue, it is not

necessary to consider whether there is a genuine case on the merits; his case must be struck out as being incompetent."

The Court of Appeal in **PDP v. EDEDE & ANOR (2022) LPELR-57480(CA)** held thus:

> *"It has also been held that the issue of locus standi constitutes a condition precedent to the institution of any action before a Court of law. See Baido vs. INEC (2008) LPELR - 3843 (CA), the concept being to protect the Court being used as a playground for professional litigants, busybodies and meddlesome interlopers and cranks who have no real stake or interest in the subject matter of the litigation."*

Kindly see also **ASSET MANAGEMENT NOMINEES LTD &ANOR v. FORTE OIL PLC &ORS (2023) LPELR-60186(SC); APC v. AGUMA &ORS (2020) LPELR-52574 (CA); FBN PLC v. GBARABE (2022) LPELR-58617(CA).**

Now the Claimant in this suit claims to be a legal practitioner and stated that the provision of section 83 (3) of the Electoral Act 2026 is likely to affect him as he would be wary of taking briefs for clients due to the fear of being fined N10,000,000.00 (Ten Million Naira) if the suit is found to be frivolous by the Court.

I must say here that even though the Claimant being a legal practitioner alone does not confer him with locus standi to bring this action, he has shown some sufficient interest in the subject matter of the suit as the constitutional right to access the Courts by litigants is in danger of being eroded if there is threat of sanctions. This therefore becomes a Constitutional issue and a matter which can properly be termed to be public interest litigation. The Claimant does not have to wait to suffer injury from the enactment of the Electoral Act 2026. A threatened injury is sufficient ground to institute action.

In **KWARA STATE GOVERNMENT & ORS v. ENETSUD (2022) LPELR-58776(CA)**, it was held thus:

> ***"It is not in dispute that, this case bothered on constitutional matter and/or public interest litigation. Courts in Nigeria adopted the test of 'sufficient interest' in determining whether a party has the requisite locus standi to commence an action in Court in respect of a given subject matter. Even in constitutional law cases, the Claimant must plead sufficient constitutional interest to sustain and meet locus standi requirement. In M.C.S. (Nig.) Ltd. /Gte v. Adeokin Records (2007) ALL FWLR, 1624 at 1637 - 1638, paras. G - A (SC), the term 'sufficient interest' is a broad and generic term that lacks a precise and legal meaning. It is better***

determined in the light of the facts and circumstances of the particular case. In arriving at a decision one way or the other, the Court will be guided by the overall interest of the parties in the litigation process in the absence of enabling statute. This Court in Centre for Oil Pollution Watch v NNPC [2013] 15 NWLR (Pt. 1378) 556 at 582 per Bage JCA relying on the Supreme Court's decision in Pam v Mohammed (2008) 16 NWLR (Pt. 1112) 1 exposited on the requirement of sufficient interest as the law, in these words: "It is the law that to have locus standi to sue, the Claimant must show sufficient interest in the suit or matter. One criterion of sufficient interest is whether the party could have been joined as a party in the suit. Another criterion is whether the party seeking redress or remedy will suffer some injury or hardship arising from the litigation. If the Judge is satisfied that he will so suffer, then he must be heard, as he is entitled to be heard. A party who is in imminent danger of any conduct of the adverse party has the locus standi to commence action."

Likewise in **UNITED INVESTMENTS LTD v. REGISTRAR OF TITLES, LAGOS STATE & ORS (2016) LPELR-41406(CA)**, it was held thus:

"In Mr. Eugene Obi Okoye & Anr. Vs. Beatitudes Nigeria Limited (2014) LPELR-23014 (CA), Abubakar Jega Abdulkadir, JCA, stated

as follows: Locus standi or standing to sue is the legal right of a party to an action to be heard in litigation before a Court of law or tribunal. A person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed. The term interest was further explained by Muhammad JSC, in the case of Adetono Vs. Zenith Int'l Bank Plc (2011) 18 NWLR (Pt 1279) 627 at 654 SC, where he stated as follows: Further it is to be noted my lords, that for a person to have interest in a thing he has to have rights, advantages, duties, liabilities, losses or the like, connected with the thing whether present or future, ascertained or potential; provided that the connection and in the case of potential rights and duties, the possibility is not too remote."

It is without dispute that legal practitioners are the only ones with the right to file election related cases on behalf of litigants and no doubt these election related cases have become significant revenue generators for legal practitioners. It is therefore reasonable to expect legal practitioners to protect their right and access to approach the Court when such issues arise. I therefore hold that the Claimant have shown sufficient interest to be vested with locus standi to bring this action. Consequently, issue one is resolved in favour of the Claimant.

On the issue of non-service of pre-action notice on the 2nd Defendant, Pre-action notice is a privilege enjoyed by statutory bodies to wit: they must be served with a notice of intention to sue them. The Pre-action notice is to give the body appropriate time to prepare for its defence. Where a Pre-action notice is specified to be mandatory then it must be complied with else the suit will be deemed incompetent except the Defendant waives its right.

The 2nd Defendant claimed that it was not served with the mandatory three months pre-action notice required by section 21 of the Legislative Houses (Powers and Privileges) Act.

