

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON TUESDAY, THE 9<sup>TH</sup> DAY OF MAY, 2017**  
**BEFORE HIS LORDSHIP, THE HON. JUSTICE G.O. KOLAWOLE**  
**JUDGE**

**SUIT NO. FHC/ABJ/CS/13/2017**

**BETWEEN:**

- |  |   |                   |
|--|---|-------------------|
| <ol style="list-style-type: none"><li>1. GOVERNOR RIVERS STATE</li><li>2. NYESOM EZENWO WIKE, CON</li><li>3. ATTORNEY GENERAL RIVERS STATE</li></ol> | } | <b>PLAINTIFFS</b> |
|--|---|-------------------|

**AND**

- |   |   |                   |
|---|---|-------------------|
| <ol style="list-style-type: none"><li>1. THE INSPECTOR GENERAL OF POLICE</li><li>2. STATE SECURITY SERVICE<br/><i>(Also known as the DEPARTMENT OF STATE SERVICES (DSS))</i></li><li>3. DAMIAN OKORO<br/><i>(DEPUTY COMMISSIONER OF POLICE)</i></li></ol> | } | <b>DEFENDANTS</b> |
|---|---|-------------------|

# **JUDGMENT**

The **Constitution of the Federal Republic of Nigeria (CFRN), 1999 As Amended** by its Section 2(1), declares Nigeria as a "Sovereign State" and reconfirmed her name as the "Federal Republic of Nigeria". It is a **Constitution** that is *ostensibly* premised on the concept of "Federalism" by which *governmental powers devolve* in

1 CERTIFIED TRUE COPY  
FEDERAL HIGH COURT

ABUJA Abu S.O  
18/7/17  
(e o co)

three (3) tiers or layers of government or State authority. These are the Federal Government otherwise called "the central authority" and it's constituted by the three (3) arms of government, i.e. the "Executive" which is clearly prescribed by Section 5(1)(a) and (b) of the **Constitution**, otherwise called the "Presidency"; the Legislature which found its expression in the "National Assembly" and which comprises the Senate and the House of Representatives and are provided for under Section 4(1) of the **Constitution** and the "Judiciary" as the 3<sup>rd</sup> Arm of Government and which is created by Section 6(1) and (5)(a) – (k) of the **Constitution**. The judicial arm which serves the Federal Government is known as the "Federal Courts" in Chapter VII; then the second tier are the 36 Constituent States created, perhaps recognized pursuant to Section 2(2) and Section 3(1) of the **CFRN, 1999**, whilst the Local Government Areas within each of the 36 States are created pursuant to Section 3(6) of the **Constitution** constitute the third tier of Government structure. Each of the States Government also has the three (3) arms of government, i.e. the Executive, represented by the Office of the Governors; the Legislature – which are the Houses of Assembly and the Judiciary which comprise the States High Court; Customary Court of Appeal and Sharia Court of Appeal. The Local Government Areas have the three (3) arms of government which found expression in the Office of the Chairman of the Local Government, the Councilors and the Customary or Alkali Courts which operate at the base of the

2. CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

  
18/5/17

judicial structure and which are not created pursuant to Section 6(5)(a) – (k) of the **Constitution** as superior Court of records.

The said Constitution not only *devolves governmental powers and authority* of the State on these three (3) tier level, it also endeavour to establish the exercise of *governmental powers* through the organs and bodies I have alluded to on the *principles of separation of powers*. See the provisions of Sections 4, 5 and 6 of the **Constitution** by which the drafters of the **CFRN, 1999 As Amended**, endeavoured to capture the essences of these *constitutional concepts* in relation to the **Constitutional Law Theories** of such *seminal* works as the **Prof. K.C. Wheare's "Modern Constitutions"**.

It is not the intention of this Judgment to consider how perfect the drafters of the **Constitution** have succeeded in attaining the ideals which such *Constitutional Law Theorists* have *espoused*. The important fact of life is that there is no perfect **Constitution** anywhere in the world, and what is most important is for the **Constitution** to meet and serve the *basic needs and expectations* of the people it was meant to govern. It is to guarantee the security and provide for the welfare of the people. This *philosophical underpinning* of the **CFRN, 1999 As Amended** has been clearly stated in the provisions of Chapter II of the **Constitution** titled the "*Fundamental Objectives and Directive Principles of State Policy*". By its Section 14,

the **Constitution** not only *affirmatively* declare that "*the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice*", but by its Section 14(1)(a) locates the "Sovereignty" in the people and in sub-paragraph (b) declares that *the security and welfare of the people shall be the primary purpose of government*". How far the operation and application of the **Constitution** has achieved these "*fundamental objectives*" is not an issue which this Judgment intends to examine. It is one of the ideals of "Federalism", that each of the tiers of government should have and exercise a level of autonomy within its area of jurisdiction.

In relation to the Local Government Areas as the 3<sup>rd</sup> tier of government in a "Federal Structure", contemporary experience has shown, that the Local Governments have become "*appendages*" to the Office of the States Governors (except for few States in which elections were conducted to constitute the Local Government Council, as prescribed by the provision of Section 7(1) of the **CFRN, 1999 As Amended**) the exercise of the executive powers of the States Governors has been used to "*muzzle*" the Local Governments by setting up what is generally called "Local Government Caretaker Committees" for the Local Government Areas created and established pursuant to Section 3(6) of the Constitution. In view of this, the Local Government Areas lacks administrative and financial autonomy which has literarily *asphyxiated* them as a credible 3<sup>rd</sup> tier of government in

a "federal structure". All of these are evidential distortions either of the provisions of the Constitution or by the refusal of authorities to abide by its provisions.

But, the 1<sup>st</sup> Plaintiff, regardless of the provision of Sections 5(2)(a) and 215(4) of the **Constitution** does not have any *coercive* State's *instrument* with which to execute its powers as the "Chief Security Officer" of the State, to maintain law and order, and this is one of the *crux* of the issues in this matter. It would seem, that the epithet by which the State Governors, including the 2<sup>nd</sup> Plaintiff are described as the "Chief Security Officers" of their States in a so called "federal structure", is at best, in my view, a *constitutional pseudonym*!

The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are by this action, challenging the decision of the 1<sup>st</sup> Defendant to set up a "Special Joint Investigation Panel" which as they have alleged, was to perform the functions of a "Commission of Inquiry" which only the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs can constitute on the strength of the **Judicial Commissions of Inquiry Law of Rivers State (Cap.30) Laws of Rivers State, 1999.**

By the Plaintiffs' suit, based on the Questions set down for determination and the reliefs being sought in the "Originating Summons" dated 11/1/17, it is a suit which brings to the fore, a seething constitutional dispute between two (2) of the three (3) tiers of governments, i.e. the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs as constituting the Executive tier of State Government of Rivers State – being one of the

36 States created or recognized by Section 3(1) and listed in the Part 1 of the **First Schedule to the CFRN, 1999 As Amended** on the one hand, and on the other, and the Defendants who are Agencies or bodies that are part of the Executive Arm of the Government of Federation and who report directly to the President. The 1<sup>st</sup> Defendant is created pursuant to Section 215(1)(a) of the **Constitution** and its responsible (see Section 215(1)(a) and (3) of the **Constitution**) to the President and Commander-in-Chief of the Armed Forces whose Office is created pursuant to Section 5(1)(a) of the **Constitution**. The 2<sup>nd</sup> Defendant is created and established pursuant to the **National Security Agencies Act, Cap.N74 LFN 2004**, while the 3<sup>rd</sup> Defendant is an "Agent" of the Federal Government of Nigeria who reports to the 1<sup>st</sup> Defendant pursuant to Section 215(2) of the **Constitution**. The 3<sup>rd</sup> Defendant, even though a Deputy Commissioner of Police, is not by virtue of Section 215(4) of the **Constitution** an officer that reports to or takes directive from to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs.

This appears to be the little I can do in terms of setting a sort of "*organogram*" in relation to the structure of the governmental powers as they concern the parties in this suit.

By the Plaintiffs' "Originating Summons" dated 11/1/17, the Plaintiffs through their Counsel, set down ten (10) questions for the Court's determination:

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

6

  
18/5/17

1. *"Whether the Constitution of a "Special Joint Panel of Investigation" by the 1<sup>st</sup> Defendant comprising of 15 members headed by the 3<sup>d</sup> Defendant and whose membership is drawn from the Nigeria Police Force and the State Security Service (SSS) otherwise known as the Department of State Services (DSS) (the 2<sup>nd</sup> Defendant), that is charged with the **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"** does not amount to the 1<sup>st</sup> Defendant constituting a Commission of Inquiry in clear violation of the Police Act and the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as amended."*
  
2. *"Whether the "Terms of Reference/investigation" as stipulated in the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, dated 20<sup>th</sup> December, 2016, with reference number **CR: 3000/IGP.SEC/ABJ/VOL.120/297** and titled **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"**, do not amount to matters fit only for Commission of Inquiry under the Commission of*

*Inquiry Law, Cap.30, Laws of Rivers State, 1999, which only the 1<sup>st</sup> Plaintiff as the Governor and Chief Security Officer of Rivers State within the meaning and purport of **Sections 5(2) and 215(4) of the Constitution of the Federal Republic of Nigeria, 1999 as amended**, and the said Commission of Inquiry Law (supra.) is legally and exclusively empowered to constitute."*

3. *"Whether the "Terms of Reference/investigation" as stipulated in the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, dated **20<sup>th</sup> December, 2016**, with reference number **CR: 3000/IGP.SEC/ABJ/VOL.120/297** and titled **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"**, do not amount to a blatant usurpation of the powers of the 1<sup>st</sup> Plaintiff as the Chief Security Officer of Rivers State, within the meaning and purport of **Section 5(2) and 215(4) of the Constitution of the Federal Republic of Nigeria, 1999 as amended** and the Commission of Inquiry Law, Cap.30, Laws of Rivers State, 1999, to set up a Commission of Inquiry."*



4. *"Whether the powers of the 1<sup>st</sup> Defendant to prevent and detect crimes, preserve law and order, protect life and property and enforce all laws and regulations with which it is charged under **Section 4** of the **Police Act, Cap.P19, LFN 2004**, extend to carrying out functions of a judicial or quasi judicial nature, which only a Court of competent jurisdiction or a Commission of Inquiry is empowered to entertain."*
5. *"Whether the 1<sup>st</sup> Defendant can in the guise of an "investigation" constitute himself into a Commission of Inquiry or Court of law and pronounce definitively, even before concluding his investigation of **"allegations of bribes taken, several murder incidents (including that of serving Police Officers), reports of gross rights abuses, acts of sabotage/terrorism, kidnapping for ransom (KFR) and ballot box snatching"** that **"all of" the said acts were "perpetrated in connivance with several Federal and State Civil Servants as well as highly place Politicians within and outside the State."***
6. *"Whether the 1<sup>st</sup> Defendant's letter dated **20<sup>th</sup> December, 2016**, with reference **No. CR:***


**3000/IGP.SEC/ABJ/VOL.120/297**, is not liable to be set aside having regard to the fact that the 1<sup>st</sup> Plaintiff has already constitutionally and legally empanelled a Commission of Inquiry to look into the same or similar matters that the 1<sup>st</sup> Defendant seeks to investigate by the contents of the said letter."

