

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE YENAGOA JUDICIAL DIVISION
HOLDEN AT YENAGOA
ON FRIDAY THE 27TH DAY OF MAY, 2022
BEFORE HIS LORDSHIP HON. JUSTICE ISA H. DASHEN
(PRESIDING JUDGE)

SUIT NO. FHC/YNG/CS/86/2022

BETWEEN:

1. ANDY SOLOMON 1ST PLAINTIFF

2. IDIBIYE ABRAHAM 2ND PLAINTIFF

AND

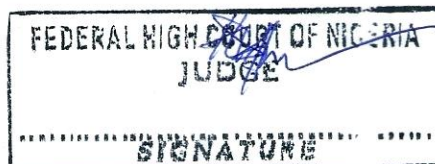
**1. DR. GOODLUCK EBELE
JONATHAN, GCFR 1ST DEFENDANT**

**2. ALL PROGRESSIVE CONGRESS
(APC) 2ND DEFENDANT**

**3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
(I.N.E.C) 3RD DEFENDANT**

JUDGMENT

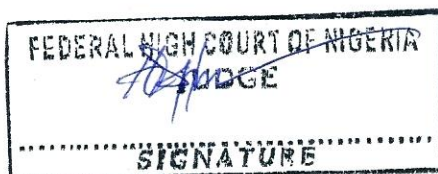
By an Originating Summons dated **16th day of May, 2022** but filed on **17th day of May, 2022**, the Plaintiffs seeks the determination of the following questions to wit:



1. ***Whether, in view of the provisions of Section 137(1)(b) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as altered) and the fact that the 1st Defendant had earlier been sworn-in as the President of the Federal Republic of Nigeria in 2010 and 2015 respectively, the 1st Defendant is qualified to contest for the office of the President of the Federal Republic of Nigeria in the 2023 General Elections to be organized by the 3rd Defendant”.***

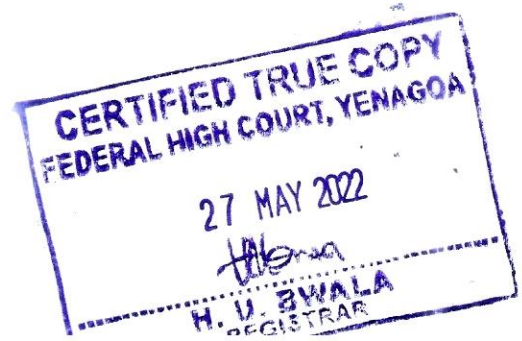
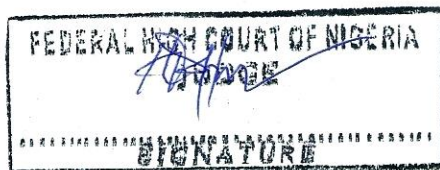
If the answer to (1) above is in the negative, then:

2. ***“Whether the 2nd Defendant is entitled to field the 1st Defendant as its Presidential Candidate in the 2023 General Elections”.***
3. ***“Whether the 3rd Defendant is entitled to disqualify the 1st Defendant from contesting and/or from being presented as the 2nd Defendant Presidential Candidate in the 2023 General Elections”.***



Following the determination of the above questions, the Plaintiff seeks the following reliefs:

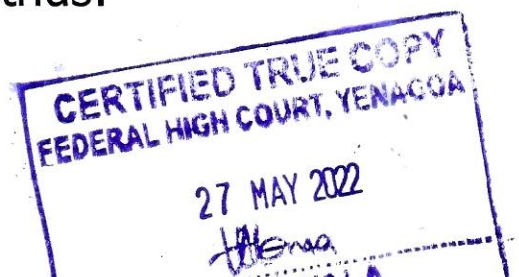
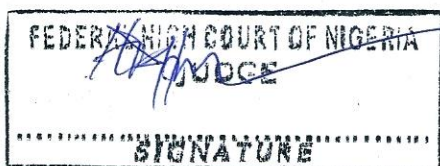
- A. A DECLARATION that, in view of the provisions of Section 137(1)(b) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as altered) and the fact that the 1st Defendant had earlier been sworn- in as the President of the Federal Republic of Nigeria in 2010 and 2015 respectively, the 1st Defendant is disqualified from contesting for the office of the President of the Federal Republic of Nigeria in the 2023 General Elections.**
- B. A DECLARATION that the 2nd Defendant is entitled to disqualify the 1st Defendant from participating in its Primary Elections or any other selection process(es) for the determination of the 2nd Defendant's Presidential Candidate for the 2023 General Elections.**



- (1) A copy of membership card of the 2nd Defendant APC (Exhibit "A").***
- (2) A copy of permanent Voters Card issued by the 3^d Defendant (Exhibit "B").***
- (3) Copies of newspaper print out confirming the facts deposed above (Exhibit "C").***

Also filed is an Affidavit of Extreme urgency of 7 paragraphs deposed to by **ANDY SOLOMON** on **17/05/2022**. Equally filed is Affidavit of Non-Multiplicity of action deposed to by the said 1st Plaintiff **ANDY SOLOMON** on **17/05/2022**.

In addition to the above Affidavit and the accompanying documentary evidence (Exhibits) filed and in compliance with the rules of this Court, a Written Address dated **16/05/2022** and filed on the **17/05/2022** in which Learned Counsel **SEIGHA EGBUWABI ESQ., with ROBINSON TIMIMINEWEI MAXWELL ESQ.,** formulated a sole issue for determination of this Honourable Court thus:

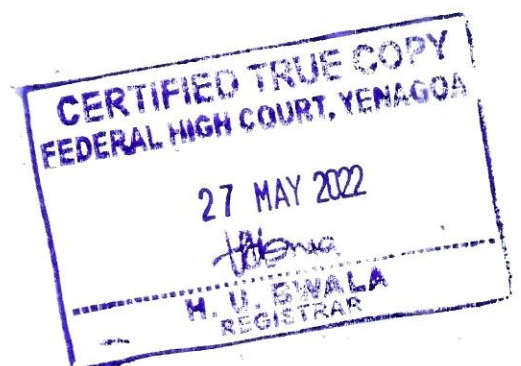
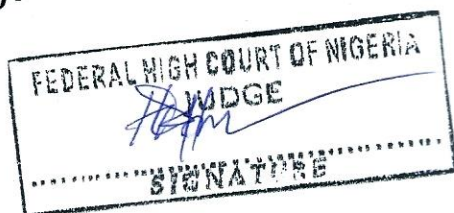


C. A DECLARATION that, the 3^d Defendant is entitled to disqualify the 1st Defendant from contesting and/or from being presented as a candidate for election into the office of President of the Federal Republic of Nigeria at the 2023 General Elections.

D. AN ORDER restraining the 2nd and 3^d Defendants from nominating and accepting the nomination of the 1st Defendant respectively, as the Presidential Candidate of the 2nd Defendant for the 2023 General election.

E. Any other reliefs.

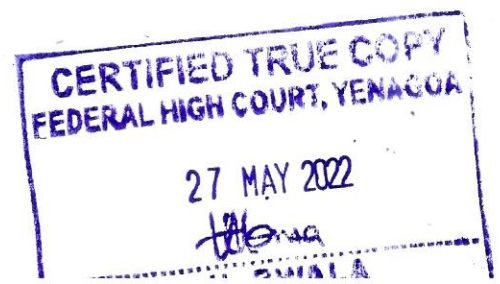
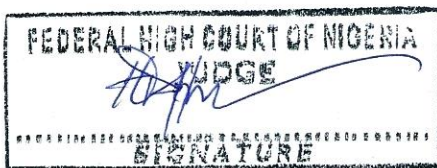
In support of the Originating Summons was a 8 paragraphs Affidavit deposed to by the 1st Plaintiff **ANDY SOLOMON** on **17/05/2022** to which were **annexed three (3) Exhibits "A", "B" and "C"** respectively consisting:



"Whether in view of the provisions of Section 137(1)(b) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as altered) and the fact that the 1st Defendant had earlier been sworn-in as the President of the Federal Republic of Nigeria in 2010 and 2015 respectively, the 1st Defendant is qualify to conduct for the office of the President of the Federal Republic of Nigeria in the 2023 General Elections".

Upon service with the Plaintiffs Originating processes, the 1st Defendant filed a number of processes in reaction thereto.

First was a Counter Affidavit of 13 paragraphs deposed to by ***ENGR. PELETIRI JOHN DEBETIMI on 19/05/2022*** attached with a lone exhibit marked as ***Exhibit EKOI (i.e "Exhibit A")*** a copy of the official Gazette of the Federal Republic of Nigeria containing the



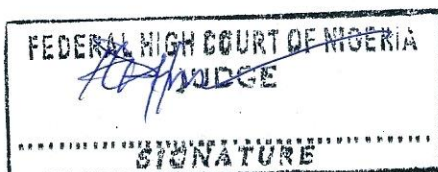
said Alteration to the Constitution referred to as (***Exhibit 'A'***).

Also filed in compliance is a Written Address dated and filed on the ***19/05/2022*** in which the Learned Counsel to the 1st Defendant ***ERIC K OMARE ESQ.,*** did not formulate issues but argued on the issues raised in the Plaintiffs Originating Summons.

Also upon being served with the Counter Affidavit of the 1st Defendant, the Plaintiffs did not filed any further processes in reaction. According to the Plaintiffs Counsel they do not see anything to react to.

Furthermore, for completeness of record, upon being served with the Plaintiffs Originating Summons, both 2nd and 3rd Defendants did not filed any processes in reaction.

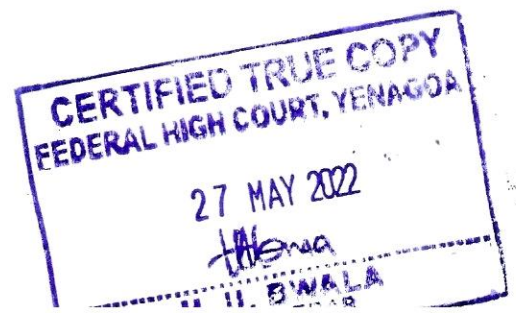
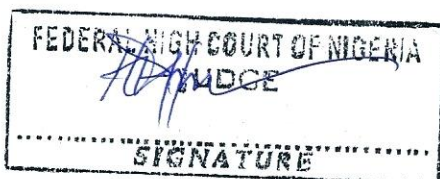
The above represents all the live processes filed for the parties. No processes were filed for the 2nd and 3rd Defendants and they were not also represented by Counsels.



On **25/05/2022**, when the matter came up for adoption and final argument, Learned Counsel for the Plaintiffs **S.A. EGBUWABI ESQ.,** and for the 1st Defendant **ERIC .K. OMARE ESQ.,** adopted their processes in respect of the substantive suit, as earlier itemized, adumbrated on same and urged the Court to resolve the suit in favour of the parties that they represent. For the avoidance of doubt, the 2nd and 3rd Defendants and/or their Counsels having not filed any processes or having filed no papers, restate the 2nd and 3rd Defendants neutrality and disposition to abide by the ultimate decision of the Court.

BACKGROUND FACTS OF THE CASE

The facts of this case, as can be gleaned from the Plaintiffs Affidavit in support of the Originating Summons, is summarized below. AS earlier stated, the supporting Affidavit of the Originating Summons is of 21 paragraphs and deposed to by the 1st Plaintiff, **ANDY SOLOMON** on the **17th of May, 2022.**



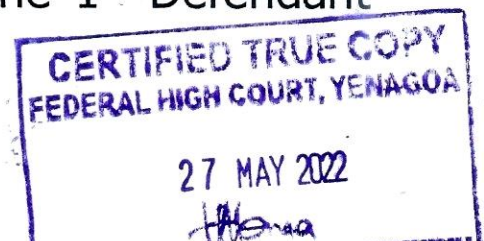
From the said supporting Affidavit, the Plaintiffs disclosed that they are card carrying members of the 2nd Defendant and Citizens of the Federal Republic of Nigeria. As proof of their claims, the Plaintiffs attached their membership cards of the 2nd Defendant as ***Exhibit A***. The Plaintiffs also attached their Permanent Voters Cards issued to them by the 3rd Defendant as ***Exhibit B***. The Plaintiffs further stated that following their vested interest as Nigerian Citizens and their membership of the 2nd Defendant, they have the requisite right to commence this suit.