In **MOBIL PRODUCING (NIG) UNLTD V. LASEPA & ORS (2002) LPELR-1887(SC),** Per EMMANUEL OLAYINKA AYOOLA, J.S.C, pungently and clearly laid and stated it thus:

> ***"A suit commenced in default of service of a pre-action notice is incompetent as against the party who ought to have been served with a pre-action notice provided such party challenges the competence of the suit."***

In **NNONYE V. ANYICHE (2005) 2 NWLR (PT.910) 623 AT P 646** the Supreme Court stated on the issue at hand thus:

"It may be mentioned that the effect of non-service of a pre-action notice, where it is statutorily required, as in this case is only an irregularity which, however, renders an action incompetent. It follows therefore that the irregularity can be waived by a defendant who fails to raise it either by motion or plead it in the statement of defence"

Kindly see also **UGWUANYI v. NICON INSURANCE PLC (2013) LPELR-20092(SC); NICON INSURANCE PLC v. ANAGBA VENTURES LTD (2018) LPELR-46672(CA).**

Section 21 of the Legislative Houses (Powers and Privileges) Act provides thus:

"Any person who has cause of action against a legislative house shall serve a three months written notice to the office of the Clerk of the Legislative House disclosing the cause of action and relief sought."

The 2nd Defendant argued that no such pre action notice was served on it by the Claimant. The Claimant on his part only submitted that failure to serve pre-action notice is an irregularity which does not go to the root of the suit and he presented no evidence of serving Pre-action notice on the 2nd Defendant.

The clear implication of the above is that failure to serve this written notice is a breach of condition precedent to the assumption of jurisdiction by this Court over the 2nd Defendant.

Condition precedent is something that must happen before the right to sue is fully vested on a Claimant where condition precedent is not fulfilled, the right to sue does not accrue.

In **AFRICAN NATURAL RESOURCES & MINES LTD v. SS MINERALS RESOURCES LTD & ORS (2021) LPELR-55151(CA)** the Court of Appeal held:

> *"This is what is termed a condition precedent to filing an action. "A condition precedent is something that must be done or must happen in a particular case, before one is entitled to institute an action. It is not of the essence of such a cause of action but it has been made essential by law.....In PRINCE J.S. ATOLAGBE & ANR. VS. ALHAJI AHMADU AWUNI & ORS. (1997) LPELR - 593 (SC) MOHAMMED JSC, at pages 28-29, referred with approval, to the English Supreme Court Practice (White Book) 1991 Edition, Order 18/7/10, on condition precedent, where it was stated that cases constantly occur in which, although everything has happened which would at common law prima facie entitle a man to a certain money, or vest in him a certain right of action, (as in this case)*

there is yet something more which must be done, or something more which must happen, in the particular case, before he is entitled to sue either by reason of the provision of some statute, or because the parties have expressly so agreed; this something more is called a condition precedent. It is not of the essence of such a cause of action, but it has been made essential. It is an additional formality superimposed on the common law"

Also in **KAWU v. YUSUFARI (2022) LPELR-58050(CA)** the Court held:

"By the word 'condition' this means the sale agreement is not a finality until certain event happens. This is the effect of condition precedent in a document. In Burton Resources Ltd & Anor v. First Deepwater Discovery Ltd (2021) LPELR-54429 (CA), this is what this Court said on condition precedent: "Once there is a condition that needs to be satisfied before an agreement will come into force, the general position of the law is that such a condition becomes condition precedent. The non-existence of the condition will be an obstacle to the enforcement of the agreement and will prevent anyone from getting any benefit from the agreement. Condition precedent has been defined as one which delays the vesting of a right until the happening of an event. See Nigercare Development Co., Ltd vs Adamawa State Water Board & Ors

(2008) 2-3 S.C (pt. II) 202. The implication of a condition precedent is that none of the parties can benefit from the agreement or claim any right therein without the fulfillment of the condition precedent.

Kindly see also **NIGERIAN COMMUNICATIONS COMMISSION V. MOTOPHONE LTD (2019) 14 NWLR (PART 1691) PAGE 1 AT 30 PARA A-B PER ABBA AJI, JSC; UGWUANYI V. NICON INSURANCE PLC (2013) 11 NWLR (PART 1366) PAGE 546 AT 612 PARA B - C; NJOKU V. CCB & ORS (2022) LPELR-58432(CA)**

The condition-precedent here is the failure to serve pre-action notice on the 2nd Defendant before filing this suit as mandated by Section 21 of the Legislative Houses (Powers & Privileges) Act, 2017.

The status of a pre-action notice is so fundamental that failure to serve one where it is mandated by statute renders the proceedings a nullity.

In **PUBLIC & PRIVATE DEVELOPMENT CENTRE LTD/GTE (PPDC) v. NNPC & ANOR (2020) LPELR-50288(CA)** it was held thus:

"It is contended by the Respondents that the Appellant did not comply with the provision of the law, thus a condition precedent for the Trial Court to assume jurisdiction was absent. It is trite that where a statute requires that there should be a preaction notice

before an action can be commenced in Court, there must be compliance with that statutory provision for the Court to assume jurisdiction over the matter. Issue of pre-action notice where service is required is very fundamental as it touches on the competence of the suit. Failure to issue same amounts to a vital or serious omission that mars a suit and renders it a nullity. It is not a mere irregularity that could be waived or disregarded.....