7. "Whether the "Terms of Reference/investigation" as stipulated in the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, dated 20<sup>th</sup> December, 2016, with reference number **CR: 3000/IGP.SEC/ABJ/VOL.120/297** and titled **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"** is not suggestive of the fact that the goal of the intended investigation is already pre-determined and biased, or likely to be biased against the Plaintiffs, having regard to the numerous conclusions already reached in the said letter."
8. "Whether having regard to the conclusions already drawn up and reached by the 1<sup>st</sup> Defendant, to wit: **"The purview of the investigation will cover allegations of bribes taken, several brazen murder incidents (including that of serving**

**Police Officers), terrorism, kidnapping for ransom (KFR) and ballot box snatching, all of which were perpetrated in connivance with several Federal and State Civil Servants as well as highly placed politicians within and outside the state**", the 1<sup>st</sup> Defendant has not already concluded that the itemized matters are crimes which had already been "**perpetrated in connivance with several Federal and State Civil Servants as well as highly placed politicians within and outside the state**", thus **LEAVING NOTHING IN FACT, TO BE "INVESTIGATED".**"

9. "Whether the "Terms of Reference/investigation" as stipulated in the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, dated **20<sup>th</sup> December, 2016**, with reference number **CR: 3000/IGP.SEC/ABJ/VOL.120/297** and titled **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"** do not **violently breach** the **rules of natural justice** as they apply to the Plaintiffs, particularly, the 2<sup>nd</sup> Plaintiff's right to fair hearing as

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

  
18/5/17

*guaranteed in Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 as altered."*


10. *"Whether having regard to the entire circumstances of this case, the purpose and goal of the intended investigation is not a deliberate **witch-hunt project** carefully schemed and embarked upon by the Defendants to denigrate and browbeat the 2<sup>nd</sup> Plaintiff and undermine his powers and authority as the Governor of Rivers State."*

In the event that each of these questions is answered in the way and manner the Plaintiffs conceived will be favourable to their *cause of action* against the Defendants, the Plaintiffs seek twelve (12) reliefs, nine (9) of which are *declaratory reliefs*. Reliefs 10, 11 and 12 are specific orders to *quash* and set aside the 1<sup>st</sup> Defendant's letter attached as Exhibit "AGR2" by which it constituted a "Special Investigation Panel" and to seek for *an order of perpetual injunction*. The reliefs are:

1. **"A DECLARATION** that by its membership and composition, the 3<sup>d</sup> Defendant led **"Special Joint Panel of Investigation"** constituted by the 1<sup>st</sup> Defendant comprising personnel of the Nigeria Police Force and the 2<sup>nd</sup> Defendant, is not an "investigation" known to the Police Act, but is in fact a Commission

of Inquiry which the 1<sup>st</sup> Defendant is not entitled to constitute or conduct."

2. **"A DECLARATION** that the "Terms of Reference/ investigation" as stipulated in the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, dated **20<sup>th</sup> December, 2016**, with reference number **CR: 3000/IGP.SEC/ABJ/VOL.120/297** and titled **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"** clearly amount to matters fit only for a Commission of Inquiry under the Commission of Inquiry Law, Cap.30, Laws of Rivers State, 1999, which only the 1<sup>st</sup> Plaintiff as the Chief Security Officer of Rivers State within the meaning and purport of **Sections 5(2) and 215(4) of the Constitution of the Federal Republic of Nigeria, 1999 as amended**, and the Commission of Inquiry Law, Cap.30, Laws of Rivers State, 1999, is legally empowered to constitute."
  
3. **"A DECLARATION** that the "Terms of Reference/ investigation" as stipulated in the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, dated **20<sup>th</sup> December, 2016**, with reference number **CR:**

  
18/5/17

**3000/IGP.SEC/ABJ/VOL.120/297** and titled **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"** clearly amount to a blatant usurpation of the powers of the 1<sup>st</sup> Plaintiff as the Chief Security Officer of Rivers State, within the meaning and purport of **Sections 5(2) and 215(4) of the Constitution of the Federal Republic of Nigeria, 1999 as amended**, to set up a Commission of Inquiry."


4. **"A DECLARATION** that the powers of the 1<sup>st</sup> Defendant to prevent and detect crimes, preserve law and order, protect life and property and enforce all laws and regulations with which it is charged under **Section 4 of the Police Act, Cap.P 19, LFN, 2004**, do not extend to carrying out functions of a judicial or quasi judicial nature, which only a Court of competent jurisdiction or a Commission of Inquiry is empowered to entertain."
  
5. **"A DECLARATION** that the letter dated **20<sup>th</sup> December, 2016**, with reference **No. CR: 3000/IGP.SEC/ABJ/VOL.120/297**, is liable to be set aside having regard to the fact that the 1<sup>st</sup> Plaintiff

*has already constitutionally and legally empanelled a Commission of Inquiry to look into the same or similar matters that the 1<sup>st</sup> Defendant seeks to investigate by the contents of the said letter."*

6. **"A DECLARATION** that the "Terms of Reference/investigation" as stipulated in the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, dated **20<sup>th</sup> December, 2016**, with reference number **CR: 3000/IGP.SEC/ABJ/VOL.120/297** and titled **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"** are suggestive of the fact that the goal of the intended investigation is already pre-determined and biased, or likely to be biased, against the Plaintiffs, having regard to the numerous conclusions already drawn and reached in the said letter."

7. **"A DECLARATION** that having regard to the conclusions already drawn and reached by the 1<sup>st</sup> Defendant, to wit: **"The purview of the investigation will cover allegations of bribes taken, several brazen murder incidents (including that of serving Police Officers),**

15 CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

  
18/5/17

*terrorism, kidnapping for ransom (KFR) and ballot box snatching, all of which were perpetrated in connivance with several Federal and State Civil Servants as well as highly placed politicians within and outside the state”, the 1<sup>st</sup> Defendant has already concluded that the matters he itemized are crimes which had already been “perpetrated in connivance with several Federal and State Civil Servants as well as highly placed politicians within and outside the state”, which includes the 2<sup>nd</sup> Plaintiff, thus leaving nothing in fact, to be “investigated”.*

8. **"A DECLARATION** that the "Terms of Reference/ investigation" as stipulated in the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, dated **20<sup>th</sup> December, 2016**, with reference number **CR: 3000/IGP.SEC/ABJ/ VOL.120/297** and titled **"INVESTIGATION INTO ALLEGATIONS OF CRIMES COMMITTED DURING THE LAST RERUN ELECTIONS IN RIVERS STATE"** as couched in the 1<sup>st</sup> Defendant's letter of **20<sup>th</sup> December, 2016**, violently breach the rules of natural justice as they apply to the Plaintiffs and the



*1<sup>st</sup> Plaintiff's right to fair hearing, as guaranteed in Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 as amended."*

9. *"**A DECLARATION** that having regard to the entire circumstances of this case, the purpose and goal of the intended investigation constitute a **deliberate** witch-hunt project carefully schemed and embarked upon by the Defendants by way of a vendetta to denigrate and browbeat the 1<sup>st</sup> Plaintiff and undermine his powers and authority as the Governor of Rivers State."*
  
10. *"**AN ORDER** quashing and setting aside wholly and in it's entirety, the 1<sup>st</sup> Defendant's letter to the 1<sup>st</sup> Plaintiff, dated **20<sup>th</sup> December, 2016**, with reference **No. CR: 3000/IGP.SEC/ABJ/VOL.120/297**, and titled **"Investigation into allegations of crimes committed during the last re-run elections in Rivers State"**, the entire contents, purport and intendment of same including any report/finding pertaining to the Plaintiffs produced in consequence of the activities/actions of the 3<sup>rd</sup> Defendant acting by himself or in concert with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants through the instrumentality*

*of either the "Special Investigation Panel" or any other panel by whatever name called outside the express provisions of the Police Act."*

11. **"AN ORDER OF PERPETUAL INJUNCTION** *restraining the Defendants, whether by themselves, their agents, servants, employees, privies and operatives or in any manner howsoever, from enforcing, executing, or carrying into effect, the matters or similar matters contained in the 1<sup>st</sup> Defendant's letter dated **20<sup>th</sup> December, 2016**, with **Ref. No. CR: 3000/IGP.SEC/ABJ/VOL.120/297**, and addressed to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs herein including any report/finding pertaining to the Plaintiffs produced in consequence of the activities/actions of the 3<sup>rd</sup> Defendant acting by himself or in concert with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants through the instrumentality of either the "Special Investigation Panel" or any other panel by whatever name called outside the express provisions of the Police Act."*
12. **"AND FOR SUCH FURTHER** *or other order or orders as this Honourable Court may deem fit to make in the circumstances of this case."*

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT

*JP*  
*18/5/17*

The Plaintiffs' "Originating Summons" is supported by a five (5) paragraphed Affidavit deposed to by Harrison Obi of Counsel on 11/1/17. The 1<sup>st</sup> Plaintiff is the Office of Governor created by the **Constitution** (see Section 176(1) and (2) of the **CFRN, 1999 As Amended**, whilst the 2<sup>nd</sup> Plaintiff is the elected Governor of the said State, i.e. Rivers State of Nigeria. Why the Plaintiffs' Counsel chose to institute the suit in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, may be ascertained in the course of this Judgment, but I had entertained the thoughts, perhaps the fear that having regard to the provisions of Section 308(1)(a), (b) and (c); (2) and (3) of the **Constitution**, that the 2<sup>nd</sup> Plaintiff should not have been seen as "*throwing his hat*" into the "*ring of contested*" litigation such as this, otherwise he may expose himself as one who may be deemed to have *waived* the *immunity* provided by Section 308(1)(a) – (c) of the **Constitution**, and thereby makes himself open to be served such processes as an ordinary Plaintiff not covered by Section 308 of the **Constitution** may receive including discovery, *subpoena ad testificandum* and the like. But, the Plaintiffs' Counsel who is a Senior Advocate of Nigeria and a seasoned litigator, certainly has his reasons for making this suit, which could have been instituted in the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs name or even in the 3<sup>rd</sup> Plaintiff's name alone on the strength of Section 195(1) of the **Constitution**. Let me leave this issue by the side as it is not germane to the resolution of the questions which the Plaintiffs have set down in the "Originating Summons" filed or on the validity *vel non* of the

reliefs which are being sought by the Plaintiffs against the Defendants.