The grouse of the Plaintiffs, disclosed in their Affidavit, is that, despite the fact that the 1st Defendant had been elected and sworn-in into the office of the President of the Federal Republic of Nigeria on Two (2) previous occasions, to wit:

- (i) ***On 6th May, 2010 and he held this office till 29th May, 2011 and***
- (ii) ***On 29th May, 2011 till 29th May, 2015.***

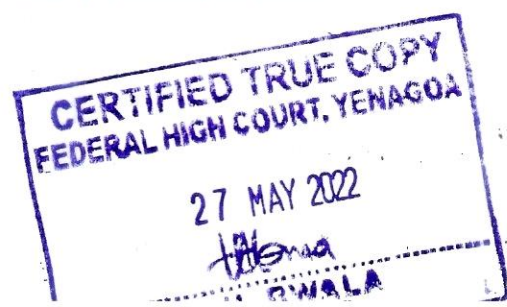


The 2nd Defendant is being rumoured (and as reported in national dailies) to be nursing the intention of contesting for the Office of the President of the Federal Republic of Nigeria in the 2023 General Elections and has purchased the 2nd Defendant's Presidential Nomination and Expression of Interest Form. In support of this deposition, the Plaintiffs attached newspaper print-outs from Punch Newspaper of 28th April, 2022 as well as ThisDay Newspaper of 10th and 11th May, 2022 as ***Exhibits C and D*** respectively. The Plaintiffs stated that, by virtue of the provisions of ***Section 137(1)(b) and (3)*** of the 4th Alteration to the Constitution of the Federal Republic of Nigeria, 1999, a person who has been elected or sworn into the Office of the President of the Federal Republic of Nigeria on two (2) previous occasions is disqualified from contesting and/or being presented for elections for the Office of President. They also stated that by the provisions of ***Section 137(3)*** of the 4th Alteration to the Constitution, a person who was sworn-in to complete the term of an elected President (such as the 1st Defendant



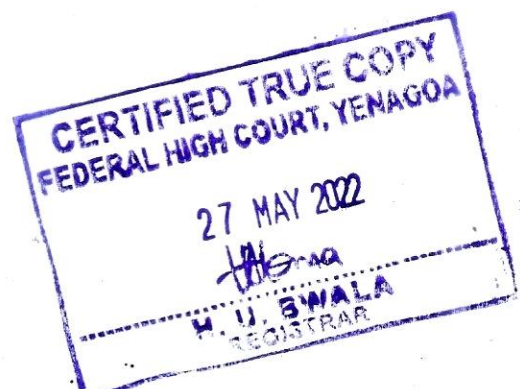
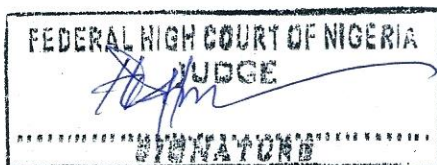
herein) shall not be elected into such office for more than a single term. It is on these bases that the Plaintiffs assert that the 1st Defendant is disqualified to contest for the Office of the Federal Republic of Nigeria having on two (2) previous occasions been elected into and sworn-in into that office. It is also on the basis of the foregoing that the Plaintiffs claim that the 2nd and 3rd Defendants are not entitled to either present him as their candidate for election into the Office of President or accept his nomination as the candidate for the said office in the 2023 General Elections.

The Plaintiffs further averred that it would be in the interest of the 2nd Defendant (of which they are members) and themselves for the 2nd Defendant to choose the 1st Defendant as its Presidential Candidate and/or nominate the 1st Defendant to the 3rd Defendant as its Presidential Candidate for the 2023 General Elections, The Plaintiffs stated that the choice and/or nomination of the 3rd Defendant, by the 2nd Defendant, as its Presidential



Candidate will diminish the chances of success of the 2nd Defendant in the said polls.

Due to the sensitive nature of this case, the Plaintiffs' approached this Court with a ***Motion Exparte*** dated 16th May, 2022 praying for an order for accelerated hearing of this suit and abridgment of time within which the Defendants are to file their respective counter-affidavits and Written Addresses in response to the Originating Summons. Having convinced this Court of the expediency of the prayers sought, this Court heard and granted the said Motion Ex-parte on 17th May, 2022 and abridged time for the Defendants to react to the Originating Summons within Five (5) days of being served with the Plaintiffs' Originating Summons. It was also Ordered that the originating processes be served on the Defendant together with the Enrolled Order abridging time, in the interest of justice and fair hearing.



1ST DEFENDANT'S RESPONSE

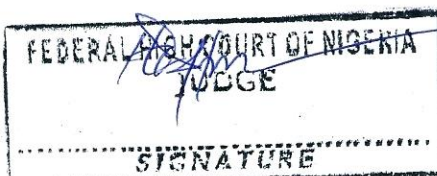
Upon being served with the Plaintiffs' originating processes, the 1st Defendant, through his Counsel, E.K. Ornare & Co. filed his Counter-Affidavit and Written Address both of which are dated **19th May, 2022**. The 1st Defendant's Counter-Affidavit is of Twelve (12) paragraphs and is deposed to by one **Engr. Peletiri John Debetimi** who described himself as an Assistant to the 1st Defendant. One (1) exhibit marked as **Exhibit EK01 (i.e 'Exhibit A')** was annexed to the said Counter-Affidavit. **Exhibit EK01 (i.e 'Exhibit A')** is a copy of the Official Gazette containing the 4th Alteration to the Constitution of the Federal Republic of Nigeria, 1999.

In summary, the 1st Defendant's response, as stated in his Counter-Affidavit, is that he has never been "**elected**" into the Office of the President of the Federal Republic of Nigeria on Two (2) previous occasions. The 1st Defendant stated that, the oath of office he took on the 6th of May, 2010 was taken upon his "**Election**" as President of the Federal Republic of Nigeria. The 1st



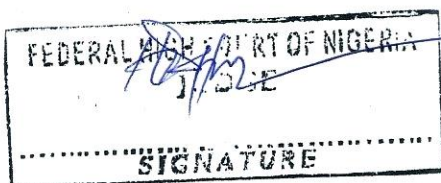
Defendant further asserted that he took the said oath to complete the aborted tenure of the late President Umar Yar'adua. The 1st Defendant referred the Court to the decision of the Court of Appeal in the case of ***CYRIACUS NJOKU VS. GOODLUCK EBELE JONATHAN (2015) LPELR-24496*** wherein the Court of Appeal held that the oath of office he took on 6th May, 2010 cannot be taken into account in the interpretation of the provisions of ***Section 137(1) (b) of the Constitution***. The 1st Defendant, thereafter, stated that he has only been elected to the Office of President once and in year 2011.

With respect to the provisions of ***Section 137(3) of the Constitution***, the 1st Defendant stated that from ***Exhibit EKOI (i.e "Exhibit A")*** (i.e. the Official Gazette of the 4th Alteration of the Constitution), the "Commencement" date of the said amendment to the provisions of ***Section 137 of the Constitution*** therein contained is said to be ***"7th Day of June, 2018"***. Therefore, the 1st Defendant contended that the amendment introduced by ***sub-section (3) of Section***



137 of the Constitution came into effect and became operational from **7th June, 2018**. On the basis of the foregoing, the Defendant contended that since he took the first oath of office as President in year 2010 and the second oath of office in years 2011 respectively, the 4th Alteration of the Constitution which took effect from **7th June, 2018** cannot be applied retrospectively to prevent him from exercising his right to contest for the Office of President of the Federal Republic of Nigeria, which said right accrued to him since **year 2015** before the 4th Alteration to the Constitution was effected.

In his written address, the 1st Defendant formulated three (3) questions for the determination of this Court. Whilst the 1st Defendant adopted questions 2 and 3 submitted by the Plaintiffs, he re-phrased question 1 submitted by the Plaintiffs. Therefore, the questions submitted by the Plaintiffs and the 1st Defendant are congruent and are not substantially different. The questions submitted by the 1st Defendant read as follows:



1. Whether in view of the provisions of:

- a. Section 137(1)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered); and**
- b. Section 137 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) (as contained in the 4th Alteration (No.16) Act 2017), the 1st Defendant is qualified to contest for the office of the President of the Federal Republic of Nigeria in the 2023 General Elections.**

If the answer to 1 above is in the affirmative, then:

- 2. Whether the 2nd Defendant is entitled to field the 1st Defendant as its presidential candidate in the 2023 General Elections.**
- 3. Whether the 3rd Defendant is entitled to disqualify the 1st Defendant from contesting and/or from being presented as the**

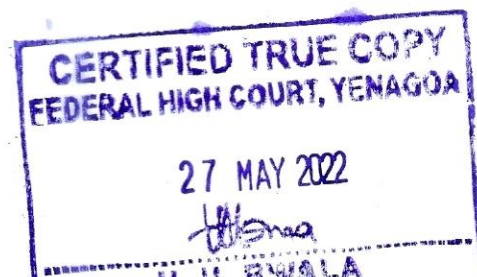
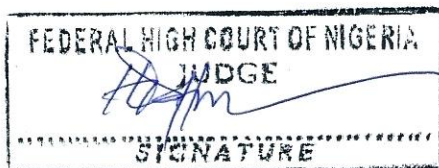


2nd Defendant's presidential candidate in the 2023 General Elections."

Again, at paragraphs 4.00 — 4.05 of his written address, the 1st Defendant raised a Preliminary Point challenging the locus standi of the Plaintiffs to institute the instant suit. I shall deal with this preliminary point whilst considering the substantive Originating Summons.

On the basis of the foregoing, the 1st Defendant asserted that he is eminently qualified to contest for and/or nominated for election into the Office of the President of the Federal Republic of Nigeria. The 1st Defendant therefore urge the Court to discountenance the Plaintiffs' contentions and answer the questions submitted in the Originating Summons in his favour and against the Plaintiffs and refuse the reliefs sought for by the Plaintiffs.

As earlier stated, both 2nd and 3rd Defendants did not filed any processes in response or reaction thereto despite service of the Originating process on them.



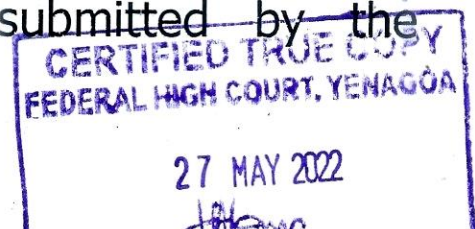
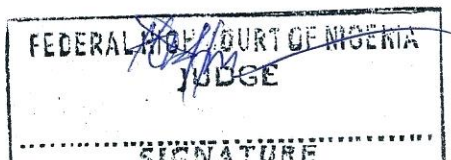
In the locus classicus case of ***OYEYIPO VS OYINLOYE (1987) 1 NWLR (Part 50) 350***. The Apex Court held thus:

A Defendant who fails to enter appearance or file Counter Affidavit in response to the averments in support of the Originating Summons would be presumed to have Demurred and admitted the facts deposed to in the Affidavit filed in support Originating Summons.

See the recent case of ***FUTMINA & ORS VS OLUTAYO (2017) LPELR- 43827 (SC)*** and ***CHEVRON (NIG) LTD VS IMO STATE HOUSE OF ASSEMBLY & ORS (2016) LPELR- 41563 (CA)*** where the Appellate Courts confirmed the above position.