An action commenced without pre-action notice where one is statutorily required is a nullity. See NIGERCARE DEV. CO. LTD VS. ADAMAWA STATE WATER BOARD (2008) 9 NWLR (PT.1093) 498. The rationale behind the jurisprudence of a pre-action notice is to enable the defendant know in advance the anticipated action and a possible amicable settlement of the matter between the parties, without recourse to adjudication by the Court. The purpose of giving notice to a party is that it is not also taken by surprise but so that it should have adequate time to prepare to deal with the claim in its defence. See NTIERO VS NIGERIAN PORTS AUTHORITY (2008) 10 NWLR (PT.1094) 129. In the instant case therefore, failure to give the pre-action notice renders such action incompetent, ineffective and liable to be struck out. Any defect in competence of a Court to adjudicate on a matter is fatal, for the proceedings are a nullity however well conducted and decided.

See MADUKOLU VS NKEMDILIM {supra}; NIGERCARE DEV. CO. LTD VS ADAMAWA STATE WATER BOARD (supra). In the circumstances therefore, the suit is incompetent and was rightly struck out by the Trial Court."

Also in **ONDO STATE DEV. & PROPERTY CORPORATION v. JIMZEST HOTEL DEV. CO. LTD (2011) LPELR-4782(CA)** it was held thus:

"What is the effect of non-service of pre-action notice where it is statutorily required? In Nigercare Dev. Co. Ltd v. A.S.W.B (supra) at 244 lines 13 - 22 Tabai, JSC held: "There are numerous decided cases on statutory provisions for pre-action notice and when they leave no one in any doubt as to their meaning, effect has to be given to the provision. Where, as in this case, the provision is mandatory, a Claimant has no choice but to comply with it. It is a condition precedent to the commencement of an action and noncompliance therewith renders the action incompetent and robs the Court of any jurisdiction to entertain same." (Emphasis mine) In the case of Nnonye Vs Anyichie (2005) 1 SC (Pt.II) 96 @ 103 and 104, it was held that non-service of a preaction notice puts the jurisdiction of the Court on hold pending compliance with the pre-condition."

Kindly see also **NOCLINK VENTURES LTD & ANOR v. AROH & ANOR (2007) LPELR-4631(CA)**

Upon this failure to fulfill condition-precedent, this Court is handicapped from assuming jurisdiction over the 2nd Defendant. Consequently, the 2nd Defendant is hereby struck out of this suit.

With respect to the substantive issue, the grouse of the Claimant is rooted in section 83 (6) (b) of the Electoral Act 2026. He stated that the provision affects the right to access the Courts since the provisions prohibits the filing of matters bordering on internal affairs of political parties and the imposition of fines for lawyers and litigants who file such cases.

I will reproduce the provision of section 83 (5) and (6) of the Electoral Act 2026 hereunder:

> ***"(5) Subject to the provision of subsection (3), no Court in Nigeria shall entertain jurisdiction over any suit or matter pertaining to the internal affairs of a political party.***
>
> ***(6) Where such action is brought in negation of this provision –***
>
> ***(a) no interim or interlocutory injunction shall be entertained by the Court, but the Court shall suspend its ruling and deliver it at***

the stage of final judgment and shall give accelerated hearing to the matter.

(b) the Court shall, at the conclusion of the matter, impose costs of not less than ₦10,000,000.00 on the counsel who filed the action and not less than ₦10,000,000.00 on the Claimant/Applicant and in addition to payment to the Commission of any cost, including solicitors' fees incurred by it where joined as a party"

A close look at the above provision shows that the intention of the drafters can be detected from a literal interpretation of the provisions. In the interpretation of statutes, the Court is enjoined to employ the literal rule as its first canon of interpretation except a literal interpretation will occasion injustice or cause ambiguity.

This is in line with the position of the Supreme Court in **NNPC v. LUTIN INV. LTD &ANOR (2006) LPELR-2024(SC)** where the Court held thus:

"It is now well settled that the cardinal principle of the interpretation of statutes is that where the words used by the legislature in a statute are clear and unambiguous in their ordinary meaning, effect should be given to them without resort to any external aid. The duty of the court therefore is to interpret the words as used in the statute

Kindly see also **EKANEM &ANOR v. ESSIEN &ORS (2022) LPELR-56508(CA); JOSEPH v. NIGERIAN NAVY (2020) LPELR-49692(CA); UBA PLC v. OGEDOH (2021) LPELR-55831(CA).**

Using the literal rule, the above provisions simply prohibits the filing of matters which border on internal affairs of political parties. This is not a novel issue as the Courts in Nigeria have consistently held that internal affairs of political parties are no-go areas for Courts.

The law is trite that Courts will not interfere in the internal affairs/disputes of political parties. Indeed, matters relating to internal disputes of a political party are not justiciable. In **UFOMBA V. INEC & ORS (2017) LPELR-42079**, the Supreme Court held as follows:

> *"...Issue of leadership and or membership of a political party an internal or domestic affair of a party. It is within the political party's jurisdiction and is indeed "NO GO AREA" for Courts, as they lack jurisdiction to delve into such affairs or matters. The Court's jurisdiction is ousted because such subject matter is non-justiciable."*

In **UMEH & ANOR v. OKWU & ORS (2014) LPELR-24063(CA)** it was held that:

"On Political Party's internal affairs, the Law is very clear that Political questions as to how a Political party should run its affairs is within the exclusive Jurisdiction of a Political Party. See Umeh v. Ejike (Unreported) CA/E/84/2013 delivered on 15/7/2013. The internal affairs of Political Parties are exclusive to the parties and not within the competence of the Court. Courts have no Jurisdiction to interfere with the election of Political offices of a Party. In other words, a Political Party choosing its candidates for an elective office is purely a domestic affair of the Political Party. See Uwazurike v. Nwachukwu (2012) 12 SCNJ 1 at 5. Where there is a dispute as to the elected offices of a Political Party the Court will not have Jurisdiction to entertain the matter. It is settled law that it is the claim of the plaintiff that determines the Jurisdiction of the Court, where however from the totality of the pleadings of both Parties and the evidence adduced to establish same the Court will then determine whether it has Jurisdiction or not."