The Plaintiffs' "Originating Summons" is also supported by "Affidavit No.2" which was deposed to by one Oraye St. Franklyn on 11/1/17 and who in paragraph 1 of the said "Affidavit No.2", says that he is "*the Senior Special Assistant on Social Media to the 1<sup>st</sup> Plaintiff*". This was the Affidavit used by the Plaintiffs to bring in the two (2) DVDs which were played during the proceedings of 3/3/17. The Plaintiffs attached nine (9) exhibits to the two (2) "Affidavits in Support of the Originating Summons" and they were marked as "AGR-1" – "AGR-9" respectively. At the proceedings of 3/3/17, the Court on the application of the Plaintiffs' Counsel and to which the Defendants' Counsel consented, played the two (2) DVDs produced as Exhibit "AGR-9".

The Plaintiffs' Counsel, Chief Mike Ozekhome, SAN filed a written address to argue the Plaintiffs' "Originating Summons".

At the centre of the Plaintiffs' *cause of action*, is the letter written by the 1<sup>st</sup> Defendant dated 20/12/16 and titled: "*Investigation into Allegations of Crimes Committed during the Last Re-run Elections in Rivers State.*" It's marked as Exhibit "AGR-2" by which the 1<sup>st</sup> Defendant conveyed its decision to "*investigate series of complaints, allegations and petitions of crimes and various acts of criminality*".

  
18/5/17


during the just concluded re-run elections in Rivers State which held on the 10<sup>th</sup> of December, 2016" to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs.

Reading Exhibit "AGR-2", it seems that the Plaintiffs' cause of *anxiety*, rather than of action, relates to the second paragraph of the contents of the said letter by which the Plaintiffs expressed the *fear* that, the 1<sup>st</sup> Defendant's "Special Panel of Investigation" that was constituted, in the Plaintiffs' view, had *usurped invidiously*, perhaps *obstrusively* the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' powers as the Governor of Rivers State, and *ipso facto* as its Chief Security Officer (Section 176(2) of the **Constitution**) to constitute a "Judicial Commission of Inquiry" (going by the "*Statutory Instrument*" produced as Exhibit "AGR-1" which constituted a "Judicial Commission of Inquiry" pursuant to Section 2(1) of the **Commissions of Inquiry Law of Rivers State** (Cap.30) Laws of Rivers State of Nigeria, 1999) to investigate "*the killings and other violent acts/matters that occurred during the December 10, 2016 Re-run/Supplementary elections to elect members of the National Assembly and House of Assembly in Rivers State*".

Having regard to both Exhibits "AGR-1 and "AGR-2", there is no doubt, that the Plaintiffs and the 1<sup>st</sup> Defendant are both *ad idem* that the 10<sup>th</sup> December, 2016 Rivers State Re-run Election for the National Assembly and the State House of Assembly, were generally *marred* by acts of *violence* and *criminality* which no responsible government or authority should ignore. The point of difference, having regard to the

facts in dispute, relate to who has the primary responsibility to conduct investigations into the alleged acts of *violence* and *criminality* in order that the *perpetrators*, where their identities can be ascertained, can be brought to justice in order to vindicate the authority of the **Constitution** and of the extant laws applicable in Rivers State where the incidents occurred.

Whilst the Plaintiffs, by their "Originating Summons" insist that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs have a *primary duty* to ascertain the immediate and remote cause of the acts of violence – and which the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs who are described as "Chief Security Officer" of Rivers State who have no Police Force of its own (I had earlier remarked that the epithet describing the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs as "Chief Security Officer" who have no *coercive State's instrument* or institution of State – see Section 214(1) of the **Constitution** by which a so called "Federal System", has one Central Police Force, as a mere joke as it is a *constitutional pseudonym*) can only conduct the investigations through the instrumentality of a "Judicial Commission of Inquiry" pursuant to the Rivers State Law, the 1<sup>st</sup> Defendant on its own, has *constitutional and statutory powers* – pursuant to Section 4 of the **Police Act**, Cap.P.19, LFN 2004 to exercise "global" investigating powers in relation to *acts of criminality in all parts of the federation*. It is no doubt, by my view speaking personally, and based on *constitutional law concepts of "Federalism" as espoused by Prof. K.C.*



Handwritten signature and date: 18/5/17

**Wheare** whose *seminal* work on "**Modern Constitutions**", I had earlier referred to, as a *misnormer*, that States duly created by the **Constitution** with all the compliments of governmental powers and authority (Legislative, Executive and Judicial) will not have their own Police Force to aid the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs on the strength of Section 5(2)(a) and (b) of the **Constitution**, to execute laws duly made by the State House of Assembly. See Section 214(4) of the **Constitution** which renders the Office of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs "*impotent*" in terms of their capacity to enforce Law and order even as the "Chief Security Officer" of Rivers State.

By this preliminary statements of the facts of the Plaintiffs' suit, it is obvious that there is a *legal dispute* between two (2) tiers of government – the first as represented by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs who are vested with executive powers pursuant to Section 5(2)(a) and (b) of the **CFRN, 1999 As Amended**, and the second, by the Agencies and Agents of the Executive Branch of the Federal Government who reports to the Presidency. What has come up for consideration, is the likely conflict between the exercise of the executive powers of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs to constitute a Commission of Inquiry under the **Rivers State Law** and of the powers of the 1<sup>st</sup> Defendant pursuant to Section 4 of the **Police Act**, Cap.P.19, LFN 2004.

Whilst the 3<sup>rd</sup> Defendant is a subordinate officer to and who reports to the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant is created as I had earlier slated,

pursuant to the provision of Section 1(c) of the **National Security Agencies Act**, Cap.N74, LFN, 2004 and reports directly to the President through the Office of the National Security Adviser as the "Coordinator on National Security". In terms of their *statutory duties*, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, although are both involved in security and law enforcement matters, but their areas of *core statutory duties* are *distinct* and *different*. The 1<sup>st</sup> Defendant is by the Constitution, the "parent" Policing authority in Nigeria and has a broader jurisdiction in terms of law enforcement than the 2<sup>nd</sup> Defendant as a specialized law enforcement agency, just like the Economic and Financial Crimes Commission (EFCC), the National Drug Law Enforcement Agency (NDLEA) or the Independent Corrupt Practices Commission (ICPC) – which are statutory bodies, has extremely limited "jurisdiction" as is prescribed in Section 2(3)(a), (b) and (c) of the **National Security Agencies Act**, supra.

On this issue, let me expatiate a little more by saying that these *specialized* law enforcement Agencies of the Federal Government, in view of their *limited* jurisdictions, cannot legally even with the best of *intentions*, *dabble* into law enforcement matters not clearly and specifically spelt out or defined in their respective enabling Acts. It is my view, that even in the exercise of their respective *prosecutorial powers*, they are still subject to the *over-riding supervisory powers* of the Attorney General of the Federation pursuant to Section 174(1), (2)



and (3) of the **Constitution** and in its capacity and status by virtue of Section 150(1) of the **Constitution, 1999 As Amended** as the "Chief Law Officer" of the Federation. All of these are to *underscore the limitations of the statutory powers* of these *specialized* law enforcement agencies in the security architecture of the country. It is perhaps, with regards to this "strange" combination of different Agencies of the Executive Arm of the Federal Government, that *led* the Plaintiffs as it were, to query the establishment of the "Special Joint Investigation Panel" which the Plaintiffs contended, is not within the *purview* of the provisions of Section 4 of the **Police Act**, supra. and by which the 1<sup>st</sup> Defendant on its own and with the aid of its subordinate officers such as the 3<sup>rd</sup> Defendant, can initiate investigation into any crime allegedly committed within the jurisdiction of the Nigeria Police Force even as the *alpha* Policing Authority by the provision of the **Constitution**. See Section 214(1) of the **CFRN, 1999 As Amended**.

By Exhibit "AGR-8" – being the 3<sup>rd</sup> Plaintiff's reply dated 30/12/16 to the 1<sup>st</sup> Defendant's letter dated 20/12/16 – Exhibit "AGR-2", the Plaintiffs expressed their *misgivings* on and objected to the 1<sup>st</sup> Defendant's decision conveyed by Exhibit "AGR-2". The Defendants, notwithstanding the Plaintiffs' protest as conveyed by Exhibit "AGR-8", wrote a letter by the 3<sup>rd</sup> Defendant in his capacity as the "Chairman" of the "*Special Joint Investigation Panel on Rivers State Re-run*

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

25

  
18/12/17

*Election*". It was produced as Exhibit "AGR-2<sup>A</sup>" and is dated 30/12/16. By the said letter, the 3<sup>rd</sup> Defendant intimated the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs of the inauguration of "a fifteen man Special Joint Panel of Investigation on Rivers State Re-run Elections of 10<sup>th</sup> December 2016" and request by the said letter, to pay the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs a "Courtesy Visit".

Let me pause here to express an impression which I have gathered in the course of reading the processes filed and exchanged by both parties, that the 3<sup>rd</sup> Defendant being named as a "Chairman of the Special Joint Investigation Panel" and the *request* made by the 3<sup>rd</sup> Defendant in Exhibit "AGR-2A" and the rather unconventional police posture as evidenced by the *documentary exhibits* produced by the Plaintiffs, that may have informed the Plaintiffs' view or opinion, that what the 1<sup>st</sup> Defendant intended to set up, is a sort of "Commission of Enquiry" rather than to conduct purely police investigation which now appears to be well guided and regulated by the provisions in Part 2 (see Sections 3 – 34 of the **ACJA 2015**) when in Exhibit "AGR-2", the 1<sup>st</sup> Defendant requests the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs to oblige the Panel with "all necessary information and other exhibits".