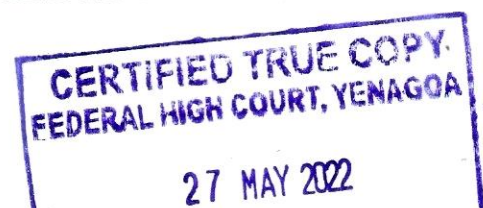
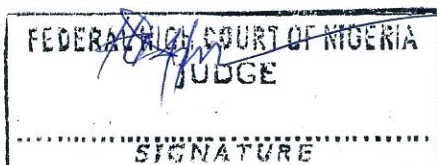
RESOLUTION OF QUESTIONS SUBMITTED FOR DETERMINATION

I have taken a global view of the processes filed by all the parties as stated above. I have also looked at all the questions/issues for determination submitted by the



parties, as set out above. I am of the considered view that the questions submitted by the Plaintiffs sufficiently covers the issues in contention between the parties in this suit. I therefore adopt the Plaintiffs' questions formulated by the Plaintiffs in determining this suit.

Before I delve into the consideration and resolution of these questions, it is necessary to deal with the Preliminary point raised by the 1st Defendant in his written address, The crux of the 1st Defendant's Preliminary Point is that, the Plaintiffs lack the requisite locus standi to institute and maintain this suit because they did not show sufficient personal interest in the subject matter of the suit or the personal benefit they stand to derive from the determination of the questions and the reliefs sought, to ground their complaints in this suit. In support of this contention, the 1st Defendant relied on the decisions in the cases of ***ANOZIA VS. AG. LAGOS STATE (2012) 15 NWLR (PT. 1216) 207 at 234, A.G.CROSS RIVER STATE vs. FRN (2019) 10 NWLR (Pt 1681) 401 at 439 and ADESANYA VS. THE PRESIDENT OF THE***

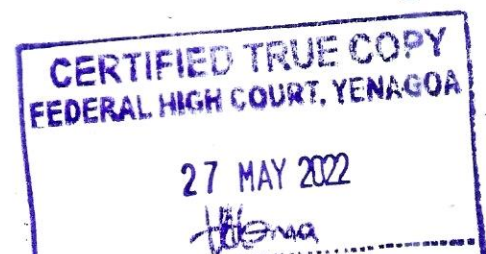
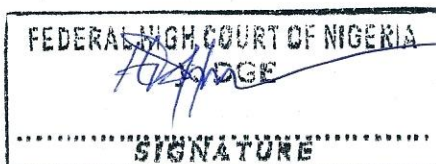


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SC 112. The 1st Defendant contended that since the complaints of the Plaintiffs in this case is not that any of their vested rights have been infringed, the Plaintiffs lack the locus standi to institute and/or maintain this suit.

Further to the above, the 1st Defendant argued that, it is only a political party, such as the 2nd Defendant who has the sole prerogative of nominating candidates for election into political offices that can complain about the disqualification of its candidates. Individual members of the party, such as the Plaintiffs, cannot complain about the choice of a candidate by their party. The 1st Defendant relied on the decision in ***P.D.P vs. Sylva (2012) 13 NWLR (Pt. 1316) 85 at 146*** in support of this contention.

The 1st Defendant thereafter concluded that, in the event that this Court agrees with its contention that the Plaintiffs lack the locus standi to commence and maintain this suit, the appropriate order to make is that of striking

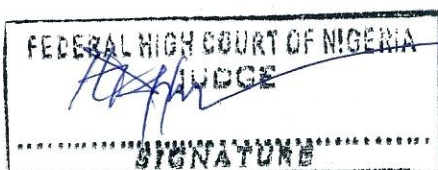


out the suit for want of jurisdiction since lack of locus standi is a jurisdictional issue. The 1st Defendant placed reliance on the case of ***OPOBIYI & ANOR VS. LAYIWOLA MUNIRA (2011) LPELR-8232 (SC)***.

The Plaintiffs did not file any Reply Affidavit and Reply on Points of Law to join issues with the 1st Defendant on his Preliminary Point.

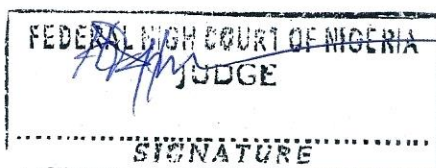
RESOLUTION OF PRELIMINARY POINT

Although the Plaintiffs did not join issues with the 1st Defendant on his Preliminary Point, this Court shall proceed to consider and determine same on the merits. The position of the law is quite established that, failure to file a defence or response to a point does not guarantee the automatic success of such point. The position taken by this Court finds support in the fact that the issue of locus standi is not an issue of fact *simpliciter* which places a burden on a party against which factual allegations have been made to refute same and place contrary facts before the court, or run the risk of the Court believing and



entering judgment on the facts placed before it. *Locus standi* however, is an issue of mixed law and facts. Therefore, in determining such an issue, the Court has a duty to consider not only the facts before it but also the position of the law in relation to such facts. ***See: A.G. CROSS RIVER STATE VS. F.R.N & ANOR. (Supra) at 439.*** I shall now proceed to determine the merits or otherwise of the 1st Defendant's Preliminary Point.

The 1st Defendant's preliminary point raises the sole of issue of locus standi of the Plaintiffs to institute and maintain this suit against the Defendants. Locus standi is of common law provenance. In ***ADESANYA VS. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & ANOR. (Supra)***, the Supreme Court, ***per FATAI-WILLIAMS, C.J.N***, defined locus standi as the "...***capacity to institute proceedings in a Court of Law. It is used interchangeably with terms like "standing" of "title to sue"***. See also: ***THOMAS VS. OLUFOSOYC (1986) 1 WWLR (Pt. 18) 669 at 685.*** In Nigeria, the Constitutional justification for the application

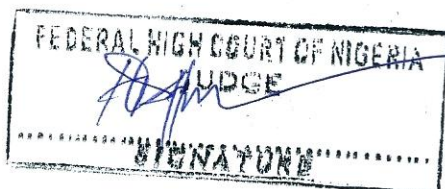


of the principle of locus standi is found in ***Section 6(6)(b) of the 1999 Constitution (as amended)*** which give the right of access to Courts to citizens of this country for the ***"determination of any question as to the civil rights and obligations of that person"***.

Now, the Plaintiffs in this stated the different but cumulative capacities in which they filed this suit. They stated, at ***paragraphs 1, 2, 3, 4, 17 and 19*** of their Affidavit in support of the Originating Summons that, they are:

- i. Citizens of the Federal Republic of Nigeria;***
- ii. Members of the 2nd Defendant (i.e. the All Progressives Congress); and***
- iii. Eligible voters, duly registered with the 3rd Defendant (i.e. the Independent National Electoral Commission).***

I have carefully perused the Counter-Affidavit filed by the 1st Defendant in opposition of the Originating Summons and I do not see where the 1st Defendant denied the fact that the Plaintiffs hold the above-listed capacities.

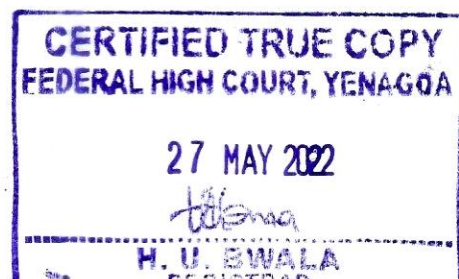
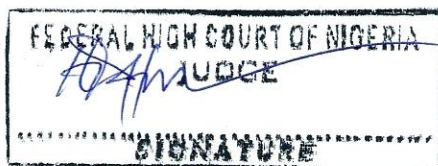


Since the position of the law is that facts not denied are deemed admitted. I, therefore, find that the Plaintiffs, indeed, are citizens of the Federal Republic of Nigeria, members of the 2nd Defendant and registered voters with the 3rd Defendant. And I so hold.

The question that arises, therefore, is whether the Plaintiffs have disclosed sufficient interest in subject matter they have submitted to this Court for adjudication to vest them with locus standi to institute and maintain this suit.

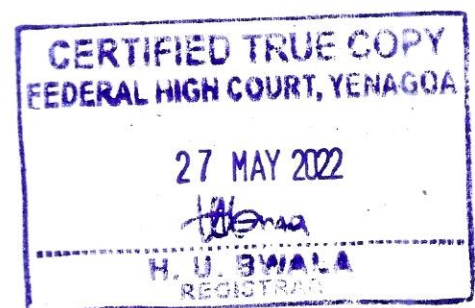
The 1st Defendant has anchored his challenge of the Plaintiffs' *locus standi* to commence this suit on two grounds, vis:

i. The failure of the Plaintiffs to disclose what "personal interest" or "benefit" the success of this suit will confer on them AND/OR what "personal right" of the Plaintiffs have been infringed upon or is about to be infringed upon; and



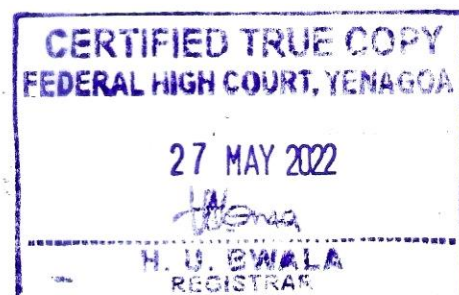
ii. That the right to choose and present candidates for elections are rights within the exclusive prerogative of the 2nd Defendant and over which no member of a party, such as the Plaintiffs, can challenge. The 1st Defendant argued that this right is non-justiciable and deals with the internal affairs of the 2nd Defendant. The 1st Defendant relied on the decision of the Supreme Court in P.D.P vs. SYLVA (2012) (Supra).

I have had the benefit of reading the decisions in ***ADESANYA VS. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & ANOR. (Supra), THOMAS VS. OLUFOSOYE (1986), FAWEHINMI VS. AKILU (1987) 4 NWLR (Pt. 67) 797 and P.D.P vs. SYLVA (2012)(supra)***, and I know that, when it comes to the application of the principle of locus stand!, the law makes a distinction between three (3) types of cases, to wit:



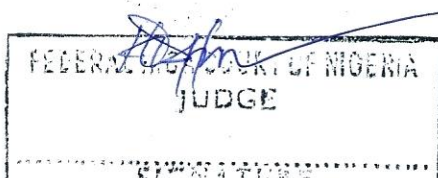
- i. Cases which complain about infractions or impending infractions of the provisions of the Constitution;*
- ii. Civil cases generally; and*
- iii. Criminal cases.*

The application of the principle of locus standi has been whittled down, almost to the extent of inapplicability, in criminal cases by the decision of the Supreme Court in ***FAWEHINMI VS. AKILU (1987)(Supra)***. In that decision, the apex court propounded and applied the "***universal brotherhood***" principle to hold that, Nigeria is an "***extended family***" and that every citizen of Nigeria is a "***brother***" to his fellow citizen irrespective of familial relationship or tribal affiliations. Therefore, every citizen has the right and *locus standi* to "***ensure that all criminals are brought to book***". The Supreme Court per ***NNAMANI, JSC***, aptly captured the position of the Court when he held as follows:



"The statutory right which has been given to every person in Lagos State to initiate criminal proceedings against any suspect(ed) felon, in my view, raises an obligation which falls within the purview of section 6(6)(b) of the Constitution. It is my view that in these matters which are so interlined with the criminal law, our interpretation of section 6(6)(b) of the Constitution must be approached with a true liberal spirit in the interest of society at large. The Appellant has locus standi as any person to make the application he has brought to court, and if all other conditions are fulfilled, to initiate criminal proceedings."