Typically, Courts of law do not involve themselves with the domestic affairs of a political party. Political parties are generally seen as democracies where the majority rules, an aggrieved member cannot just go to Court to ventilate his grievance on happenings within the party.

The Appellate Courts have stated that matters relating to leadership and membership of political parties are out of the jurisdiction of Courts being internal affairs of the parties.

In **ONI & ANOR v. OYEBANJI & ORS (2023) LPELR-60699(SC)** the Supreme Court held thus:

> ***"Also, the issues of whether the 3rd respondent could act as the National Chairman of the 2nd respondent and whether the Caretaker Extraordinary Convention Committee headed by the 3rd respondent was a legitimate organ of the Party and had the authority to superintend over the affairs of the Party in the absence of the National Working Committee of the Party are the internal affairs of the Party. It is settled law that the management or administration of a political party and who should head it or hold any office therein is the internal affair of the party. See our decision on the same point and facts in Jegede V INEC."***

Kindly see also **OMOYELE & ANOR v. NZENWA & ANOR (2022) LPELR-57939(CA)**

The National Assembly have simply codified the settled principle of law that internal affairs of political parties are non-litigable. This is not to say that political parties cannot be sued or that decisions of political parties cannot be challenged, it is simply saying that apart from pre-election suits which are circumscribed by Section 285 (14) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), all other matters cannot be entertained by the Court.

For the sake of clarity section 285 (14) of the Constitution as amended provides:

14 *"For the purpose of this section, "pre-election matter" means any suit by –*

1. *an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;*
2. *an aspirant challenging the actions, decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election; and*

3. a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election"

It is clear from the above that aspirants who participated in a primary election have the Constitutional right to challenge the primary election and such will not be seen as internal affairs of the party. A political party can also challenge the decisions of the Independent National Electoral Commission where the Electoral Act or other laws are not complied with by the Commission.

Under the Electoral Act, 2026 issues which can be litigated before the Federal High Court are found in Sections 88 (2) and section 29 (5) which provides:

"(2) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party have

not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court for redress."

"29 (5) An aspirant who participated in the primaries of his political party who has reasonable grounds to believe that any information given by the political party's candidate in the affidavit or any document submitted by that candidate in relation to his constitutional requirements to contest the election is false, may file a suit at the Federal High Court in the Federal Capital Territory or in the jurisdiction the cause of action arose against that candidate seeking a declaration that the information contained in the affidavit is false."

The above are the acceptable grounds to bring a pre-election suit in addition to the grounds as contained in section 295 (14) of the Constitution.

The question then becomes which issues of internal affairs are non-litigable? From settled decisions of the Supreme Court, internal affairs of the party which cannot be entertained by the Court includes leadership issues, membership matters, mode of nominating candidates, delegates lists, party administration etc. The Supreme

Court in ANYANWU v. EMMANUEL & ORS (2025) LPELR-80882(SC) held:

"A look at the amended originating summons and affidavit in support filed by the 1st Respondent, reveals that the subject matter of the suit, which he filed before the trial Court, borders on internal affairs of a political party, particularly leadership tussle, over which the Court has no jurisdiction. It is trite that matters pertaining to person's membership of a political party, his qualification or non-qualification based on or arising from a nomination exercise of a political party are matters within the internal affairs of a political party over which the political party as an association is supreme. Such matters are not justiciable and fall outside the jurisdiction of the Court. This Court in the case of KABIR V. APC & ORS (2024) LPELR-61 712(SC) (Pp 54 - 54 Paras A - E) per Ibrahim Mohammed Musa Saulawa, JSC, held thus: "Most ironically, however, by the pleading thereof (as contained in the foregoing averments), the question of membership of a political party and sponsorship of a candidate for an election squarely falls within the purview and contemplation of domestic affairs of a political party, thus not justiciable. This proposition of law has been settled and reiterated beyond per adventure by this Court in a plethora of formidable authorities. In one of the recent

decisions of this Court, it was aptly held: The issue of leadership and/or membership of a political party is an internal or domestic affair of a party. It is within the political party's jurisdiction and is indeed NO GO AREA for Courts, as they lack jurisdiction to delve into such affairs or matters. See ABDULLAHI VS. ARGUNGU (2023) 11 NWLR (pt. 1895) 289 per Nweze, JSC (of blessed memory) @ 312. See also AL- HASSAN VS. ISHAKU (2016) 10 NWLR (pt. 1520) 230 @ 289; ARDO VS. NYAKO (2014) 10 NWLR (pt. 1416) 591 @ 616: ENANG VS ASUQUO (2023) 11 NWLR (pt. 1896) 501 @ 523." This Court reiterated the above principle particularly when it has to do with leadership/administration of a party in the case of MANASSEH v. GOSHWE & ORS (2024) LPELR-61673(SC) (Pp 82 - 82 Paras B - D) per Helen Moronkeji Ogunwumiju, JSC, relying on the case of JEGEDE & ANOR V. INEC & ORS (2021) LPELR- 55481 (SC), thus: "It has been settled in several cases in this Court that the issue of party congress or the administration of a political party is outside the jurisdiction of the Courts. Political parties are made up of men and women who join a voluntary association and their administration should not be the business of the Courts." Further this Court in the earlier case of TUMBIDO v. INEC & ORS (2023) LPELR-60004(SC) (Pp 31 - 35 Paras D- C) per Adama Jauro, JSC gave a fulsome exposition of the attitude of the Court to the *internal affairs of political parties thus: "The question of membership of a political party has always been held to be outside the purview of the Court's jurisdiction. It is a matter which only a political party can decide. To inquire into such matters would amount to a Court poking into the internal or domestic affairs of a political party and dictating to its members how the affairs of the party are to be piloted."*