By the Plaintiffs' "Statement of Facts", even though the 3<sup>rd</sup> Defendant's fifteen man "Special Joint Investigation Panel" by Exhibit "AGR-2A" were billed to pay "Courtesy Visit" on the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs on 11/1/17, by 7/1/17 – on account of publications produced

as Exhibit "AGR-3", the 1<sup>st</sup> Defendant had already taken a decision to "dismiss, to prosecute six police officers over the events that occurred during the Rivers State Re-run elections held on 10/12/16". It seems by the contents of Exhibit "AGR-3", that the six (6) affected police officers were originally attached to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, and by this act, which the Plaintiffs conceived as rather *precipitate*, the Plaintiffs' Counsel argued that the "1<sup>st</sup> Defendant's publication had already linked, by the claim of the Police High Command, the 2<sup>nd</sup> Plaintiff, without investigation being concluded, with the violence associated with the Rivers Re-run election". Exhibit "AGR-3" was "Guardian Newspapers published on 7/1/17 whereas, the 3<sup>rd</sup> Defendant's "Special Joint Investigation Panel", by Exhibit "AGR-2<sup>A</sup>" dated 30/12/16 was billed to pay the 2<sup>nd</sup> Plaintiff a "Courtesy Visit" – perhaps, as a prelude to its investigation activities in Rivers State because, Exhibit "AGR-2" – being the 1<sup>st</sup> Defendant's letter dated 20/12/16 addressed to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, in the *penultimate* paragraph states thus: "You are kindly requested to furnish the investigative team with all necessary information and other exhibits that may assist them during the course of their investigation activities." It seems that it is the awkward nature of the events reported in Exhibit "AGR-3" when *contextualized* with the contents of Exhibit "AGR-2A" – by which the 3<sup>rd</sup> Defendant's "Special Joint Investigation Panel" billed to pay a "Courtesy Visit" to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs on 11/1/17 that may have aroused the suspicion, and

perhaps confirm the fears which the 3<sup>rd</sup> Plaintiff has expressed in its letter produced as Exhibit "AGR-8" dated 30/12/16.

In paragraph 18 of the written address filed, the Plaintiffs' Counsel as part of his "Statement of Facts", avers that:

18. *"The clear fact is that the 1<sup>st</sup> Defendant had already "convicted" or had overtly manifested a clear determination to "convict" the 2<sup>nd</sup> Plaintiff, regardless of the available facts of the so-called investigation, the Mechanism of his "Special Joint Investigation Panel on Rivers State Re-Run Election", headed by the 3<sup>rd</sup> Defendant, his subordinate and appointee."*

On the basis of these presentations, the Plaintiffs' Counsel sets down six (6) issues for determination. These are:

1. *"Whether the general powers of the Nigeria Police under Section 4 of the Police Act can be limited;"*
2. *"Whether in the light of Exhibit AGR-2, there is anything left for the Defendants to investigate;"*
3. *"Whether the Defendants can constitute an investigation panel with Terms of Reference in the Nature of a Commission of Inquiry;"*

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

*18/5/17*

4. *"Whether the 1<sup>st</sup> Defendant can establish a multi-force "Special Joint Investigation Panel on Rivers State Re-Run Election", under the provisions of the **Police Act** and the **Constitution of the Federal Republic of Nigeria, 1999 as amended;***"
5. *"Whether in the entire circumstances of this case, the Defendants can investigate the 2<sup>nd</sup> Plaintiff in a fair and Just manner;" and*
6. *"Is this a proper case to grant the reliefs sought?"*

The Plaintiffs' Counsel in the written address filed, opted to argue issues 1, 2 and 5 together. It was submitted that the *statutory power* of the Nigeria Police Force as prescribed in Section 4 of the **Police Act** is "wide" and cited the Supreme Court's decision in **FAWEHINMI v. I.G.P. (2002) 7 NWLR (pt.767) 602** to buttress that submission. Still relying on the same decision, the Plaintiffs' Counsel submitted that there are *exceptional cases or circumstances* in which the Court may *interfere* with the *discretionary powers* of the police. On this, the Court of Appeal's decision in **LUNA v. C.O.P. (2010) LPELLR 8642** was cited. One of the recognized *exceptions* where the Court may interfere with the said decision is where the said power is used for "*improper purpose*". It was argued, that the 1<sup>st</sup> Defendant "*is employing the powers of the police to witch-hunt the 2<sup>nd</sup> Plaintiff*". The Court's attention was drawn to the contents of Exhibits "AGR-2";

"AGR-2A"; "AGR-3" and "AGR-8" attached the Plaintiffs' "Originating Summons" along with Exhibit "AGR-9". The Court was urged to *"interfere to stop the 1<sup>st</sup> and 3<sup>d</sup> Defendants from proceeding with the contents of Exhibits "AGR-2" and "AGR-2A" with regards to the "investigation of the 2<sup>nd</sup> Plaintiff" who the Plaintiff's Counsel, lifting the words used by the 1<sup>st</sup> Defendant in its letter attached as Exhibit "AGR-2" described as a "highly placed politician ... within the State" by a "Special Joint Investigation Panel". With reference to the penultimate paragraph of Exhibit "AGR-2", the Plaintiffs' Counsel argued that the 1<sup>st</sup> Defendant "had categorically made a judicial or quasi judicial pronouncement which is only fit for a Court of law to make". The Plaintiffs' Counsel in paragraph 28 of his address, went further to argue that "the 1<sup>st</sup> Defendant's pre-determined determination of the guilt of the 2<sup>nd</sup> Plaintiff makes Exhibit "AGR-2" liable to be quashed". It was contended that with the pre-judicial views which the 1<sup>st</sup> Defendant expressed in the penultimate paragraph of Exhibit "AGR-2" attached to the Plaintiff's "Originating Summons", that "there is nothing left for the Defendants to investigate". On the basis of this submission, the Court was urged to "restrain the said "Joint Special Panel of Investigation" identified in Exhibit "AGR-2" from investigating the alleged crimes as they concern the 2<sup>nd</sup> Plaintiff, and where it purports to have done so, to quash any report produced by the said Panel". This, it was argued, is because "such an investigation and its report are merely in furtherance of the determinations already made*

*and conclusions reached by the 1<sup>st</sup> Defendant as shown in Exhibit "AGR-2".*

In paragraph 32 of the written address, the Plaintiffs' Counsel did a summary of the reasons why the Defendants' investigation against the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs cannot be free from *bias*, and the reason why the Court should not allow it to go on.

On issues 3 and 4 set down by the Plaintiffs' Counsel, it was argued that the powers of the Federal Government whose "*agents and agencies the Defendants are, to establish Commissions of Inquiry is limited to the FCT*" and that that power "*is vested only in the President by virtue of Section 1(1) of the **Tribunals of Inquiry Act, Cap.T.21, LFN 2004***".

It was submitted, that the 1<sup>st</sup> Defendant does not "*share the said power with the President*". The Plaintiffs' Counsel argued that what the 1<sup>st</sup> Defendant has set up "*in the guise of a Special Joint Panel of Investigation*" is a "*Commission of Inquiry with the terms of Reference as stated in Exhibit "AGR-2"*". It was argued that Exhibits "AGR-2" and "AGR-2A" "*are clearly not in the nature of a police investigation*".

It was submitted, that "*the police do not invite a suspect to furnish the investigative team with all necessary information and other exhibits that may assist them during the course of their investigative activities*". The Plaintiffs' Counsel argued that "*this method of*

*investigation is clearly outside the purview of Section 4 of the **Police Act**, or indeed any other provision of the **Police Act**". It was further contended, that this method adopted by the 1<sup>st</sup> Defendant "is outside any wide discretion that the police may enjoy pursuant to the decision in **FAWEHINMI v. I.G.P. (2002) LPELR – 1258 CSC**". It was submitted that by this decision, even when the police "is investigating a Governor, like the 2<sup>nd</sup> Plaintiff, they must not encounter him in the course of the investigation due to the provision of Section 308 of the **Constitution**".*

In paragraph 41 of the address filed, the Plaintiffs' Counsel developed his submissions further by arguing that "it was in a bid to remove this particular investigation from the purview of normal police investigations and, in doing so, circumvent the clear guidelines of investigating an incumbent Governor laid out in **FAWEHINMI v. I.G.P.**, supra. that the 1<sup>st</sup> Defendant contrived the "Special Joint Panel of Investigation Comprising Police and SSS (DSS) Personnel that is headed by the 3<sup>rd</sup> Defendant, a lower officer answerable to the 1<sup>st</sup> Defendant". Having regard to these submissions, the Plaintiffs' Counsel concluded that "the Special Joint Panel of Investigation" is a "Commission of Inquiry simpliciter".

The Plaintiffs' Counsel further argued that "the person with authority to appoint such a Commission of Inquiry with regards to events that happened in Port-Harcourt, Rivers State, is the Governor of Rivers



State ... pursuant to Section 2(1) of the **Commissions of Inquiry Law, Cap.30, Laws of Rivers State of Nigeria, 1999'**. It was contended that *"this Honourable Court finds that the said "Special Joint Panel of Investigation" is a "Commission of Inquiry" for all intents and purposes established by the 1<sup>st</sup> Defendant in blatant usurpation of the statutory powers of the 2<sup>nd</sup> Plaintiff, which are liable to be set aside"*.

The Plaintiffs' Counsel, in the event that the submissions made that the "Special Joint Panel of Investigation" set up by the 1<sup>st</sup> Defendant was a "Commission of Inquiry" was not accepted by the Court, alternatively argued that the 2<sup>nd</sup> Defendant *"is a totally different security organization and Agency from the police"* as it was created pursuant to Section 1(c) of the **National Security Agencies Act, Cap.N74, LFN, 2004**. It was submitted, that the 2<sup>nd</sup> Defendant's functions are *"spelt out in Section 2(3)(a), (b) and (c) of the said **National Security Agencies Act"***. The Plaintiffs' Counsel argued that the 2<sup>nd</sup> Defendant, having regard to its enabling provisions, *"cannot usurp and act in exercise of the powers of the Police under Section 4 of the **Police Act"***. It was contended that *"neither can the **Police** act in exercise of the 2<sup>nd</sup> Defendant under Section 2(3) of the **National Security Agencies Act"*** and that *"until the law under which the "Special Joint Panel of Investigation" was established is*

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT

118  
18/5/17

*identified, it remains a hybrid investigative agency that is unknown to law".*

It was also argued, that *"without any enabling legislation, the said "Special Joint Panel of Investigation" cannot engage in the responsibility the 1<sup>st</sup> Defendant has vested on her"*. The Plaintiffs' Counsel, in two (2) paragraphs, summarized the issues argued in relation to the "Special Joint Panel of Investigation" and submitted that it was a *"surreptitious attempt by the 1<sup>st</sup> Defendant to hold a public inquiry into the matters contained in Exhibits "AGR-2" and "AGR-2A"*. The 1<sup>st</sup> Defendant, it was submitted, *"has no such powers under the **Police Act** and the **Constitution"***. Secondly, it was submitted, that the *"1<sup>st</sup> Defendant does not have the statutory power under the **Police Act** to establish a multi-force "Special Joint Panel of Investigation" comprising personnel of the Police and the 2<sup>nd</sup> Defendant"*.