With respect to civil cases, such as the instant suit, it appears to me, and I strongly believe so, that the law distinguishes between cases which complain about an infraction or impending infraction to the provisions of the

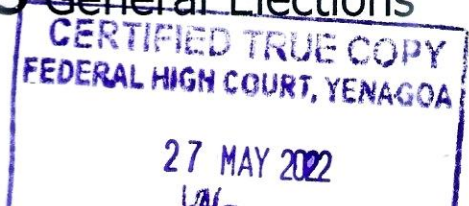


Constitution and those that do not. As a general rule, a plaintiff can only be said to have *locus standi* where he is able to convince the court that:

- i. The actions or acts complained of in the suit infringes, affects or threatens to affect or infringe rights and/or obligations peculiar or personal to him; and/or***
- ii. The actions or acts complained of in the suit has caused him injury.***

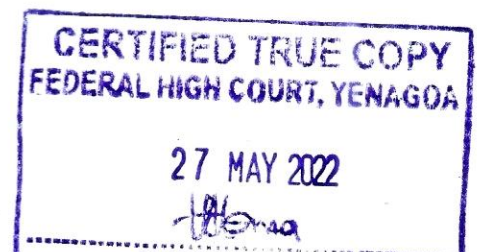
See: ANOZÍA VS. A. G. LAGOS STATE (2012)15 NWLR (PT. 1216) 207 at 234.

I have taken a calm look at the Plaintiffs' affidavit in support of their Originating Summons and I must state that I cannot find where the Plaintiffs disclosed any interest, which is personal to them, which has been infringed or which is threatened with infringement. It is also pertinent to state that, the Plaintiffs failed to disclose any injury which they will personally suffer, if the 1st Defendant contests for the Office of the President of the Federal Republic of Nigeria in the **2023** General Elections



or if the 1st Defendant is nominated, by the 2nd Defendant to the 3rd Defendant, as its presidential candidate for the **2023** General election which of their rights has been or would be violated if the 1st Defendant contests for the Office of the President of the Federal Republic of Nigeria in the **2023** General Elections or is nominated, by the 2nd Defendant to the 3rd Defendant, as its presidential candidate for the **2023** General Elections. The contentions of the Plaintiffs that "it will be antithetical" to their interests if the 1st Defendant contests for the Office of the President of the Federal Republic of Nigeria in the 2023 General Elections or is nominated, by the 2nd Defendant to the 3rd Defendant, as its presidential candidate for the 2023 General Elections, is nebulous, lacking in specificity and unsubstantiated. And I so hold.

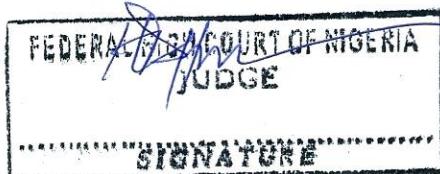
However, as is the case with every general rule, exceptions exist. The exception to this general rule arises when it comes with suits that complain about infractions or impending infractions of the provisions of the Constitution. The position of the law is almost immutable



that, the Constitution represents the collective will of the people. This position is expressed in the Preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), where it was declared as follows: ***"We the people of the Federal Republic of Nigeria:...DO HEREBY make, enact, and give to ourselves the following Constitution:..."***

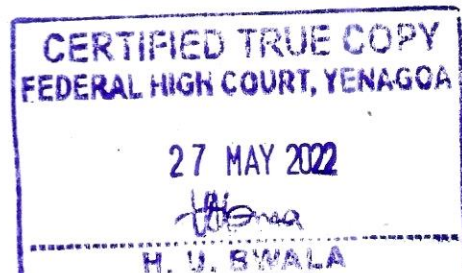
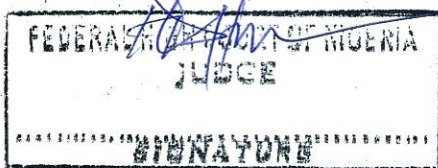
Being the collective will of the people, every citizen of the Federal Republic of Nigeria is vested with the inalienable right as well as the obligation to ensure that the provisions of the Constitution are not infringed or breached. The sentiments of this Court was most eloquently echoed by the Supreme Court in its decision in the case of ***ADESANYA VS. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & ANOR (Supra)*** at 23 and 27, where ***His Lordship, Honourable Justice Fatai-Williams, C.J.N.*** held as follows:

"I take significant cognizance of the fact that Nigeria is a developing country with a



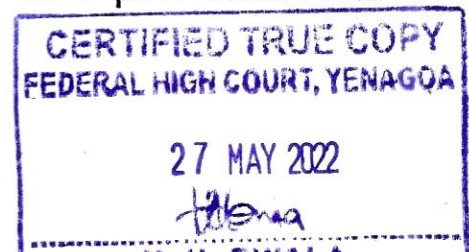
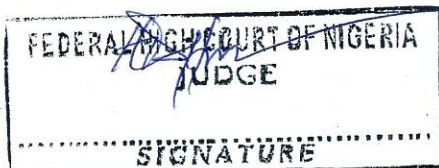
multiethnic society and a written Federal constitution, where rumour-mongering is the pastime of the market places and the construction sites. To deny any member of such a society who is aware or believes, or is led to believe, that there has been an infraction of any of the provisions of our Constitution, or that any law passed by any of our legislative Houses, whether Federal or State ,is Unconstitutional, access to a court of law to air his grievances on the flimsy excuse of lack of sufficient interest is to provide a ready recipe for organized disenchantment with the judicial process.

To my mind, it should be possible for any person who is convinced that there is an infraction of the provisions of Section 1 and 4 of the Constitution which I have enumerated above to be able to go to court and ask for the appropriate declaration and consequential



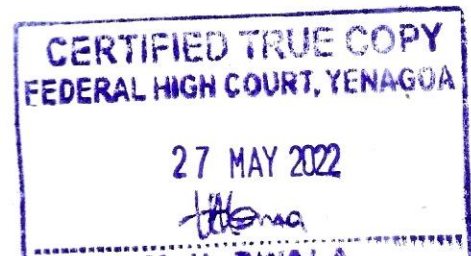
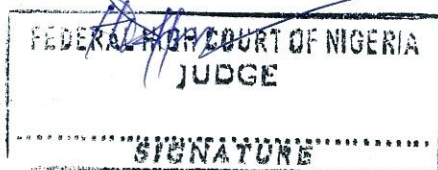
relief if relief is required. In my view, any person, whether he is a citizen of Nigeria or not, who is resident in Nigeria or who is subject to the laws in force in Nigeria, has an obligation to see to it that he is governed by a law which is consistent with the provisions of the Nigerian Constitution. Indeed, it is his civil right to see that this is so. This is because any law that is inconsistent with the provisions of that Constitution is, to the extent of. That inconsistency, null and void by virtue of the provisions of sections 1 and 4 to which I have referred earlier."

In the final analysis, having earlier found and held that the 1st Defendant did not deny the facts that the Plaintiffs are citizens of Nigeria, are duly registered members of the 2nd Defendant and registered voters with the 3rd Defendant, I am constrained to permit the Plaintiffs to air their grievances because their complaints in this case fall squarely within the purview of the provisions of



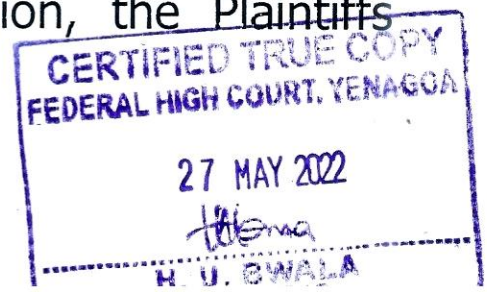
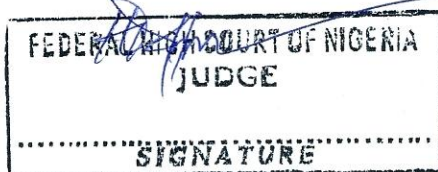
Section 137(1)(b) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered). As have been established above, every citizen of Nigeria has the overriding right, duty and obligation to ensure that, the provisions of the Constitution are not violated. And I so hold.

Before I conclude with the 1st Defendant's Preliminary Point, it is imperative for me to state that, I find no merit in the argument of the 1st Defendant that, the complaint of the Plaintiffs is non-justiciable because it deals with or attempts to meddle with the 2nd Defendant's "internal affairs" and its exclusive right to choose a candidate of its choice for the 2023 General Elections, Whilst I agree with the 1st Defendant that, the 2nd Defendant has the exclusive right and prerogative to choose any candidate of its choice as its flag bearer for the 2023 General Elections, I struggle to agree with him on the purport and intendment of this suit, My understanding of the complaint of the Plaintiffs in this suit is that, by the provisions of **Section 137(1)(b) and (3) of the Constitution**, the 1st Defendant is



disqualified, ab initio, from contesting for the Office of the President of the Federal Republic of Nigeria. I think that the qualification or otherwise of the 1st Defendant comes before his availability to be nominated by the 2nd Defendant. The 1st Defendant must be adjudged to be qualified to contest for the Office of The President before the question of the exclusive right of the 2nd Defendant to nominate him as a candidate for the 2023 General Elections can arise. The qualification of a candidate for the Office of the President of the Federal Republic of Nigeria did not arise in ***P.D.P vs. Sylva (2012) (supra)***. I, therefore, hold that the 1st Defendant's reliance on that case in support of his contentions is misconceived. The 1st Defendant has clearly put the cart before the horse by his arguments. And I so hold.

Following from the foregoing, I hold that having regard to the nature of the complaint and reliefs sought by the Plaintiffs in this suit which complain about the breach or impending breach of the provisions of ***Section 137(1)(b) and (3)*** of the Constitution, the Plaintiffs



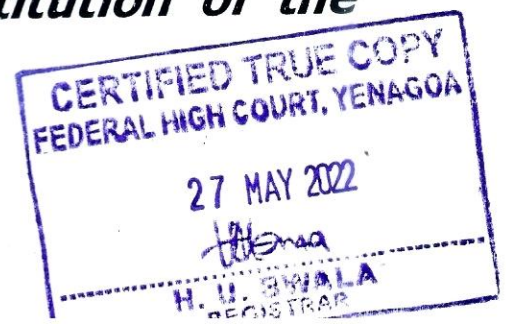
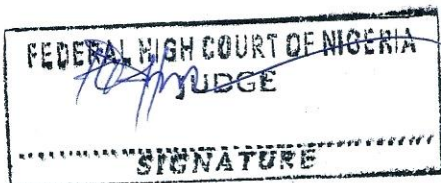
possess the requisite locus standi to institute and maintain this suit, despite the fact that none of their personal rights have been breached and they have not suffered any injury. And I so hold.

Therefore, it is needless to say that the Plaintiff's disagree. The parties are now before this Honourable Court to determine the true position or for resolution of the matter.

RESOLUTION OF QUESTIONS SUBMITTED IN THE ORIGINATING SUMMONS

As I have disclosed above, this Court is of the considered opinion that the questions submitted for determination by the Plaintiffs sufficiently captures the entire sphere of dispute between the parties. The three (3) questions formulated by the Plaintiffs are hereby adopted. The Plaintiffs' questions are reproduced hereunder for ease of reference. They read as follows:

"1 Whether, in view of the provisions of Section 137(1)(b) and (3) of the Constitution of the

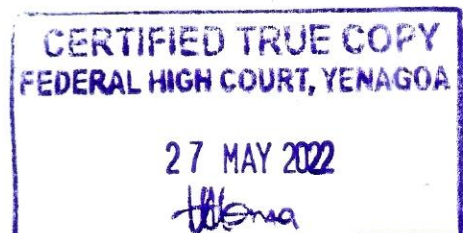


Federal Republic of Nigeria, 1999 (as altered) and the fact that the 1st Defendant had earlier been sworn-in as the President of the Federal Republic of Nigeria in 2010 and 2015 respectively, the 1st Defendant is qualified to contest for the office of the President of the Federal Republic of Nigeria in the 2023 General Elections to be organized by the 3rd Defendant.

If the answer to 1 above is in the negative, then:

- 2. Whether the 2nd Defendant is entitled to field the 1st Defendant as its presidential candidate in the 2023 General Elections.***
- 3. Whether the 3rd Defendant is entitled to disqualify the 1st Defendant from contesting and/or from being presented as the 2nd Defendant's presidential candidate in the 2023 General Elections."***

Before going further, permit me, to note that, Questions 2 and 3 are conditional questions. This is



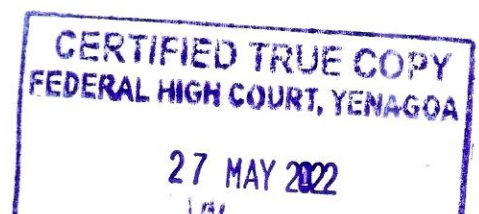
because, their successes are conditional on this Court answering Question 1 in the negative. And I so hold.