In **OSAGIE & ORS v. ENOGHAMA & ORS (2022) LPELR-58903(SC)** the Supreme Court also held:

"The issues as to which congress of the 1st respondent in Edo State is the authentic Congress and which delegates are the authentic delegates fall squarely within the internal or domestic affairs of a political party, the 1st respondent in this case. It has been held, emphasized and established by numerous decisions of this Court that save within narrow confines, Courts have no jurisdiction to interfere or meddle in the domestic affairs of political parties. See UFOMBA V. INEC & ORS (2017) LPELR- 42079 (SC); AGI V. PDP & ORS (2016) LPELR - 42578 (SC); ARDO V. NYAKO (2014) 10 NWLR (PT. 1416) 591; PDP V. SYLVA (2012) 13 NWLR (PT. 1316) 85. The circumstances under which a Court is clothed with jurisdiction to entertain matters bordering on the internal affairs

of a political party are provided for in Sections 29(5) and 84(14) of the Electoral Act, 2022. The two sections clearly provide that such an action can only be instituted by an "aspirant". In other words, in order for a suit on the internal affairs of a political party to be actionable, the person who seeks to air his grievance(s) must be an aspirant and his complaint must fall within the scope of Sections 29(5) or 84(14) of the Electoral Act. Section 152 of the Electoral Act defines an aspirant as "a person who aspires or seeks or strives to contest an election to a political office". The appellants herein are clearly not aspirants, but acclaimed ad-hoc delegates. They have therefore not been able to scale the first hurdle. That being the case, the trial Court was bereft of jurisdiction to entertain their claim"

Kindly see also **ONOR & ANOR v. INEC & ORS (2024) LPELR-61788(SC);**

Thus, any matter outside the narrow confines of Section 285 (14) of the Constitution and sections 29 (5) and 88 (2) of the Electoral Act 2026, constitutes internal affairs and same would not be entertained by the Court. The National Assembly has only codified settled principles laid down by the Supreme Court. In law making, sometimes judicial precedents can be codified as part of the amendment process. The National Assembly has simply done this by prohibiting internal affairs matters from being entertained by the Courts. I hold that this provision is not a bar to access the Court but a filter to whittle out frivolous suits. This Court takes judicial notice of the high volume of political matters filed by various persons and due to the time constraints in these matters, the Court usually give such matters priority. Unfortunately, most of these matters which clog the Court's docket end up being frivolous internal affairs disputes. Political parties and their members rather than resolve their disputes internally would rather approach the Court to settle such disputes for them.

The National Assembly has cured this mischief by prohibiting such matters from being entertained. Section 83 (5) is therefore valid and does not conflict with any provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

With respect to section 83 (6) (b) which imposes sanctions on counsel and parties who file such frivolous suits, the position of the law is that costs usually follow events.

The Supreme Court in **EZENNAKA v. COP, CROSS RIVER STATE & ANOR (2022) LPELR-59628(SC)** held:

> ***"award of costs by a Court, is usually regulated by the Rules of Court which vest the Court with the judicial discretion to assess and make order for costs as the facts and circumstances of a case***

may warrant or justify. The award of costs in a matter is therefore generally, regarded as discretionary on the part of the Court, which discretion is always required by law to be exercised judicially and judiciously. See Akinbobola v. Plisson Fisko Nig. Ltd. (1991) 1 NWLR (pt. 167) 270, Olasape v. N.B.N. Ltd. (1985) 3 NWLR (pt. 11) 147, UBA v. GMBH (1989) 1 NWLR (pt. 110)374, Anyegbunam v. Obaka (1993) 5 NWLR (244) 449, NNPC v. Clifco Nig. Ltd. (2011) 10 NWLR (pt. 1255) 234. As a guideline on the principle of award of costs, Irikefe, Ag., JSC, in the case of Haco Ltd. v. Brown (1973) 4 SC (Reprint) 103, (1973) LPELR -1347 (SC) had stated that:- "We are satisfied that there is abundant authority in support of the proposition that a successful party in an action, unless he misconducts himself is entitled to costs as of right." See also Obayagbona v. Obazee (1972) 5 SC, 246, Amira Nig. Ltd. v. Mal. Nig. Ltd. (2001) 17 NWLR (pt. 742) 464, Idam v. Mcne (2009) 17 NWLR (pt. 1196) 74, UBN Ltd. v. Nwaokolo (1995) 6 NWLR (pt. 400) 127. This position of the law is premised on the principle that costs follow or should follow events and that a successful party in litigation is entitled to be indemnified for all the reasonable expenses incurred in the prosecution of a matter up to judgment. These expenses include fees for services of counsel, production of witnesses/evidence and genuine and *reasonable out of pocket expenses incurred in the course of trial by the successful party, e.t.c.. See Ojiegbe v. Ubani (1961) 2 NSCC 1153, Onabanjo v. Ewetuga (1993) 4 NWLR (pt. 288) 443, Uzoma v. Okorie (2000) 15 NWLR (pt 692) 882, Sogunro v. Yeku (2003) 12 NWLR (pt. 853) 644, Int. Offshore Constr. Ltd. v. Shoreline Lift-Boats Nig. Ltd. (2003) 16 NWLR (pt. 845) 157, ACB v. Ajugwo (2012) 6 NWLR (pt. 1295)97. Order 36, Rule 6 of the Cross River State High Court (Civil Procedure) Rules, 2004. (Applicable to the Appellant's case) provided that the award of costs in all proceedings in the trial Court shall be at the discretion of the Judge and in Rule 1(1) says:- "In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses which he has necessarily put in the proceedings, as well as compensated for his time and effort in coming to Court. The Judge may take into account all the circumstances of the case. " In line with these provisions, the trial Court had the discretionary duty to assess and award costs to a successful litigant such as the Appellant in all proceedings before it in order for the party to fully reap the benefits of his success or victory in the legal battle before that Court which include compensation for the wrong done to him and the reasonable expenses he had been made to incur in the prosecution of the battle to decisive conclusion"*