In paragraph 49 of the written address filed, the Plaintiffs' Counsel provided the answers to each of the ten (10) questions set down in the "Originating Summons".

The Plaintiffs' Counsel concluded that having regard to the answers which he has proffered, based on the submissions *canvassed*, it is a *"proper case in which the Honourable Court should grant all the reliefs sought by the Plaintiffs"* and he gave three (3) itemized reasons why the reliefs should be granted. These are:

- (a) *"The 1<sup>st</sup> Defendant has clearly and consistently acted outside the ambit of the law in procedure and substance;"*
- (b) *The "investigation" by the Defendants is lacking in bona fides and is a witch-hunt;" and*
- (c) *"The Honourable Court has a duty to boldly protect the citizenry against infractions of the law by the Executive. This legal point was aptly made by the Supreme Court in **The Military Governor of Lagos State v. Ojukwu (1986) LPELR – 3186 (SC) at pages 21 -22 paragraphs D – A.***

The Plaintiffs through Harrison Obi, filed a "Plaintiffs' Better and Further Affidavit in Support of Originating Summons" on 12/1/17. It's a five (5) paragraph Affidavit. This "Better and Further Affidavit" in paragraph 4(a) reproduced statements which the 2<sup>nd</sup> Defendant was credited to have issued on 23/12/16 through its "Spokesperson", one Mr. Tony Opuliyo and the certified true copy of two (2) newspapers, i.e. This Day Newspaper and Punch Newspaper were produced as Exhibits '10' and '10A'. Whilst the This Day Newspaper on its front page, captioned the said publication as "*DSS Accuses Wike of sponsoring Protests in Abuja*"; the Punch Newspaper titled its own story as "*DSS accuses Wike of Sponsoring Protests to disrupt governance*". Through the same deponent on 13/1/17, the Plaintiffs

filed another "Plaintiffs' Better and Further Affidavit in Support of Originating Summons". The said "Better and Further Affidavit" was used to produced certified true copies of more newspapers publications and were marked as Exhibits '11A'; '11B'; '11C' and '11D' respectively.

In paragraph 4(e) of the said Affidavit, the deponent avers thus:

*4(e): "The 2<sup>nd</sup> Defendant has already apportioned blame and responsibility on the 2<sup>nd</sup> Plaintiff, His Excellency, Nyesom Ezenwo Wike, CON, for the violence, murder of DSP Mohammed Alkali, his colleagues that were murdered along with him and the alleged brutalization of Independent National Electoral Commission staff, without regard to the video evidence and the reports of election observers that clearly fix culpability for the violence on the security agencies, particularly the police."*

When the Defendants were served with the Plaintiffs' processes, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants through their Counsel, Samuel Ogala, Esq. of Falana & Falana's Chambers, filed a "Memorandum of Conditional Appearance" on 27/1/17.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants through Olawanle Taiwo Ernest, filed a "Counter-Affidavit of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to the Plaintiffs'


Originating Summons". It was filed on 27/1/17 and runs into ten paragraphs.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel, Samuel Ogala, Esq. filed a "written address in Support of the Counter-Affidavit to the Plaintiffs' Originating Summons".

In the said address, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel gave a brief "introduction" by way of history of electoral violence in Rivers State and of the progress which the 1<sup>st</sup> and 3<sup>rd</sup> Defendants had made in their investigating activities.

In paragraph 2.01 of the said address, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel set up two (2) issues for determination. These are:

1. *"Whether by virtue of the combined effect of Section 215 of the Constitution and Section 4 of the **Police Act** this Honourable Court has the power to stop the 1<sup>st</sup> and 3<sup>rd</sup> Defendants from detecting and investigating the criminal offences committed during the re-run election of December 10, 2016 in Rivers State;"*
2. *"Whether the setting up of a Judicial Commission of Inquiry by the 2<sup>nd</sup> Plaintiff to inquire into violence which occurred during the Re-run Election in Rivers State can stop the 1<sup>st</sup> and 3<sup>rd</sup> Defendants from*

  
18/5/17

*investigating the electoral offences committed during the said election."*

On issue one, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel argued that apart from paragraph 4 of the "Affidavit in Support of the Plaintiffs' Originating Summons" which has been denied, that all other paragraphs violate Section 115(2) of the **Evidence Act, 2011** and that they should be struck out.

The Court was urged, with reference to issue one, "*to resist the dangerous invitation of the Plaintiffs to confer immunity on the 2<sup>nd</sup> Plaintiff to prevent the 1<sup>st</sup> and 3<sup>rd</sup> Defendants from investigating the grave electoral offences which were perpetuated by armed gangs and other criminal elements during the rerun election of December 10, 2016 in Rivers State*". It was contended that the "ground for the reliefs is that the 2<sup>nd</sup> Plaintiff has set up a Judicial Commission of Inquiry on the same matter to inquire into violence and killings which occurred during the said election". Relying on the provision of Section 215(4) of the **Constitution** and Section 4 of the **Police Act**, it was argued, that "*the Defendants are empowered to investigate the commission of crime in Rivers State and question any person whether suspected or not, in connection with the complaints which they are investigating*". The Court of Appeal's decision in **A.G. ANAMBRA STATE v. UBAH (2005) 15 NWLR (pt.947) 44 @ 53** was cited. The Supreme Court's decision in **FAWEHINMI v. I.G.P.** supra.

already cited by the Plaintiffs was also cited by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel.

Reading the submissions of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel, it seems that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel took a rather *simplicistic* view of the *grouse* of the Plaintiffs which is not whether the 1<sup>st</sup> and 3<sup>rd</sup> Defendants cannot investigate allegation of commission of a crime, but its whether the 1<sup>st</sup> Defendant is empowered by any law to constitute multi-agency body known as "Special Joint Panel of Investigation" to conduct investigation whose "terms of reference" are as defined in Exhibit "AGR-2". Secondly, whether the 1<sup>st</sup> Defendant was not indirectly, except it has the *statutory power* to constitute the "Special Joint Panel of Investigation", not setting up a "Commission of Inquiry" having regard to the "terms of reference" of the said body and which Commission of Inquiry, the 1<sup>st</sup> Defendant, by the Plaintiffs' arguments, lacked the power to constitute in relation to events that occurred during the 10<sup>th</sup> December, 2016 Re-run elections in Rivers State. It is not the case, whether the Court is being invited to stop the 1<sup>st</sup> Defendant from investigating allegation of commission of crimes in Rivers State. It is whether it has the *vires* to constitute a "Special Joint Panel of Investigation" that comprises of the 2<sup>nd</sup> Defendant – being an independent and separate agency not under the 1<sup>st</sup> Defendant's control or authority to do so with specific "terms of reference". This basically is my understanding of the Plaintiffs' suit apart from

allegations of *bias* against the 2<sup>nd</sup> Defendant which the Plaintiffs seek to buttress by the production of Exhibits '10'; '10A'; '11'; '11A'; '11B'; '11C' and '11D' attached to the "Better and Further Affidavit" of Harrison Obi of Counsel.

In relation to this issue, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel argued "*that the Plaintiffs lack the vires to dictate to the Police how to carry out the constitutional responsibility conducting investigation into crimes*". This submission was supported by reference to the Court of Appeal's decision in **I.G.P. v. UBAH**, supra. which had earlier been cited by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel also cited another Court of Appeal's decision in **BAMAIYI v. THE A.G. OF THE FEDERATION (2000) 6 NWLR (pt.601) 421 @ 441**. Reading the *excerpts* of the said decision, it seems that the power to set up a "Special Investigation Panel", which the Court of Appeal conceded to, relate to the power of the Attorney General. The arguments of the Plaintiffs' Counsel were posited on the provision of Section 215(4) of the **Constitution**, and Section 4 of the **Police Act** which the Plaintiffs' Counsel argued, do not empower the 1<sup>st</sup> Defendant to constitute a "Special Joint Investigation Panel" as mentioned in Exhibit "AGR-2" attached to the Plaintiffs' "Originating Summons".

On the allegation of breach of the Plaintiffs' right to *fair hearing*, it was argued that at the stage of investigation, the issue of *fair hearing*



has no relevance to investigation, and the same decision in **I.G.P. v. UBAH**, supra. was cited and a long *excerpt* of it was reproduced. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel argued that it is when the matter is charged to Court, that the issue of *fair hearing* can arise.

On the official status of the 2<sup>nd</sup> Plaintiff as the incumbent Governor of Rivers State, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel, also citing the Supreme Court's decision in **FAWEHINMI v. I.G.P.** supra, submitted that the 2<sup>nd</sup> Plaintiff can be investigated during his tenure as the Governor of Rivers State but he cannot be prosecuted whilst in office.

On the second issue, it was argued that whilst the 2<sup>nd</sup> Plaintiff has the power to set up a "Judicial Commission of Inquiry", that his power to do so "*is circumscribed by Section 215 of the **Constitution** and Section 4 of the **Police Act** which have vested the Police with the powers to investigate all criminal offences committed in the country, including Rivers State*". The Supreme Court's decision in **A.G. OF LAGOS STATE v. EKO HOTELS (2007) 1 WRN 1 @ 56** was cited.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel argued that the 3<sup>rd</sup> Defendant had already "*commenced investigation into the crimes which were committed in Rivers State on December 10, 2016*" and that "*the 2<sup>nd</sup> Plaintiff has no power to set up a "Judicial Commission of Inquiry" to investigate criminal offences by virtue of Section 215(4) of the **Constitution** and Section 4 of the **Police Act***".

  
18/5/17

It was further submitted in paragraph 4.03 of the address, that even if the 2<sup>nd</sup> Plaintiff can set up a "Judicial Commission of Inquiry" into the violence which occurred during the rerun election, it was argued that if the Commission "*finds that criminal offences were committed, it is bound to recommend that such criminal offences be referred to the 1<sup>st</sup> Defendant for investigation and prosecution*". It was further argued, that "*the crimes set out in the **Electoral Act, 2010** are federal offences the 2<sup>nd</sup> Plaintiff has no power whatsoever to set up a "Judicial Commission of Inquiry" to investigate or probe them*". It was further submitted that "*a Judicial or Administrative Commission of Inquiry lacks the competence to investigate the commission of criminal offences*". The decision in **MILITARY GOVERNOR OF IMO STATE v. NWAUWA (1997) 2 NWLR (pt.490) 675** was cited.