I shall, therefore, resolve Question 1 first and, depending on the outcome of such resolution, proceed with the resolution of Questions 2 and 3.

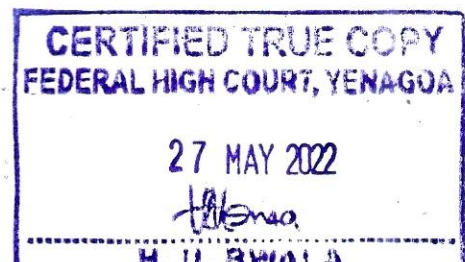
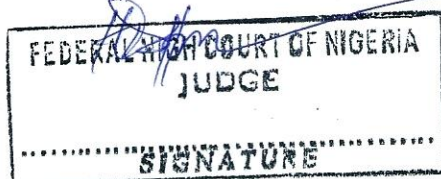
QUESTION I

A cursory look at Question 1 will leave no one in doubt that, the central complaint of the Plaintiffs revolves around the interpretation and effect of the provisions of ***Section 137(1)(b) and (3) of the Constitution*** of the Federal Republic of Nigeria, 1999 (as amended) hereinafter referred to simply as the Constitution.

The contention of the Plaintiffs is that, by the provisions of ***Section 137(1)(b) and (3) of the Constitution***, the 1st Defendant is disqualified from seeking election into the Office of the President of the Federal Republic of Nigeria because he has twice been elected and sworn-in into the said Office. The Plaintiffs contended that, the 1st Defendant sworn-in (or took the

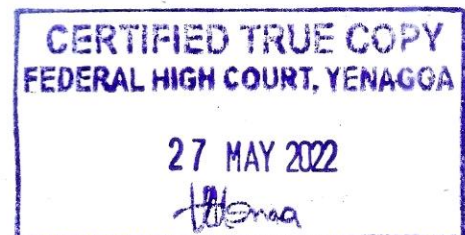
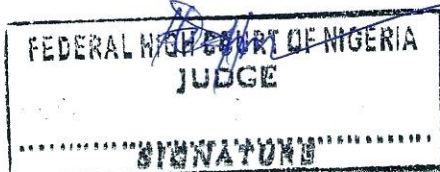


oath of office) as President for the first time on **6th May, 2010** (to complete the term of late President Umaru Musa Yar'adua) and for the second time on **29th May, 2011**. The Plaintiffs argued that by the application of the provisions of **Section 137(1)(b) and (3) of the Constitution**, the 1st Defendant has lost the right to contest for and/or be nominated by the 2nd Defendant as its presidential candidate for the 2023 General Elections. The Plaintiffs, therefore, argued that if the 1st Defendant is allowed to contest or be nominated by the 2nd Defendant as its presidential candidate for the 2023 General Elections, it would be tantamount to the 1st Defendant being elected and/or sworn-in for the third time, which will be in breach of the provisions of **Section 137(i)(b) and (3) of the Constitution**. The Plaintiff urged the Court to apply the literal rule of interpretation in construing the provisions of **Section 137(1)(b) and (3) of the Constitution** and placed reliance on the cases of **CENTER FOR OIL POLLUTION WATCH vs. N.N.P.C. (2019) 5 NWLR (PT. 1666) 518 at 601, TANIMU vs.**



RABLU (2018) 4 NWLR (PT. 1610) 505 at 528 - 529, EJIOFOR vs. OKEKE (2000) 7 NWLR (PT 665) 363 and AG. FEDERATION VS. ABUBAKAR (2007) ALL FWLR (PT. 375) 405 at 548.

In response to the arguments of the Plaintiffs, the 1st Defendant by his written address dated 19th May, 2022, urged the Court to discountenance the entirety of the arguments put forward by the Plaintiffs. The 1st Defendant contended that he has only been elected into the Office of the President of the Federal Republic of Nigeria on one (1) occasion i.e in year 2011. He contended that, he was not **"elected"** into the Office of the President in year 2010. He further contended that, his ascendancy to the Office of President on ***6th May, 2010***, following the demise of late President Umaru Musa Yar'adua was not pursuant to an election but same was by ***"Constitutional appointment...to complete the term of Late President Umaru Yar'adua as the Vice-President."*** The 1st Defendant referred to the decision in the case of ***CYRIACUS NJOKU vs. GOODLUCK EBELE JONATHAN***



(2015) LPELR-24496 (CA) and submitted that the Court of Appeal had determined, in that case, that the oath of office which he took on **6th May, 2010** for the purpose of concluding the term of the Late President Umaru Musa Yar'adua was not as a result of an election as contemplated in **Section 137(1)(b) of the Constitution.**

With respect to the Plaintiffs' arguments on **Section 137(3) of the Constitution**, the 1st Defendant referred the Court to **Exhibit EK01** (wrongly stated to be Exhibit A") which is the Official Gazette of the Federal Republic of Nigeria No. 79, Volume 105 of 2018. **Exhibit EK01 (i.e Exhibit 'A')** contains the 4th Alteration to the Constitution especially the alteration to the provisions of **Section 137** therein. The 1st Defendant argued that by this alteration, a new sub-section (3) was introduced to **Section 137** of the Constitution. The 1st Defendant urged the Court to pay close attention to the "Commencement" date stated in the said exhibit, which reads: **"7th Day of June, 2018"**. The 1st Defendant, therefore, submitted that **sub-section (3)**



of Section 137 took effect, acquired the force of law and became applicable from 7th June, 2018 and not before. The 1st Defendant placed reliance of the Latin maxim ***lex prospicit non respicit*** in arguing that the provisions of **Section 137(3)** of the Constitution cannot be applied retroactively to disqualify the 1st Defendant whose right to run for the Office of President in the **2023** General Elections accrued to him in year 2015. The 1st Defendant further argued that before a law can acquire retrospective effect the legislature must expressly and clearly say so in the said law; retrospective application of laws cannot be conferred by implication or conjecture. In support of his arguments, the 1st Defendant placed reliance on the cases of ***OJOKOLABO vs. ALAMU (1987) LPELR-2393 (SC)***, ***MODU vs. FRN (2015) LPEL R-40471(CA)***, ***OJUKWU vs. OBASANJO (2004) 12 NWLR (PT. 886) 169 at 228***, ***IBRAHIM vs. BARDE (1996) 9 NWLR (PT. 474) 513 at 577***, ***GUSAU vs. A.P.C2 NWLR (PT. 9) 734*** and ***A.G, LAGOS STATE vs. A.G. FEDERATION***



(2003) 12 NWLR (PT. 833)1 at 164 did not enter appearance or file any Counter Affidavit.

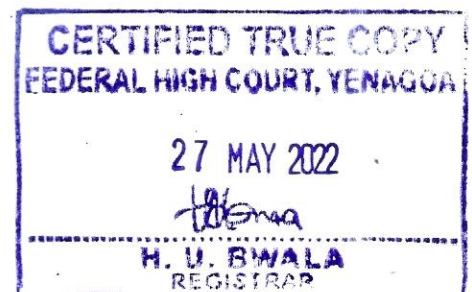
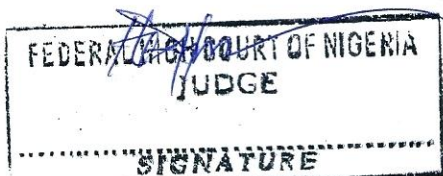
Therefore, since the crux of this arguments put forward by the parties all revolve around the provisions of **Section 137(1)(b) and (3) of the Constitution**, the resolution of the questions submitted for determination must, in my humble opinion, proceed from reproducing the text of **Section 137(1)(b) and (3) of the Constitution**. It reads as follows:

"137 (1) A person shall not be qualified for election to the office of President if—

b) He has been elected to such office at any two previous elections.

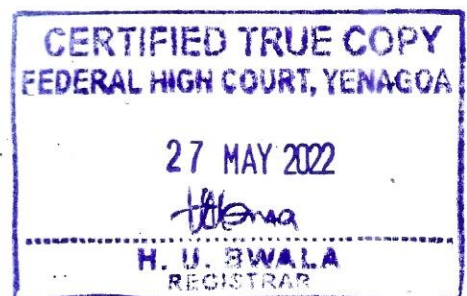
(3) A person who was sworn-in as President to complete the term for which another person was elected as President shall not be elected to such office for more than a single term."

I shall take the provisions of **sub-section (1)(b)** first. This sub-section disqualifies a person who has been



elected into the Office of the President of the Federal Republic of Nigeria in two (2) previous elections from standing for election into the said office for a third time. A calm reading of the sub-section will reveal that, the key word therein is "election". The terms "***election***" has enjoyed judicial interpretation in the case of ***I.N.E.C & ANOR vs. ONYIMBAH ENEKWECHI C. RAY & ANOR (2004) 14 NWLR (PT. 892) 92 at 123***, where the Court of Appeal explained what qualifies as an "election" thus:

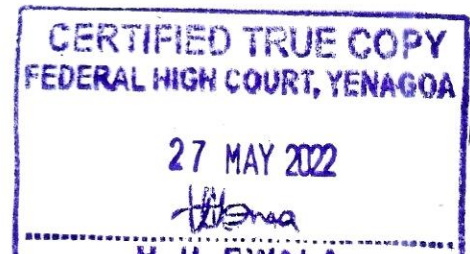
"It is trite law that the concept of "election" denotes a process constituting accreditation, voting, collation, recording on all relevant INEC Forms and declaration of results. The collation of all results are therefore constituent elements of an election as known to law."



Again, in ***IGODO VS. OWULO & 5 ORS. (1999) 5 NWLR (PT. 601) 70 at 77 –79***, the Court of Appeal held as follows:

As to whether the election was concluded, it is my humble view that this can be determined by observing whether all the acts and things required to be done under the procedure for elections setout in Decree 36 and Schedule 4 of Decree 36 of 1998, have been gone through in accordance with the provisions of the Decree.

The application of the word "election" in Section 92(2) is the bone of contention as the above submissions show. And, the issue is whether it refers to the whole process of election, constituting accreditation, voting, collating, recording on all relevant INEC forms under the Decree and

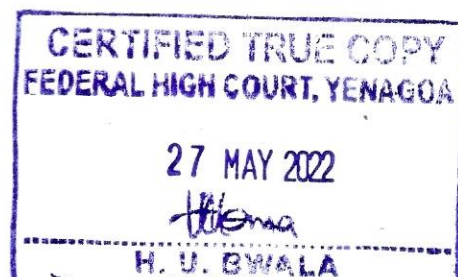
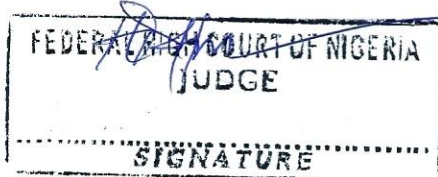


declaration of result. Or, on the other hand does "election" refer to merely voting — as in units or wards, as the case may be?

It seems to me that applying the ordinary meaning of the word "election" the meaning referring to the whole process is preferable. Voting in polling units or wards cannot amount to "election".

From the above, what constitutes an election is pretty clear; it is the entirety of the process that runs from the casting of votes for candidates vying for an elective office to the declaration of results. And I so hold.