In **OGBONNA v. OKORO (2022) LPELR-58612(CA)** the Court of Appeal held:

> *"According to Black's Law Dictionary 6th ed. @ pg. 246 cost is indemnity for the payment of legal fees and expenses; money expended to prosecute or defend a suit which a party is entitled to recover. As costs follow events, however, it is not to be awarded as a punishment or a bonus. It must be based on a disadvantage suffered by a party who must be compensated. Compensation is the basis for awarding costs. The award of costs is to be exercised at the discretion of the trial Judge acting judicially and judiciously. By the discretionary nature of costs, it should not be punitive; meaning of "costs follow event" is that it is an indemnity to the winning party and not to damnify the unsuccessful party for no good reason."*

From the above decisions, costs are usually imposed on an unsuccessful party to indemnify the other party who had to incur costs in defending the case. The quantum of costs to be imposed is also within the discretion of the Court.

In this instant case, the Claimant argued that the imposition of costs of not less than ₦10,000,000.00 on the counsel who filed the action and not less than ₦10,000,000.00 on the Claimant/Applicant is ultravires and also interferes with the discretion of the Court.

The minimum costs of N10,000,000.00 each on Counsel and the Claimant where the suit ends up being an internal affairs suits may appear to be punitive and excessive if not exercise judiciously and Judicially and it is only the court that can exercise such discretion judiciously and Judicially and not any other body. This Court in applying the Mischief Rule of interpretation which is used when the intention of the drafters of a law is called in aid to interpret a statute. The Supreme Court in **PATRICK v. INEC & ORS (2024) LPELR-61643(SC)** explained it as follows:

> *"The term Mischief Rule (1861), denotes that a statute should be construed (interpreted) by first identifying the mischief (problem) that the statute was designed to remedy, then adopting a construction that would suppress the problem and thereby advance the remedy. This is in accordance with the trite common law doctrine of purposivism. Under this methodology, the words of the text are expanded from their ordinary meaning so as to carry out the legislative purpose inherent therein: "There is no need to first find the text ambiguous or uncertain before obtaining from other sources an understanding of the purpose of*

the statute."See UNIF. STATUTE &RULE CONSTRUCTION ACT (1995). According to Cross: "Originally, however, the rule was to be applied only in cases of ambiguity that is, when the literal rule was in applicable."See RUPERT CROSS: PRECEDENT IN ENGLISH LAW (1961) @ 183. Interestingly, the classic and most ancient authoritative decision regarding the trite fundamental doctrine of purposivism was the Locus classicus- HEYDEN'S case F8 3 REP 7A (1584) wherein it was held: For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: first, what was the common law before the making of the act. Second, what was the mischief and defect for which the common law did not provide. Third, what remedy the Parliament has resolved and appointed the cure the disease the commonwealth. And fourth, the true reason of the remedy; and then the offence of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy and to suppress subtle inventions and evasions for continuance of the mischief, and Pro Privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the act Pro bono Publico."

Likewise, in **FRN v. AKAEZE (2024) LPELR-62190(SC)** where the Apex Court held:

> ***"One of the fundamental guidelines to interpretation is the Mischief Rule, which considers the state of the law prior to the enactment, the defect which the statute sets out to eradicate or prevent, the remedy adopted by the legislature to cure the mischief, and the actual reason behind the remedy."***

This Court reasons that the National Assembly in inserting section 83 (6) (b) intends to cure the mischief of parties filing frivolous suits. Despite the settled pronouncements of the Supreme Court, matters bordering on internal affairs are still being filed without any punishment. The inclusion of a minimum fine is meant to discourage recalcitrant lawyers and litigants from clogging the Court with frivolous suits. It sets a clear punishment for filing these suits which waste the precious time of the Court.

The issue of frivolous suits has become endemic and it must be punished severely to send a clear message. The Supreme Court recently had cause to sanction a lawyer for filing frivolous suit. The Supreme Court in Appeal No. SC.266/2017 per Nwosu Iheme JSC without mincing words held:

"This Application and the unbecoming Conduct of Counsel for the Applicant is bereft of Common Sense, it is dismissed in its entirety. The Judgment of this Court delivered on the 4th day of June, 2025 in Appeal No. SC.266/2017 remain subsisting, final and binding on all parties. Sequel to the vexatious and unprofessional Application of this uncultured Counsel, S.M. Danyaro, intended only for causing annoyance when objectively evaluated, I also order that costs of ₦50,000,000:00 (FIFTY MILLION NAIRA) be paid personally by this recalcitrant Counsel, S.M. Danyaro personally for filing this trash. The costs shall be paid within 90 days (Ninety days) to the Respondents. A certificate of compliance must be filed in Court in accordance with the Provisions of Order 12 Rules 4(d), 6, and 7 of the Rules of this Court. S.M. Danyaro of Counsel shall cease to have right of audience in any Court in Nigeria until there is evidence of compliance with the said Rules of this Court."