In conclusion, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel submitted that what the Plaintiffs seek by this suit, is to "*restrain the Defendants from performing their statutory duties of investigating serious allegations of murder, electoral crimes, etc.*" The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel argued that the Court should not grant the *reliefs being sought* by the Plaintiffs as doing so will "*promote impunity in Rivers State*" and will amount to "*an invitation to anarchy and chaos*". The Court was urged to dismiss the Plaintiffs' "Originating Summons".


As one would have been expected, the Plaintiffs' Counsel upon being served with the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit" and the

"Written Address" which I have just reviewed, filed a "*Plaintiffs' Further and Better Affidavit in Answer to the Counter-Affidavit of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to the Plaintiffs' Originating Summons*". It's a lengthy 12 paragraphed depositions with lots of sub-paragraphs and was deposed to by Harrison Obi of Counsel on 2/2/17. The deponent used the occasion of the said "Further Affidavit" to explain some of the *documentary exhibits* which the 1<sup>st</sup> and 3<sup>rd</sup> Defendants have produced and by my assessment, *contextualized* some of the issues raised in the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit". I refer to Exhibit 'C' attached to the "Counter-Affidavit" and Exhibit "AGR-12" by which the Plaintiffs prove that the Report in Exhibit 'C' attached to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit" has been *quashed* by a High Court of Rivers State.

The Plaintiffs' Counsel filed a "Plaintiffs' Reply on Points of Law". It's dated and was filed on 2/2/17.

In paragraph 5 of the said address, the Plaintiffs' Counsel highlighted seven (7) issues which he regards as issues of law on which the Plaintiffs need to be heard. In paragraph 6 of the address, the Plaintiffs' Counsel condensed the seven (7) issues into three (3) categories and expressed an intention to argue issues 1, 5 and 6 together, while issues 2 and 7 will be taken "*seriatim*" and issues 3 and 4 are to be addressed together.

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

  
18/5/17

In the submissions *canvassed* under the title: "*Preliminary Points*", the Plaintiffs' Counsel endeavoured to demonstrate that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel, by their written address filed "in Support of their Counter-Affidavit", has a *gross misconception* or *understanding* of the Plaintiffs' suit. It was, by the submissions made, what *led* the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel in making the submissions that the Court cannot restrain the 1<sup>st</sup> and 3<sup>rd</sup> Defendants from "*performing its constitutional and statutory functions/duties.*" This, it was contended, a *general legal proposition* that is *valid* and it was submitted, *that the "general propositions of law" do not automatically oust the power of superior Courts of record... to intervene in justiciable and deserving issues*". The Plaintiffs' Counsel argued that the exercise which the 1<sup>st</sup> and 3<sup>rd</sup> Defendants seek to carry out through the "Special Joint Investigation Panel" was a "*witch-hunt*" targeted at the 2<sup>nd</sup> Plaintiff" and that it was not "*meant to achieve any public good, the basic reason for which the police is set up*". It was argued that the decision of the Supreme Court in **FAWEHINMI v. I.G.P. (2007) 7 NWLR (pt.767) 606** and in **LUNA v. C.O.P. (2010) LPELR – 8642** recognized "*the right of the superior Courts of record to intervene in exceptional circumstances to prevent the police from acting mala fide*".

In paragraph 16 of the address filed, the Plaintiffs' Counsel enumerated the circumstances under which the Courts may intervene

in the so called exercise of the *statutory powers* of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. These are:

- (1) "*In exceptional circumstances: see **Fawehinmi v. Inspector General of Police** (supra.);"*
- (2) "*When its statutory power is used for some improper purpose: see **Luna v. Commissioner of Police** (supra.);"*
- (3) "*When the Police breaches the statutory or constitutional rights of citizens in its exercise of the powers conferred on it by Section 4 of the Police Act and Section 215(4) of the 1999 Constitution as amended: see **Inspector General of Police v. Ubah** (supra.);" and*
- (4) "*When the Police fails to act in a "**professional, thorough and diligent**": see **Atiku v. The State** (supra.)."*

Having regard to the *enumerated circumstances*, the Plaintiffs' Counsel submitted that "*in a constitutional democracy*", the police "*do not have a blank cheque*", and that "*its statutory duty must be complied with a responsibility to act bona fide and in the public interest*".

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

HS  
18/5/17

On issues 1, 5 and 6 as highlighted, in the address, the Plaintiffs' Counsel having reproduced paragraph 8(i); (j); (k) and (t) of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit", argued that this *led* the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel to make a *legal submission* that the 2<sup>nd</sup> Plaintiff had admitted that he ordered the killings which occurred. It was contended that address of Counsel "*is no substitute for evidence*" and cited the decision in **W/AFRICA OFFSHORE LTD. v. ARIRI (2015) 18 NWLR (pt.1490) 177 @ 199<sup>F</sup>**. It was argued that there is no "*single deposition in any of the Affidavits of the Plaintiffs or the "Counter-Affidavit" of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants*" which supports the alleged admission by the 2<sup>nd</sup> Plaintiff of the commission of the offences. It was contended that Exhibit 'A' attached to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit" is not an admission of any of the issues which the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel's address, have rolled up around the 2<sup>nd</sup> Plaintiff's neck as admission for which Exhibit "AGR-2" was set up to investigate.

On Exhibit 'D', the Plaintiffs' Counsel referred to Exhibit "AGR-13" and submitted that the Plaintiffs' case was meant "*to prevent a premeditated "witch-hunt" typified in the sweeping and unsubstantiated depositions of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit"*".


The Plaintiffs' Counsel in paragraph 34 of the "Reply on Point of Law", submitted, based on the Supreme Court's decision in **HART v. MIL.**

**GOV. OF RIVERS STATE & 2 ORS. (1976) 1 S.C. 211**, that "*any administrative body that holds an inquiry/investigation to ascertain facts and in which it has to take a decision" between an allegation and a defence "has to act fairly"*.

On issue 2, it was argued that "*a general denial that does not condescend on the particulars is no denial*" and that "*paragraph 6 of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit" does not controvert the facts deposed to in the Plaintiffs' "Affidavit in Support of the Originating Summons"*". By this argument, it was contended that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants have "*unequivocally admitted paragraphs 4(e), (f), (h), (i), (l), (m), (r), (w), (y) and (z)*" by which the Plaintiffs contended that "*the investigation is nothing more than a mere ruse and pre-determined "witch-hunt"*". The other sub-paragraphs of paragraph 4 of the Plaintiffs' Affidavit were challenged on the ground that they contravened the provision of **Evidence Act**, supra. and as such, they were not factually *controverted*.

On issues 3 and 4, the Plaintiffs' Counsel argued that paragraph 4(j), (k), (n), (o), (p), (q), (s), (t), (u), (v), (x), (cc), (dd) and (ee) of the Plaintiffs "Affidavit in Support of the Originating Summons" "*are not legal submissions and conclusions of the Plaintiffs' Counsel*". It was contended that the depositions in the said sub-paragraphs "*are facts supplied to the deponent of the "Affidavit by...the 3<sup>rd</sup> Plaintiff on record"*". It was argued that the "*deponent has complied with Section*

47 CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

  
18/5/17

115(4) of the **Evidence Act**". The Court was urged to find that the said depositions are proper and to also find that "*the facts therein have not in any way been denied*".

On issue 7 in the "Reply address on Points of Law", that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' deposition in paragraph 8(r) of their "Counter-Affidavit", is inconsistent with the submissions of their Counsel in paragraphs 4.01 to 4.04 of the address filed, it was submitted that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants "*cannot approbate and reprobate*". The Plaintiffs' Counsel submitted that the "Judicial Commission of Inquiry" set up by the 2<sup>nd</sup> Plaintiff was not set up to investigate criminal allegations but it was set up to "*investigate the remote and immediate causes of violence during the rerun election of December 10, 2016*" among others by a reading of Exhibit "AGR-1".

Having regard to some of the *factual* conclusions which the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit" has stated as highlighted in paragraph 52 of the Plaintiffs' written address, the Plaintiffs' Counsel in paragraph 52 posed four (4) questions, to wit:

- (a) "*Is this case then a criminal accusation or a witch-hunt?*"
- (b) "*Is the 2<sup>nd</sup> Plaintiff placed in jeopardy in the circumstances of the investigation by the Special Joint*



*Investigation Panel and subsequent trial of the said policemen?"*

- (c) *"Will it be possible for the Special Joint Investigation Panel (the Panel) to conduct its investigation cleanly and fairly without an opportunity being given to the 2<sup>nd</sup> Plaintiff to defend himself?"*
- (d) *"Can any meaningful investigation or hearing of the Panel take place without an opportunity being given to the 2<sup>nd</sup> Plaintiff to cross-examine the policemen he is alleged to have colluded with to commit the alleged crime?"*

The Plaintiffs' Counsel argued that *"the setting up of the "Special Joint Investigation Panel" is nothing more than a "witch-hunt" and an attempt to denigrate the exalted office of the 2<sup>nd</sup> Plaintiff for political reasons"*.

It was contended that *"for fair trial to take place, the Panel must of necessity, encounter the 2<sup>nd</sup> Plaintiff and this inevitably would lead to a breach of the Immunity provision contained in Section 308(1)(c) of the **Constitution**"*. This was the reason why the Plaintiffs' suit, it was argued, ought to succeed. The Court was urged *"to discountenance the submissions of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants on their issue two"*, because, they *"completely miss the point"*.

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ADUNA

*[Handwritten signature]*  
18/5/17

The 2<sup>nd</sup> Defendant on its part, when served with the Plaintiffs' "Originating Summons" and "Written Address" filed thereon, it entered on 9/2/17, a "*Conditional Appearance*" by its memorandum dated and filed on 9/2/17.


The 2<sup>nd</sup> Defendant on the same date, through one of its officers, Bamai Abu Nehemiah filed a "*2<sup>nd</sup> Defendant's Counter-Affidavit in Opposition to Plaintiffs' Originating Summons filed on 11<sup>th</sup> January, 2017*". It's a five (5) paragraphed "Counter-Affidavit".

The 2<sup>nd</sup> Defendants' Counsel, Oyinlade Koleosho, Esq. filed a "*2<sup>nd</sup> Defendant's Written Address in Support of the Counter-Affidavit in Opposition to the Plaintiffs' Originating Summons*". It's dated 9/2/17 and was filed on the same date.