The question that arises, therefore, is whether or not the 1st Defendant's ascendance to the Office of President of the Federal Republic of Nigeria on 6th May, 2010 was pursuant to an election? In resolving this question, recourse must be had to the depositions in the Plaintiffs'



Affidavit in support of the Originating Summons and the Counter-Affidavit of the 1st Defendant thereto. At paragraphs 11 and 12 of the Affidavit in support, the Plaintiffs deposed as follows:

"11. I also know that although the 1st Defendant was elected into the office of Vice-President in year 2007 when he was the running mate to Late President Umaru Musa Yar'Adua, he was subsequently sworn-in as President of the Federal Republic of Nigeria in year May 6, 2010 following the demise of Late President Umaru Musa Yar'Adua.

12. I also know that, in year 2011, the 1st Defendant was elected and sworn in again as President of the Federal

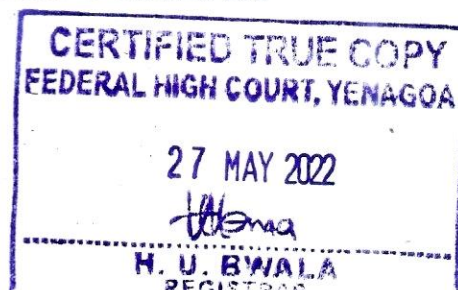


Republic of Nigeria on the 29th of May, 2011."

In rebuttal, the 1st Defendant, at paragraph 4 of his Counter-Affidavit deposed as follows:

"4. "Contrary to the depositions contained in paragraphs 10, 11, 12 and 13 of the affidavit in support of the Originating Summons, I know as fact that:

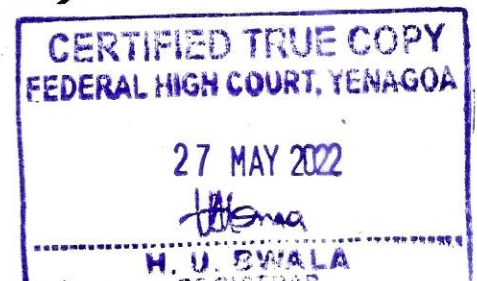
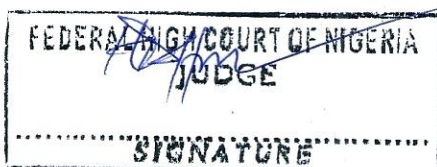
- i. The provisions of Section 137(1) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) ("the Constitution") only disqualifies any person who has been "elected" as President of the Federal Republic of Nigeria at any Two (2) previous elections;***
- ii. The 1st Defendant has not been elected as President of the Federal***



Republic of Nigeria at two (2) previous election, The 1st Defendant has only been elected as the President of the Federal Republic of Nigeria in 2011 and he took oath of office as such, on the 29th of May, 2011;

iii. The oath of office taken by the 1st Defendant on the 6th of May, 2010 was not taken upon the election of the 1st Defendant as President of the Federal Republic of Nigeria but to complete the aborted tenure of the Late President Umar Yar'adua as an elected President of the Federal Republic of Nigeria;

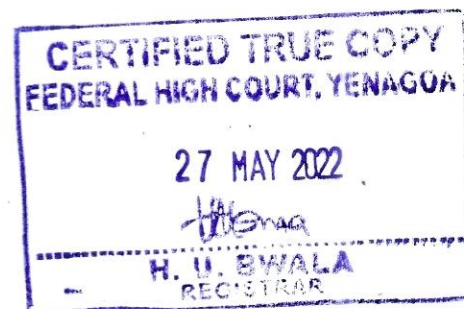
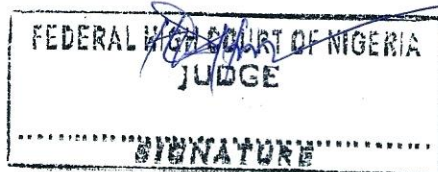
iv. I have seen and read the decision of the Court of Appeal in the case of CYRIACUS NJOKU vs. GOODLUCK EBELE JONATHAN (2015)LPELR-



24496 (CA), and I know as fact that, the Court held that the oath of office taken by the 1st Defendant on the 6th of May, 2010, cannot be taken into account in the interpretation of Section 137 (1) (b) of the Constitution as he was not elected as President at that time;

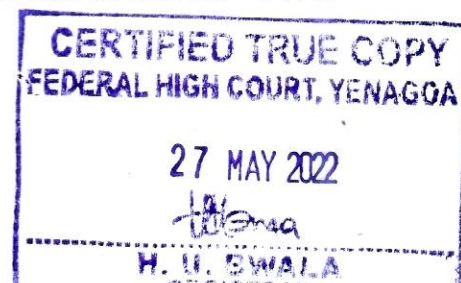
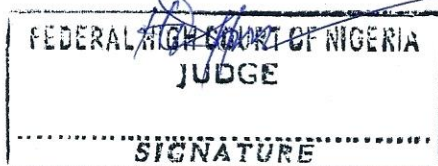
v. The only time the 1st Defendant was elected into the office of the President of the Federal Republic of Nigeria was at the 2011 General Elections."

From the above, although the Plaintiffs case is that the 1st Defendant has been elected into the Office of the President on Two (2) previous occasions i.e. in year 2007 and 2011 respectively, the Plaintiffs seem to have made a somersault when they asserted as follows: ***"..although***



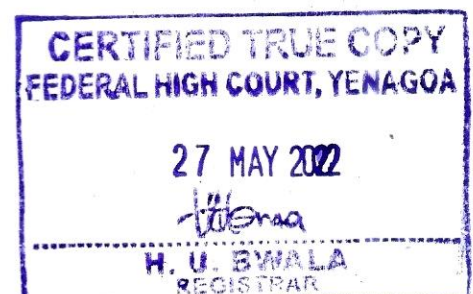
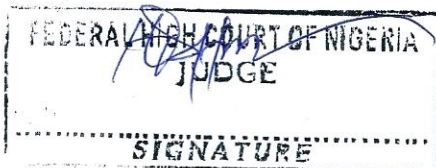
the 15th Defendant was elected into the office of Vice-President in year 2007". The office into which the **"election"** stated in **Section 137(1)(b) of the Constitution** applies to the Office of the President of the Federal Republic of Nigeria and not into the Office of the Vice-President. I have perused the entirety of the Plaintiffs supporting affidavit and Written Address and I am unable to find where the Plaintiffs referred this Court contested apart from the elections conducted in year 2011. I, therefore, find the Plaintiffs' contention that the 1st Defendant has been elected to the Office of President on Two (2) previous occasions spurious, baseless and unsubstantiated. And I so hold.

It must be made clear that, in Nigeria, although elections into the Offices of the President and Vice-President are conducted simultaneously and upon a joint ticket submitted, by a political party such as the 2nd Defendant, to the 3rd Defendant, the positions of President and Vice-President are Two (2) different offices. See: **Sections 130 and 141 of the Constitution.** The



election of a person, such as the 1st Defendant, into the Office of the Vice-President is not the same as his election into the Office of the President and vice-versa. A person who is elected into the Office of Vice-President cannot by virtue of such erection simpliciter, occupy the position of the President of the Federal Republic of Nigeria .I so hold.

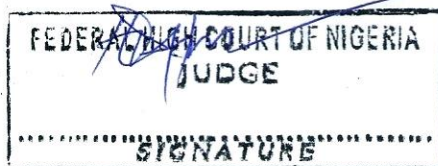
As I have noted above, the Plaintiff did not file a Reply Affidavit to dispute the facts contained in paragraphs 4(i) — (y) of the 1st Defendant's Counter-Affidavit. The legal implication of this failure is that the contentions of the 1st Defendant are deemed to be true. See: ***NATIONAL HOSPITAL, ABUJA & 12 ORS. vs. NATIONAL COMMISSION FOR COLLEGES OF EDUCATION & 3 ORS. (2014)11 NWLR (PT. 1418)309 at 332 and FASORO VS.BEYIOKU (1988) 2 NWLR (PT.76) 263.*** The 1st Defendant unequivocally stated that, he was not elected into the Office of President in the 2007 General Elections; he was the running mate i.e. Vice-Presidential candidate, of the Late President



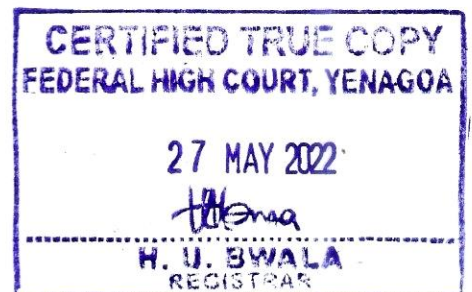
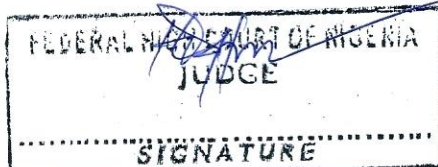
Umaru Musa Yar'adua in the 2007 General Elections. This assertion was not controverted by the Plaintiffs.

The 1st Defendant went ahead to state that, he merely stepped into the shoes of the President on 6th May, 2010, not by virtue of any election, but by "Constitutional appointment" so as not to leave the Office of President vacant following the demise of the then President, Umaru Musa Yar'adua. This fact was also not denied by the Plaintiffs. In support of his position, the 1st Defendant referred this Court to the decision of **(2015) LPELR-24496 (CA)**, where the issue of whether or not the process that led to the ascendancy of the 1st Defendant to the Office of President on 6th May, 2010, was an "election". In that case, the Court of Appeal upheld the decision of the trial Court that same was not an election. The Court of Appeal held as follows:

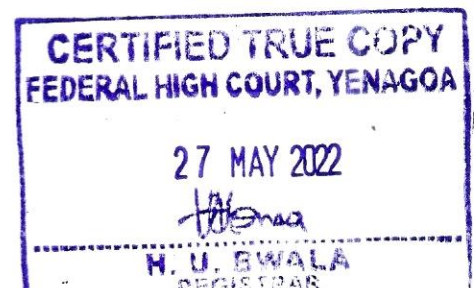
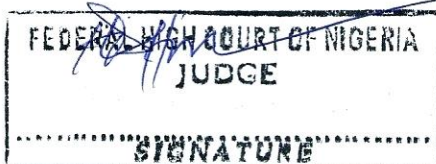
"So the word election used in Section 137(1)(b) of the 1999 Constitution when given its ordinary grammatical



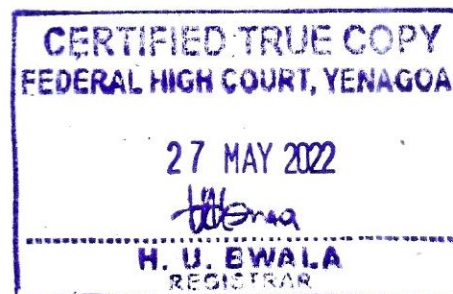
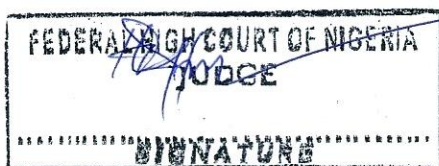
meaning connotes a process where voting is employed to choose a person for a political office. The process of primaries, nomination, voting, collating and announcement of results must of necessity, be involved. These did not take place when the 1st Respondent stepped into the shoes of President Yar'adua on the 6th May, 2010. To say that these things were deemed done, is to import into the section, words that were not used and this is not permitted. Again, this succession of a Vice President to the office of a President who died, in accordance with Section 146 (1) of the 1999 Constitution, cannot be "deemed an election", especially for the purpose of taking away a right that has been vested, As stated earlier, an election



under the 1999 Constitution involves primaries, nomination, voting and declaration of results. That is the mode prescribed in electing a President, and once it is so prescribed, it must be followed, and no other method can be employed. All these processes can be challenged in a Court of law and if successful, the election would be annulled. But if a Vice-President succeeds a President who died, that cannot be challenged because it is a Constitutional provision, and the succession cannot be annulled. It is a mode of assumption to the office of the demised President, an 'appointment' by the Constitution, as it were, as no letter of appointment is necessary from anybody. The Vice President automatically becomes the



President, by virtue of his being the President 'elected' in May 2010, and had taken Oath of office as an elected President for the first time in May 2010, then it means that by Section 135(1) (2) (a) of the 1999 Constitution, he would then be eligible to serve for four years, since a person first elected as President, as President has a tenure of four years. This cannot be, since by Section 135(2)(b) of the 1999 Constitution, he is only entitled to complete the unexpired term of President Yar'adua. So, this brings to fore, the absurdity and ambiguity, in the interpretation urged upon us, by the Appellant.... Clearly therefore, it was not an election that produced the 1st Respondent as the President in May, 2010, nor can it be deemed to

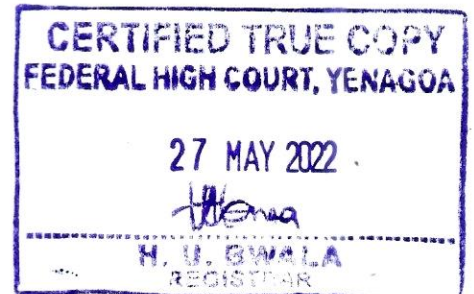
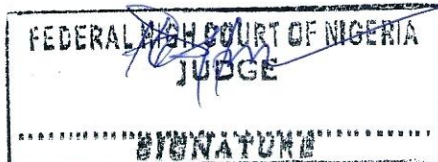


have been an election. As a corollary, the oaths he took then, could not have been the Oaths of an elected President."