The above means that Courts can impose costs where the suit is frivolous. The fact that a lawyer has the right of audience does not mean he can file any type of case under the sun. where the case is unmeritorious such as filling an application to review the judgment of the Supreme Court, he may be met with stiff sanctions.

Section 83 (6) (b) simply empowers the Court to impose financial sanctions for the filing of frivolous suits. To the mind of this Court, it is not meant to serve as an embargo for parties and counsel to file election suits but it serves to deter unserious litigants and counsel from wasting the time of the Court. As held earlier, suits brought within the narrow confines of acceptable pre-election matters can be entertained by the Court therefore not subject to sanctions. Provided counsel and litigants and counsel file the proper suit, I see no reason why section 83 (6) (b) should apply to them.

On the issue of the minimum amount of costs mentioned in section 83 (6) (b) of the Electoral Act 2026, I must say that the power to access costs is inherent and discretionary to the Court and this discretion must be exercised judicially and judiciously.

In **NNPC v. CLIFCO NIG. LTD (2011) LPELR-2022(SC)**, the Supreme Court held:

> ***"The award of cost is entirely at the discretion of the court, costs follow the event in Litigation. It follows that a successful party is entitled to costs unless there are special reasons why he should be deprived of his entitlement. In making an award of costs the court must act judiciously and judicially. That is to say with correct and convincing reasons."***

In **GREENFIELD ASSETS LTD v. RENOCON PROPERTY DEVELOPMENT LTD (2026) LPELR-83712(CA)** it was held:

> *"The rationale for the award of cost stated by the Court in JALBAIT VENTURES (NIG) LTD & ANOR V. UNITY BANK (2016) LPELR-41625(CA) as follows: "The law is that costs follow events and a successful party is entitled to cost which he should not be deprived of except for a good or special reason... The whole essence of awarding cost is to compensate or indemnify the successful party for the cost incurred in the litigation. It is neither intended as a bonus to the successful party nor cure all the financial loss sustained in litigation. It is also not awarded on sentiments or to punish the loser of the case... The award of cost is a matter of discretion for the Court subject only to the fact that it is seen to have been so exercised both judicially and judiciously. Although there are no universal tables for fixing cost or any statutory or even regulatory tariffs available to the Courts as guides, the Courts are enjoined to be reasonable in the assessment of cost"*

Kindly see also **NPGMCN v. ABU (2025) LPELR-81639(CA); ADIKE & ANOR v. ADIKE (2023) LPELR-61495(CA)**

The fixing of a minimum fine of N10,000,000.00 on Counsel and Claimant to the mind of this Court interferes with the discretion of the Court. The Court cannot be limited or constrained regarding the costs to be imposed on erring parties. In determining or assessing the quantum of costs, the Court must consider each case individually to determine which is the appropriate costs to impose. After all, it is the Court itself that would determine if the case is frivolous or not. The Legislature therefore lacks the powers to fetter the discretion of the Court in the award of costs on erring litigants. It is the sole duty of the Court to do so provided the discretion is exercised judicially and judiciously.

The Supreme Court in **NIGERIAN BANK FOR COMMERCE & INDUSTRY & ANOR v. ALFIJIR (MINING) (NIG) LTD (1999) LPELR-2015(SC)** echoed this when it held:

> ***"...It is trite law that a court has an absolute and unfettered discretion to award or refuse costs in any particular case but that discretion must be exercised judicially and judiciously"***

The Court of Appeal also in **SDP v. INEC & ORS (2026) LPELR-83502(CA)** held:

> ***"The award of costs is at the discretion of the Court, which discretion extends not only to the party who should pay but also***

to the quantum of the costs to be paid and the amount of costs in this respect, shall be determined summarily by the Judge at the time of judgment or making the order. In fixing the amount payable as costs, the guiding principle to be observed as provided in the rule, is that the party who is right or successful, should be indemnified or compensated for his expenses to which he has been put in the course of establishing his claim as in this case, where the respondents succeeded in the lower Court. The Court in so doing, may also take into consideration the surrounding circumstances of the case. Costs are not supposed to be punitive or excessive as they are meant only to indemnify a successful party to the extent of his being justified and damnified. Again, since the award of costs is at the discretion of the Court, like every discretion, the Court is expected to act judicially and judiciously in such exercise of discretion"

From the above decisions, this Court will not allow judicial discretion in awarding costs or determining of penalty or default fees in civil proceedings to be fettered by an Act of the National Assembly.

Costs, penalties and default fees in civil proceedings are different from fines as a result of criminal convictions as a result of commission of an offence contrary to any Act establishing the offence. The National

Assembly is well empowered to prescribe fines as punishment for an offence. However, the issue of costs, penalties and default fees in this context are imposed not as a result of criminal offence but in civil proceedings which the Heads of Court have the powers to regulate under the enabling provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). These Rules of Court or Practice Directions made by the Chief Judge of each Court or the President of the Court of Appeal are subsidiary legislations which draw their validity from the Constitution of the Federal Republic of Nigeria 1999 (as amended).