The 2<sup>nd</sup> Defendant's Counsel prefaced the written address with an "*introduction and brief summary of facts*" which are about the events that characterized the December 10, 2016 re-run election in Rivers State and which informed the decision of the 1<sup>st</sup> Defendant to "*set up a Panel of Inquiry to conduct an extensive and thorough investigation into the allegations of crime during the re-run election*". The 2<sup>nd</sup> Defendant's Counsel in paragraph 1.07 of the address, states that "*the 2<sup>nd</sup> Defendant was joined in this suit because some of its officials are members of the Investigative Team set up by the 1<sup>st</sup> Defendant*" and in paragraph 2.01 of the address, sets down two (2) issues for determination. These issues are: (a) "*Whether the Investigative Team*

set up by the 1<sup>st</sup> Defendant can be said to assume the authority of a Panel of Inquiry as alleged by the Plaintiffs?" (b) "Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants can statutorily and validly constitute an investigation team to look into the complaints of allegations of criminal acts during the 10<sup>th</sup> December, 2016 Re-run Election in Rivers State". I thought that issue two (2) would have been more properly defined by stating it as a "Joint" Panel because, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, in their respective performance of their *statutory duties*, can independently constitute investigating teams, but what is in issue is the setting up a "Joint Investigative Panel" by two (2) distinct and separate organizations each of who, by its enabling Acts, has its specific *statutory duties* clearly defined by the Acts of the National Assembly. The *grouse* of the Plaintiffs' suit, if I understand the submissions *canvassed* well, is that the 1<sup>st</sup> Defendant does not have the *statutory powers* pursuant to Section 215(4) of the **Constitution** and Section 4 of the **Police Act**, to constitute a "Joint Panel of Investigation" which will comprise of the 2<sup>nd</sup> Defendant's officers who are not under the 1<sup>st</sup> Defendant's command by virtue of the provision of Section 215(2) of the **Constitution** as the 2<sup>nd</sup> Defendant's Director General, by virtue of Section 3(1) and (2)(a) of the **National Security Agencies Act**, *supra*. does not report to the 1<sup>st</sup> Defendant in the performance of the 2<sup>nd</sup> Defendant's *statutory duties* prescribed in Section 2(3)(a), (b) and (c) of the 2<sup>nd</sup> Defendant's enabling Act.

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

  
18/5/17

In arguing issue one, the 2<sup>nd</sup> Defendant's Counsel who somehow, accepts the re-defining of issue two (2) as I had remarked, dismissed the Plaintiffs' proposition as "*not only misguided in their position*", but that "*their position is also totally frivolous and unmeritorious*". In paragraph 3.03 of the address filed, it was argued that "*there is a world of difference between the terms of Reference of a Panel of Inquiry set up by a State Government and the Investigative Team set up by the 1<sup>st</sup> Defendant*". The Court of Appeal's decision in **DONBRAYE & ANOR. v. PREYOR & ORS. (2014) LPELR – 22286 (CA)** was cited with its *excerpts* reproduced. When I read the *excerpts* of the said decision, the question which remained, by my understanding of the said decision and its *excerpts*, is whether the 1<sup>st</sup> Defendant or the 2<sup>nd</sup> Defendant where it exercises its *statutory powers* to conduct investigation into an alleged crime, will as it was done in Exhibit "AGR-2", call on the 2<sup>nd</sup> Plaintiff to oblige the investigative team with "*necessary information and other exhibits*". I have asked this question because, if the decision of **FAWEHIMNI v. I.G.P.** supra. which both parties seem to be relying upon, empowers the 1<sup>st</sup> Defendant to investigate an incumbent Governor of a State, Exhibit "AGR-2" should have in *clear* and in *unequivocal* terms, let the 2<sup>nd</sup> Plaintiff be well advised, that he is a "suspect" on the allegations being investigated, and that having regard to the provision of Section 308(1)(a) – (c) of the **Constitution**, he should accord the 3<sup>rd</sup> Defendant's "Special Joint Investigation Panel" necessary co-operation

in order to be interviewed for the purposes of the investigation, rather than the language in which Exhibit "AGR-2" was *couched* and which had given rise to the suspicion and fears of the Plaintiffs as regards the *bona fide* of the 1<sup>st</sup> Defendant's intention or action. It further fueled the allegation of *bias* which the Plaintiffs also made as a major *plank* of their objection to the "Special Joint Investigation Panel" which they perceived, was set up to "*witch-hunt*" the Plaintiffs and *denigrates* the 2<sup>nd</sup> Plaintiff. Assuming it or they can do so, the question still remains whether the 1<sup>st</sup> Defendant has been able to show under what provisions of the **Police Act**, or under what provision of the **National Security Agencies Act** which relate to the 2<sup>nd</sup> Defendant, it can constitute a "Joint Panel of Investigation" and be headed by a "Chairman", in what *ordinarily* should be an exercise of its *statutory powers* pursuant to Section 4 of the **Police Act**, and to state its "terms of reference" on specific subjects which are contrary to the conventional police methods of investigation, to request the 2<sup>nd</sup> Plaintiff "*to furnish the investigative team with all necessary information and other exhibits that may assist them during the course of their investigation activities*". The question again remains whether the 2<sup>nd</sup> Plaintiff is required to do so as a "suspect" or as a "witness" notwithstanding his position as the "Chief Security Officer" of Rivers State? It was argued that the Panel set up by the 2<sup>nd</sup> Plaintiff "may not have the wherewithal to carry out deeper intelligence work and also cited the Court of Appeal's decision in **I.G.P. v. UBAH (2015)**

**11 NWLR (pt.1471) 405 @ 436** and submitted that the Court cannot stop the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from performing their *statutory duties*.

In paragraph 3.06 of the address, the 2<sup>nd</sup> Defendant's Counsel argued that the "*investigative team set up by the 1<sup>st</sup> Defendant which consists of the officials of the 2<sup>nd</sup> Defendant cannot be likened in any way or manner to the "Panel of Inquiry" set up by the Plaintiffs and answered the question in the negative*". It was argued that the Investigative team set up by the 1<sup>st</sup> Defendant cannot become a "Panel of Inquiry" and that such a "Panel of Inquiry" "*needs to turnover its findings and recommendations to the authority that set it up*". It was further submitted that the Plaintiffs are not empowered to "*to prosecute electoral offences*" and that "*even if the 3<sup>d</sup> Plaintiff chooses to prosecute some of the offences, it must resort to the 1<sup>st</sup> Defendant as stipulated by Statute*". The 2<sup>nd</sup> Defendant's Counsel argued that the "Panel of Inquiry" set up by the Plaintiffs cannot make findings in relation to the commission of criminal offences and prosecute those indicted and he cited the decision in **MIL. GOVERNOR OF IMO STATE v. NWAUWA (1997) 2 NWLR (pt.490)** and the Supreme Court's decision in **GARBA v. UNIV. OF MAIDUGURI (1986) 1 NWLR (pt.18) 550.**

In paragraphs 3.11 – 3.12 of the address filed, the 2<sup>nd</sup> Defendant's Counsel argued that the Plaintiffs' suit seeks essentially, *declaratory*

*remedies, and it was submitted, that "the Plaintiffs have failed to prove on the balance of probability as required, that they are entitled to reliefs being sought having failed to show ... that there is a resemblance between the investigative team set up by the 1<sup>st</sup> Defendant and the "Panel of Inquiry" set up by the 1<sup>st</sup> Defendant" (sic) (1<sup>st</sup> Plaintiff)".*

On the second issue, the 2<sup>nd</sup> Defendant's Counsel addressed the said issue by reference to Section 215(3) of the **Constitution** and to the **Police Act** (Section 4). It was submitted, *"that the discretion of how to carryout investigation rests solely with the investigative body"* and cited the Supreme Court's decision in **KAREEM OLATINWO v. THE STATE NSCQ Vol.532 2013 page 635**. The 2<sup>nd</sup> Defendant's Counsel argued that the 1<sup>st</sup> Defendant can *"rightly delegate such powers to other Police Officers as in the case in this instant suit"*. The 2<sup>nd</sup> Defendant posed a question thus: *"Can the Plaintiffs then rightly pray this Honourable Court to set aside the acts carried out by the investigative team set up by the 1<sup>st</sup> Defendant in pursuit of the function for which it was set up which is in line with its investigative powers?"* This was answered in the negative.

On the issue of *bias* which the Plaintiffs also raised, the said allegation was dismissed by the 2<sup>nd</sup> Defendant's Counsel as *"not only unfounded, it is simply of no moment"*. It was also argued that the 1<sup>st</sup> Defendant's letter to the 2<sup>nd</sup> Plaintiff did not identify specific persons. The 2<sup>nd</sup>

Defendant's Counsel also took up the Plaintiffs' own "Panel of Inquiry" and argued that "*is it not also reasonable to assume that the "Panel of Inquiry" set up by the 1<sup>st</sup> Plaintiff will also be biased going by the history of unpleasant relationship between it and the 1<sup>st</sup> Defendant?"* It was submitted that "*the 1<sup>st</sup> Defendant's findings can be rightly challenged in Court when prosecutions take place*" and that the Plaintiffs "*have no legal right to insist that the Defendant be ordered to quit investigations*". The Court was urged to dismiss the Plaintiffs' fear of *bias* as it was not *substantiated*. The provision of Section 131(1) and (2) of the **Evidence Act**. *supra*. was cited and the Court was urged to dismiss the Plaintiffs' suit.

In paragraph 5.01 of the address, the 2<sup>nd</sup> Defendant's Counsel concluded his submissions in three (3) numbered summary and states thus:

- i. "*This suit fails to establish that the investigative team set up by the 1<sup>st</sup> Defendant has any semblance to a panel of Inquiry set up by a state law, neither did it usurp such powers in its activities.*"
- ii. "*The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are constitutionally and statutorily empowered to carry out investigative and prosecutorial activities in respect of the allegation of commission of any crime in any part of Nigeria.*"



- iii. *"The Plaintiffs failed to establish that the 1<sup>st</sup> Defendant in its letter indicate any bias in its intended investigation."*

When served with the 2<sup>nd</sup> Defendant's "Counter-Affidavit" and the written address filed thereon, the Plaintiffs' Counsel filed a "*Plaintiffs' Further Affidavit in Answer to the 2<sup>nd</sup> Defendant's Counter-Affidavit to the Plaintiffs' Originating Summons*". It was deposed to by Harrison Obi of Counsel on 17/2/17. It is an 8 paragraphed depositions in which the Plaintiffs joined issues with the 2<sup>nd</sup> Defendant on virtually all facts as contained in its "Counter-Affidavit filed in Opposition to the Plaintiffs' Originating Summons".

The Plaintiffs' Counsel filed a "*Plaintiffs' Reply on Point of Law to the 2<sup>nd</sup> Defendant's Counter-Affidavit dated 9/2/17*".