In deference to the doctrine of stare decisis, I hold myself bound by the decision of the Court of Appeal as reproduced above. The position taken by this Court finds support in the fact that no appeal was lodged against the decision of the Court of Appeal in ***CYRIACUS NJOKU vs GOODLUCK EBELE JONATHAN (2015) (Supra)*** to the Supreme Court, therefore, the decision of the Court of Appeal is still subsisting.

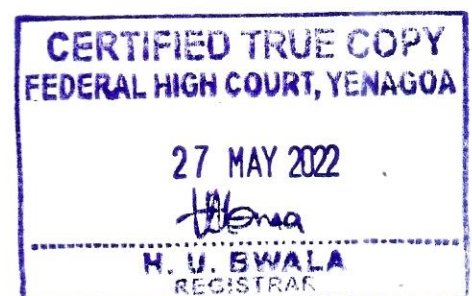
Following from the above, I therefore find the arguments of the 1st Defendant that he has only been elected into the Office of the President of the Federal Republic of Nigeria only once, and in year 2011, not only irresistible but established. And I so hold.

Apart from the admissions of the above fact, this Court, by virtue of the provisions of ***Section 122(2)(d)***



of the Evidence Act, 2011, is empowered to take judicial notice of "*the assumption of office of the President, a State Governor or Chairman of a Local Government Council, and of any seal used by any such public officer*". On the strength of this provision, this Court takes judicial notice of the fact that no presidential election was conducted in Nigeria in year 2010 when the 1st Defendant Nigeria following the demise of Late President Umaru Musa Yar'adua in year 2010. This Court also takes judicial notice that, although the 1st Defendant contested for the Office of the President in the 2015 General Elections, the 1st Defendant lost the said election to the present president, Rt. General Mohammadu Buhari.

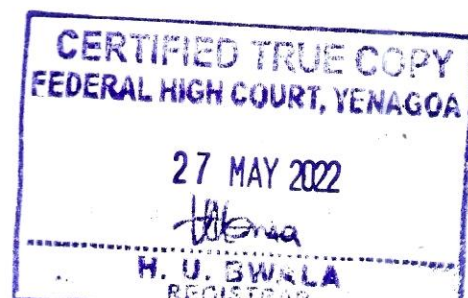
In the final analysis, I find that, the evidence before this Court points to the conclusion that the 1st Defendant has only been elected into the Office of the President of the Federal Republic of Nigeria on one (1) previous occasion, which said occasion was in the General Elections conducted in year 2011. And I so hold.



I shall now turn my attention to the second leg of the Plaintiffs' argument: ***Section 137(3) of the Constitution.***

The Plaintiffs' argument is that, since the 1st Defendant has been sworn-in as President on Two (2) previous occasions, vis: on ***6th May, 2010*** to complete the term of late President Umaru Musa Yar'adua and on ***29th May, 2011*** after he won the 2011 Presidential Elections.

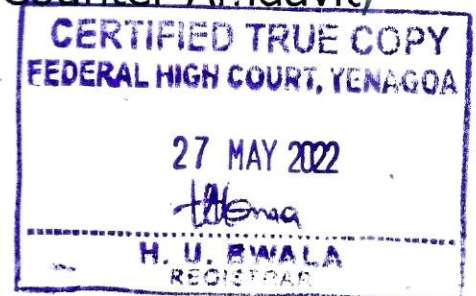
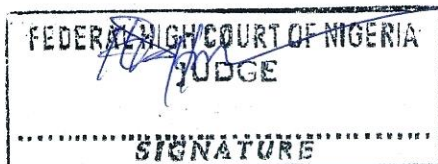
On his part, the 1st Defendant concedes the fact that he has been sworn-in as President of the Federal Republic of Nigeria on Two (2) previous occasions. However, the 1st Defendant argued that, he is not caught by the provisions of ***sub-section (3) of Section 137 of the Constitution.*** The basis of the 1st Defendant's contention is that, since he acquired his right to contest and be sworn-in as President in year 2015 (when he lost the 2015 Presidential elections to the incumbent president), the introduction of sub-section (3) of Section 137 of the Constitution in 2018 by the 4th Alteration to the



Constitution, cannot apply retrospectively to take away the said acquired/accrued right.

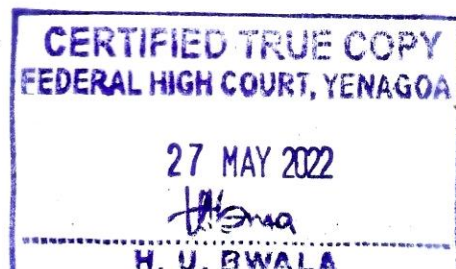
Having carefully considered the arguments of the parties, I am of the view that the determination of the application or otherwise of the provisions of ***sub-section (3) of Section 137 of the Constitution*** to the 1st Defendant lies on the juxtaposition of the date when the 1st Defendant claims to have acquired his present right to be sworn-in as President and the date on which ***sub-section (3) of Section 137 of the Constitution*** took effect.

The starting point is to acknowledge the fact that, ***sub-section (3) of Section 137 of the Constitution*** was not originally part of the corpus of the Constitution. ***Sub-section (3) of Section 137 of the Constitution*** was introduced by the 4th Alteration to the said Constitution. Although the 1st Defendant attached the Official Gazette wherein this alteration was published as ***Exhibit EKO I (i.e Exhibit "A")*** to his Counter-Affidavit,



this Court is empowered to take judicial notice of the law by virtue of the provisions of ***Section 122(2)(a) of the Evidence Act 2011***. A cursory look at ***Exhibit EKO1 (i.e Exhibit "A")*** will reveal that, the 4th Alteration introduced a restriction with regard to the number of times a person sworn-in as President of the Federal Republic of Nigeria to complete the term for which another person was elected, can be sworn-in as President after completing the remainder of the said term. ***Sub-section (3) of Section 137 of the Constitution*** states that, any person who was so sworn-in, shall, after completing the term of such other person, be eligible to be only elected to the office of President for a single term.

Further scrutiny of ***Exhibit EKO1 (i.e Exhibit "A")*** also reveals that, the 4th Alteration was enacted by the National Assembly in 2017, however, the '***commencement***' date for same was expressly set for ***"7th Day of June, 2018"***. Having the benefit of reading the Official 'Gazette (***i.e. Exhibit EKO1 "A"***)', I therefore have no difficulty in holding that, provisions ***of***



subsection (3) of Section 137 of the constitution took effect from **7th June, 2018**. And I so hold.

I find justification for my finding above in the decisions in the case of **OJOKOLOBO vs. "ALAMU (1987)" LPELR — 2393** where the Supreme Court, per **Karibi-Whyte, JSC**, held that:

"Where the date of commencement of a legislation is clearly indicated in the enactment that date governs, and the law except otherwise stated in any of its provisions cannot be retrospective from the date so indicated."

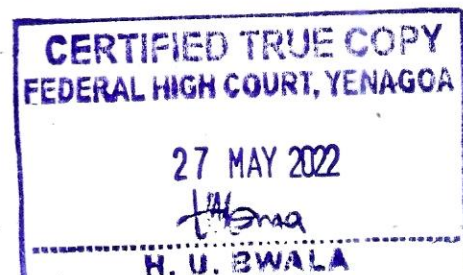
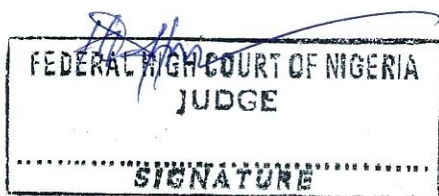
See also the decision of the Court of Appeal in **MODU vs. FRN (2015) LPELR- 40471(CA)**, where the Court held that:

"The Appellant's contention is that he cannot come under the provisions of the said Act. The basic question is



how does an Act of the National Assembly come into effect or when is its commencement date? Commencement simply means the beginning, the starting point, genesis, birth, kickoff, onset, initiation and dawning of a thing. For a statute or legislation, the commencement or coming into force refers to a process by which legislation, regulation and such related matters or processes and legal instrument come into effect."

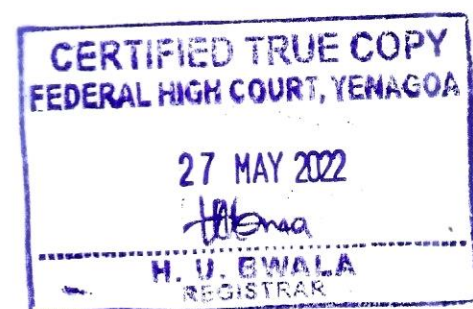
As I have held above, the provisions of ***sub-Section (3) of Section 137 of the Constitution*** was not part of our Constitution prior to the ***7th of June, 2018***, when same took effect. It, therefore, follows that the provisions of sub-section (3) was not the position of our law at all material times before the ***7th of June, 2018***. It also follows that, prior to the ***7th of June, 2018***, no restriction was placed on the number of times a person who was



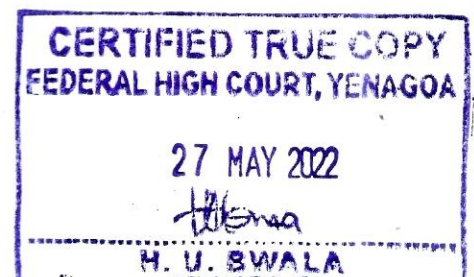
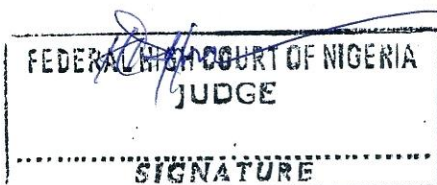
sworn-in to complete the term of office of a President of the Federal Republic of Nigeria can be re-elected into that office.

The 1st Defendant has argued that, since he acquired his right to contest and, if successful, be sworn-in as President after he lost his re-election bid, in **2015**, to the current President - President Muhammadu Buhari - it would be unethical to the spirit and intendment of the legislature to take away the right he acquired in year **2015** on the basis of a law that came into effect in **2018**.