This Court will judiciously and jealously guard its powers in awarding costs. Consequently, I hold that section 83 (6) (b) of the Electoral Act 2026 with respect to fixing a minimum cost of N10,000,000.00 each on Counsel and Claimant in matters bordering on internal affairs of political parties is invalid as it infringes on the discretion of the Court to award costs. The National Assembly overstepped its bounds by prescribing a minimum amount for costs to be imposed by the Court. at best that duty is that of the Chief Judge of the Federal High Court to make Rules outlining how costs is to be imposed as sanctions and not for the National Assembly to arrogate to itself the powers it lacked. The award of costs after judgment is delivered is part of the proceedings of the Court. this can only be regulated by the Rules of the Court or Practice Directions which are within the powers of the Chief Judge of the Federal High Court to issue by virtue of section 254 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Court is therefore not bound by that provision and it will assess Costs on a case-by-case basis and will assess costs to whatever amount it deems acceptable or prescribed by the Rules of Court if any.

With respect to whether the Independent National Electoral Commission is entitled to be paid costs seeing that it is funded from the National budget. I must say that the argument of Claimant's counsel on this point is misconceived. Section 83 (6) (b) of the Electoral Act 2026 does not command that the costs to be imposed by the Court be paid to the Independent National Electoral Commission. I will reproduce the said section hereunder:

> ***"(b) the Court shall, at the conclusion of the matter, impose costs of not less than ₦10,000,000.00 on the counsel who filed the action and not less than ₦10,000,000.00 on the Claimant/Applicant and in addition to payment to the Commission of any cost, including solicitors' fees incurred by it where joined as a party."***

A look at the above provision shows that costs is not to be paid to the Independent National Electoral Commission except where it is joined as a party and the Court assesses costs based on expenses incurred especially where it asks for costs. In all other cases the cost to be paid will be paid to the Court. It is not in all cases that the Independent National Electoral Commission will be a party. In some cases, it is between members of the same party or a political party and a member. In such instances costs cannot be paid to the Commission where the Court determines the suit to be frivolous. Also, the successful party may not ask for costs but since the law makes it mandatory that costs be paid regardless of any request by the successful party such costs are paid to the Court. I therefore hold that the intention of section 83 (6) (b) of the Electoral Act 2026 is that costs assessed by the Court be paid to the Court. The Court also has discretion to award costs to the Independent National Electoral Commission where it is joined as a party in the suit.

I must also say that awarding costs to the Independent National Electoral Commission where it is joined as a party is to indemnify it of the costs incurred in defending the suit.

In **SEVEN-UP BOTTLING CO. LTD v. SIFOR LTD & ORS (2025) LPELR-80443(CA)** it was held:

"It is also a settled principle of law that the successful party is entitled to the award of cost to compensate him for the expenses he incurred in the litigation and on loss of time, and the successful party can only be deprived of this entitlement for good reason(s)."

The mere fact that the Commission has funds budgeted for its operations does not stop it from being entitled to costs. Budgetary allocations are made months before these expenses are incurred and there is no way to know how steep its financial obligations might be. This Court is aware that the Independent National Electoral Commission is one of the government bodies that is sued the most in Nigeria. This means it has to engage a lot of legal practitioners as outside counsel to represent it. These are huge expenses which the budget may not fully cater for. Awarding costs for expenses incurred, indemnifies it and discourages future frivolous suits from being filed against it. I therefore hold that the Independent National Electoral Commission is entitled to be indemnified of costs where it is joined as a party in an election related suit.

In final analysis, the case of the Claimant succeeds in part. Consequently, it is hereby ordered as follows:

1. A DECLARATION OF THIS HONOURABLE COURT IS HEREBY MADE THAT pursuant to the principle of separation of powers preserved under Sections 4, 5, 6(6)(b), 253, and 254 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the legislative powers of the 2nd Defendant do not extend to the exercise of discretionary power of a Judge of the Federal High Court, which are exclusively regulated under Sections 6(6)(b), 253, and 254, and, consistent with the Constitution, only the Chief Judge of the Federal High Court is empowered to make Rules of Court or Practice Directions governing the award of costs in proceedings before the Federal High Court, such that any legislative attempt by the 2nd Defendant to fix or limit such costs, including Section 83(6)(b) of the Electoral Act 2026 in favour of the 1st Defendant (who is entitled to yearly budgetary allocations for all its litigation cases). constitutes an unconstitutional derogation of the Court's inherent judicial power and is therefore null, void, and of no effect to the extent of the inconsistency.
2. A DECLARATION OF THIS HONOURABLE COURT IS HEREBY MADE THAT Section 83(6) (b) of the Electoral Act 2026 enacted by the National Assembly unlawfully fetters the discretionary powers of a Judge of the Federal High Court, interferes with the

constitutional duty and functions of the judiciary, thereby constitutes an unconstitutional intrusion into judicial proceedings, and is contrary to Sections 4, 5, and 6 of the Constitution, which collectively preserve the separation of powers between the legislature, executive, and judiciary.

J.K. OMOTOSHO
Judge
23/7/2026

Appearances

Christian Nduka Esq. (Plaintiff) appears in person

A.I Lemu SAN with Augustine Obinna Onu Esq., L.E Nyibian Esq., and S.A Nna Esq- for the 1st Defendant

Tolulope Asuni Esq.- for the 2nd Defendant

Emono Bwacha Esq.- for the 3rd Defendant