Now, the position of the law on retroactive or retrospective application of laws is quite settled. Retroactive laws are which relate or cover matters or acts which occurred before its commencement date. In ***H.R.H. FESTUS ADESANNOYE vs. PRINCE GBADEBO ADEWOLE (2006) 7 SCNJ 501 at 517 and 534 — 535; (2006) 14 NWLR (PT. 1000) 242 at 517, NIKI TOBI, JSC***, held that:



"Retrospectively, the synonym of retroactivity, as it relates to statutes, means when the date of commencement of the statute is earlier in point of time than the date of enactment. See AFOLABI VS. GOVERNOR OF OYO STATE (1985) 2 NWLR (Pt 9) 734. In other words, where a statute extends its scope or effect to matters that have occurred in the past, such a statute is said to have retrospective effect. A statute having a retrospective effect takes care of past matters in the sense that it draws forward such matters to have legislative effect with all the currency of the new statute. While Courts of law frown upon retrospective legislation as they are not the best in the development of the rule of law and



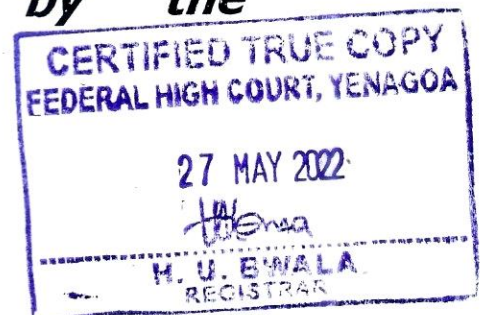
more particularly the concept of fair hearing, they are not unconstitutional and therefore part of our jurisprudence. This is because the legislatures have the constitutional right to enact a statute and make it apply retrospectively."

See also: ***HON. SUNNY OBI-A KEJULE & 5 ORS. vs. DELTA STATE GOVERNMENT & ANOR (2009)17 NWLR (PT. 1170) 292 at 305—306.***

Despite the latitude granted to the legislature to make retrospectively laws, a Law will not be held to apply retrospectively except the legislature, in clear and plain word, expressly their intention for it to be so applied.

HON. SUNNY OBI-AKEJULE & S ORS. vs. DELTA STATE GOVERNMENT & ANOR. (2009) at 306, the Court held that:

"As for the argument that a retrospective act cannot affect vested rights as propounded by the

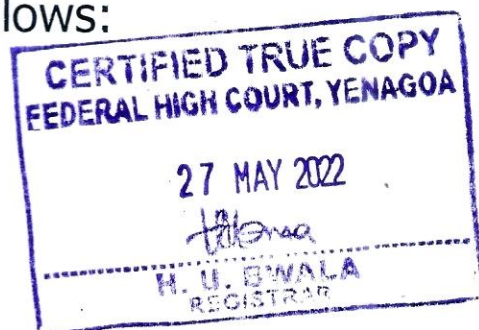


appellant's counsel, I think the law by virtue of Section 6(1) of the Interpretation Act is that retrospectivity must not be implied in an act to affect vested rights unless expressly provided for in the statute..."

In **OBUMSELI VS. UWAKWE (2009) 8 NWLR (PT 1142)55 at 79**, the Court of Appeal held as follows:

"It is a fundamental rule of law in our legal system that although it is competent for the legislature to make retrospective laws, no statute should be construed to have a retrospective operation unless the terms of the statute say so in clear and unequivocal language."

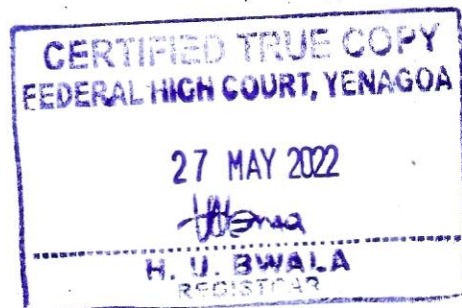
I shall now pause and re-examine **Exhibit EK01 (i.e Exhibit "A")** (i.e. 4th Alteration to the Constitution) to see if the legislature by any express word, evinced their intention for same to be applied retrospectively. **Section 137(3) of the Constitution** reads as follows:



"137 (3) A person who was sworn-in as President to complete the term for which another person was elected as President shall not be elected to such office for more than a single term."

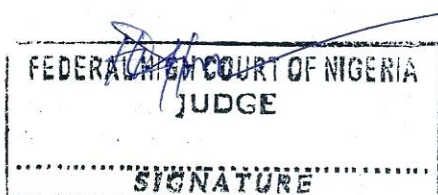
Despite my best efforts, I fail to see where the legislature expressed their intention, by express and unequivocal words, that the provisions of subsection (3) of Section 137 of the Constitution should be accorded retrospective application. In the absence of such express words, I am constrained to hold that the provisions of Section 137(3) do not enjoy retrospective application. The application and enforceability of the said subsection can only be construed to apply with effect from of 7th June, 2018. And I so hold.

In my opinion, the position being propounded by the 1st Defendant is not only tenable but accords with the position of the law. It is the duty of the



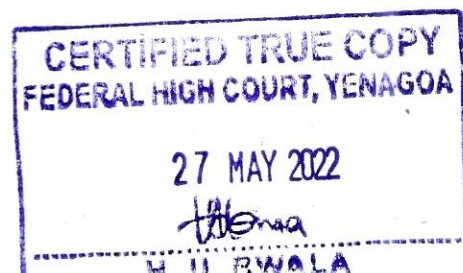
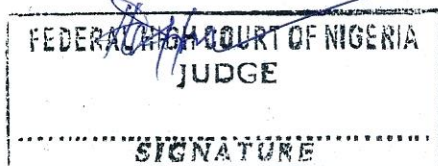
Plaintiffs to point or direct this Court to where the legislature stated that the provisions of Section 137(3) of the Constitution is to apply to events and/or rights which have been acquired and/or have been vested in parties prior to the 7th of June, 2018. The law is that, he who asserts must prove. See: Section 131(1) of the Evidence Act, 2011. It, therefore, behoved the Plaintiffs to provide this Court with facts to support their case. In the absence of such proof, I find that the Plaintiffs have not discharged the burden of proof placed on them by law.

I, therefore, find merit in the argument of the 1st Defendant that the introduction of sub-section (3) of Section 137 of the Constitution does not affect his right to contest for the Office of the President of the Federal Republic of Nigeria in the 2023 General Elections and be sworn- in as such, should he be victorious at the polls. As I have noted above, before, in year 2015 when the 1st



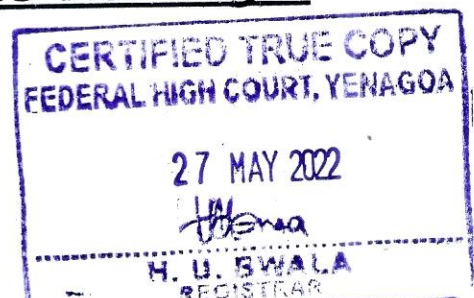
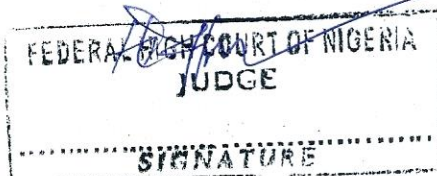
Defendant lost his re-election bid into the Office of the President, the restriction imposed by subsection (3) to Section 137 was not in existence. This is why the 1st Defendant despite having been sworn-in as President on 6th May, 2010 and 29th May, 2011, was able to contest for the Office of the President in the 2015 General Elections. Had the 1st Defendant been victorious at the 2015 polls, he would have been sworn-in for a third time without any legal impediment. Therefore, the 1st Defendant acquired his right to contest for the Office of the President immediately his term as President ended on 29th May, 2015. Clearly, it is incontrovertible that the 1st Defendant's right to contest and be sworn-in as President accrued to and was vested in him on 29th May, 2015. And I so hold.

Thus, being an accrued right which enured in favour and for the benefit of the 1st Defendant since 2015, the commencement of the provisions of subsection (3) of Section 137(3) of the Constitution on



7th June, 2018 cannot be invoked and/or applied to defeat same. In the case of AFOLABI VS. GOV. OYO STATE (1985) 2 NWLR (PT. 9) 734 at 783, His Lordship, Oputa, J.S.C. (of blessed memory) held thus:

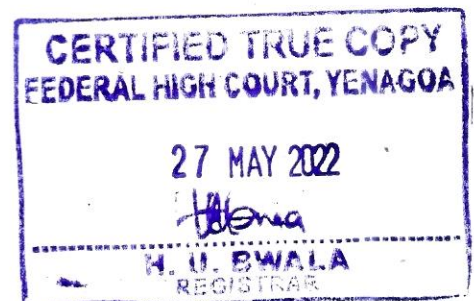
"Generally speaking, retrospective laws are prima facie of questionable policy and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law - See Wives, J. in Phillips y. Eyre (1870) LR 6 QB 89; see also Scrutton L.i. in Ward y. British Oak Insurance Co. Ltd. (1932) 1 KB 392 at p. 397. Prima facie therefore a new legislation will deal with future not past events. If it were not so, the Act might



annul rights already acquired, while the presumption is against this intention. Coming to the policy of the Court, the consensus of judicial opinion is that the Courts lean against so interpreting an Act or Law as to deprive a party of an accrued right. Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards a matter of procedure."

Again, in the case of A.G., Lagos State vs. A. G., Federation (2003) 12 NWLR (Pt. 833) 1 at 164, the Supreme Court held that, the

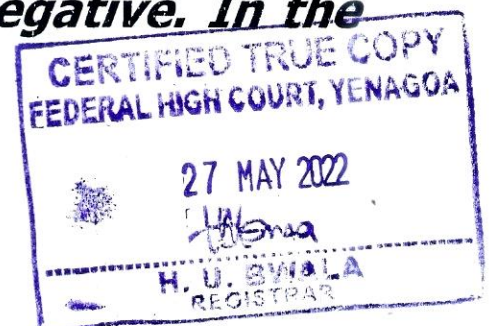
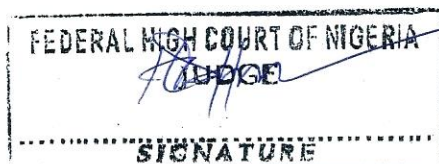
"For the same reasons rights which have been acquired or become vested will not be affected by voiding the law under of which they were acquired or vested.



" See also: LIPEDE VS. SONEKAN (1995) NWLR (PT 374) 668 (S.C) and Section 6(1)(C) of the Interpretation Act, Cap. 123, LFN 2004.

In the final analysis, I answer Question 1 formulated by the Plaintiffs in their Originating Summons in the affirmative. I declare that, the provisions of Section 137(3) of the Constitution acquired the force of law with effect from the 7th day of June, 2018 and same does not have retrospective application. I also declare that, the 1st Defendant is not disqualified by the provisions of Section 137(1)(b) and (3) of the Constitution from contesting for election into the Office of the President of the Federal Republic of Nigeria in the 2023 General Elections.

Having answered Question 1 in the affirmative, the necessity to answer Questions 2 and 3 have been obviated. However, for the avoidance of doubt, I answer Question 2 in the affirmative also whilst I answer Question 3 in the negative. In the



final analysis, I answer questions 1 and 2 posed in the Originating Summons in favour of the 1st Defendant and question 3 in the negative and therefore against the 3rd Defendant.

Consequently, I enter Judgment for the 1st Defendant and all the reliefs sought by the Plaintiffs in their Originating Summons dated 16th May, 2022 (but filed on 17th May, 2022) fail and are all hereby dismissed.

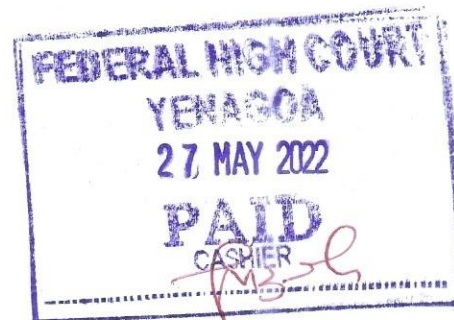
And I so hold.

I make no order as to costs.

This is the judgment of the Court.



***HON. JUSTICE ISA H. DASHEN
Presiding Judge
27th May, 2022.***



APPEARANCES:

Parties absent.

- 1. S.A. EGBUWABI ESQ., with T.M.ROBINSON ESQ., for the Plaintiffs.**
- 2. E.K. OMARE ESQ., for the 1st Defendant.**