In paragraph 2.1 of the address, the Plaintiffs' Counsel itemized four (4) issues on points of law which the 2<sup>nd</sup> Defendant's "Counter-Affidavit" and "written address" have thrown up. These are:

1. *"That the Special Joint Investigation Panel set up by the 1<sup>st</sup> Defendant does not have the coloration and authority of a Panel of Inquiry and not tainted with bias and malice."*
2. *"That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have powers under law to set up a Special Joint Investigation Panel to*

*TS/15/17*

*look into allegations of crime committed during the re-run election of 10<sup>th</sup> December, 2016 in Rivers State."*

3. *"That the averments contained in paragraphs 4(n, o, p, cc, dd, q, r, s, t, u & z) of Harrison Obi consist of arguments."*
4. *"That the averments contained in paragraphs 20 and 21 of the supporting affidavit of Oraye St. Franklyn consist of opinions and conclusions."*

On the first and second points which were taken together, the Plaintiffs' Counsel submitted that the 1<sup>st</sup> Defendant *"has no power under any law in Nigeria to set up the "Special Joint Investigation Panel" made up of the 2<sup>nd</sup> Defendant"*, and this point was argued from the provision of Section 4 of the **Police Act** – which was reproduced.

The Plaintiffs' Counsel who reproduced paragraph 8(b), (c), (d), (e), (f), (g), (h), (p) and (q) of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit" submitted that *"what the above facts point to, is that the Defendants have in fact concluded their investigations in line with their statutory mandate under the law and nothing is left in respect of which a "Special Joint Investigation Panel" is being set up"*.

The Plaintiffs' Counsel also submitted that, will the setting up of a "Special Joint Investigation Panel", a statutory function of the 1<sup>st</sup> and

3<sup>rd</sup> Defendants? The Plaintiffs' Counsel submitted that *"in all arguments of the Defendants in vainly attempting to justify the setting up of the "Special Joint Investigation Panel" they have not been able to make any reference to any law empowering them to set up the said Panel"*. It was argued that the provision of Section 4 of the **Police Act** *"cannot translate to powers to set up a "Special Joint Investigation Panel" comprising the 2<sup>nd</sup> Defendant"*. The Plaintiffs' Counsel argued further, that *"it follows that any actions carried out or report presented by the said Panel without legal backing ought also to be declared null and void"*. The Court's attention was drawn to a Court of Appeal's decision in **BOKOSHI v. CHIEF OF NAVAL STAFF (2004) 15 NWLR (pt.896) 268.**

In relation to the 2<sup>nd</sup> Defendant's submissions that the Police *"are free to carry out their investigation in any manner they choose at their sole discretion"*, the Plaintiffs' Counsel replied that *"this argument can only be true to the extent that the investigation is not carried out by a body set up contrary to law"*. It was further contended that *"so long as the Defendants purport to carry out any investigation or inquiry using the instrumentality of a "Special Investigation Panel" that is unknown to law, this Court can rightly intervene to declare such act as a nullity"*.

In paragraph 3.6 of the address, it was submitted that the *"Special Joint Investigation Panel"* set up by the 1<sup>st</sup> Defendant has the

coloration and authority of a "Panel of Inquiry". The Plaintiffs' Counsel advanced three (3) reasons for this view and they are:

- (a) *"It is named **SPECIAL JOINT INVESTIGATION PANEL ON RIVERS STATE RE-RUN ELECTION – See exhibit AGR-2A** attached to the Affidavits in Support of the Originating Summons of the Plaintiffs"*
- (b) *"It has a Chairman appointed by the 1<sup>st</sup> Defendant, who is the 3<sup>d</sup> Defendant to this suit – See again, **Exhibit AGR-2A**"*
- (c) *"It has terms of reference common to Commissions of Inquiry."*

On the 2<sup>nd</sup> Defendant's Counsel's submission, whilst citing the Court of Appeal's decision in **I.G.P. v. UBAH**, supra. that "*no Court has power to stop the police from investigating a crime and that how the investigation is done is at the discretion of the police*", the Plaintiffs' Counsel replied that "*such investigation must be done within the bounds of the law and bonafide*". It was argued, that "*where such investigation is done malafide or improperly, the Court will grant an injunction in that regard*" and cited the Supreme Court's decision in **FAWEHINMI v. I.G.P. (2002) 7 NWLR (pt.767) 606.**

On this issue of Courts created by the Constitution, not having power to restrain a *statutory body* from performing its duties, let me digress

a little and share my humble thoughts on this *postulation* which in recent time, has been rearing its "ugly head" in submissions made by Counsel who defend government institutions, and in particular, investigatory and prosecutorial Agencies of Government.

In my view, it's a *wide* and perhaps, "*wild*" *legal proposition* which sounds like a "*constitutional heresy*" to state that a statutory body in the performance of its *statutory duties* will be left alone, perhaps a form of "*statutory immunity*" from Court's process, to operate in such manner that its act or decision will remain as it were, *irreviewable* by the superior Courts of record created by the **Constitution**, when the **Constitution** by its own provisions, has prescribed *benchmarks* for the *validity*, not only of Acts of the National Assembly (see Section 4(8) of the **Constitution**) but of the steps/acts/decisions of bodies created by laws which may be taken or exercised pursuant to the provisions of such Acts which themselves are reviewable by the Courts. The exercise of a *statutory power* only remain *unimpeachable*, when exercised *bona fide* and in strict compliance with the law that donates the power. See Court of Appeal's decision in **MCLAREN v. JENNINGS (2003) FWLR (pt.154) 528 @ 530, 537 – 538.** Where the exercise of a statutory power will result in the *infringement of any of the rights guaranteed* by the **Constitution** or the exercise of such power is, when all the facts are taken into consideration will result in abuse of *bona fide* State's powers conferred on a *statutory*

*body*, the Courts created by the Constitution and empowered to act as the proverbial "sentinel's of liberties of the citizens, will be acting properly and constitutionally to restrain such a statutory body from misusing its statutory powers. For instance, the police or any of the law enforcement agencies has no statutory power to investigate an act that does not amount to an offence in any written law. See Section 36(12) of the **Constitution**. This in my view, is the *whole essence of constitutionalism and rule of law in a democratic society governed by a written Constitution*. I have no doubt in my mind, that there is no valid *legal proposition or judicial principle*, by which a *statutory body* or even a constitutional organ of government, can as of "*right*" (I bear in my view, **Prof. Wesley Newcomb Hohfeld's "Classification of Jural Relations**) exercise its *statutory powers* in accordance with its own *whims* and *predilection* and or not in accordance with or for the purposes for which the *statutory powers* were conferred by its enabling Act, and insist as a legally valid argument, that no Court of law can restrain it in the exercise of such powers when *ex facie*, there are facts that it may have abused the said powers for purposes they were not granted or has acted in excess of its powers, or has acted *unreasonably* and *mala fide* even in the exercise of its *discretion* or it has acted contrary to provisions of the **Constitution**. This, in my view, is the whole essence of the concept of rule of law by which the *final say* as to the *legality* or *constitutionality of any governmental act or decision* lay with the

Courts as the 3<sup>rd</sup> Arm of Government under the *doctrine of separation of powers* because, no *statutory body* can be a "judge" in its own cause. To accede to that strange proposition is for the Courts to surrender its pre-eminent adjudicatory duty as the *proverbial "Guardian"* of the **Constitution** to a *strange concept* not borne out of a wholistic consideration of the letters and spirit of the **Constitution**: That *inert judicial attitude*, will be a *recipe* that will encourage and foster a culture of *impunity* and *endanger a cloudy and ominous atmosphere* for *authoritarianism* and *despotism* to thrive in a democratic State meant to be governed on the basis of a written **Constitution** which only guarantees a *limited government* on the *principles of rule of law*.

On the 2<sup>nd</sup> Defendant's Counsel's submission that the power to prosecute offenders indicted for electoral offences which it argued, *lay* with the 1<sup>st</sup> Defendant, the Plaintiffs' Counsel replied that the "*duty to prosecute crimes primarily lies on the 3<sup>rd</sup> Plaintiff; though the 3<sup>rd</sup> Plaintiff can delegate such power or duty to the 1<sup>st</sup> Defendant*" and he cited the provision of Section 195 of the **CFRN, 1999 As Amended** and the Supreme Court's decision in **F.R.N. v. OSAHON (2006) 5 NWLR (pt.973) 361 @ 404**. It was also submitted that based on the provision of Section 286 of the **Constitution**, "*the 3<sup>rd</sup> Plaintiff can also prosecute federal crimes in so far as they were committed in Rivers State*".

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

#18/5/17

The Plaintiffs' Counsel, again dwell on the issues of *bias* and that the investigations being conducted, had from its inception, reached *prejudicial* conclusions against the interests of the 2<sup>nd</sup> Plaintiff.

Still on the *legality* of the "Special Joint Investigation Panel", the Plaintiffs' Counsel further contended that "*it is apparent that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are two different government agencies with disparate functions*" and proceeded to submit, that "*it is quite absurd and strange for the 1<sup>st</sup> Defendant to set up a panel involving the 2<sup>nd</sup> Defendant, such act is unknown to law*".

On the 3<sup>rd</sup> and 4<sup>th</sup> points of law which relate to the averments in paragraph 4 of the Plaintiffs' deponent, Harrison Obi and of paragraphs 20 and 21 of the deposition of Oraye St. Franklyn, it was submitted, that the facts are within the knowledge of the deponents and that the depositions comply with the provision of Section 115 of the **Evidence Act**, supra. It was also argued, that the said depositions were not in any way countered by the Defendants. The Plaintiffs' Counsel also drew the Court's attention to paragraph 3(p) of the 2<sup>nd</sup> Defendant's "Counter-Affidavit", and submitted that the deposition therein was a "conclusion" and that it offends the provision of Section 115(2) of the **Evidence Act**.

The Plaintiffs' Counsel also drew the Court's attention to paragraph 3(k) of the 2<sup>nd</sup> Defendant's "Counter-Affidavit", and submitted that the "*step was taken by the Defendants whilst this Honourable Court was*



*already seised of the issues the subject matter of this suit and even after the 1<sup>st</sup> and 3<sup>rd</sup> Defendants have submitted to the jurisdiction of this Court and had joined issues with the Plaintiffs on their Originating Summons". It was argued that "the Defendants have by their action undermined the powers and authority of this Court to preserve the rule of law and adjudicate on issues submitted to the Court". The Plaintiffs' Counsel concluded by submitting, that "this Court possess the inherent powers to undo anything that has been done by a party contrary to law" and he urged this Court, "notwithstanding the actions of the Defendants' proceeding with the sitting of the Panel and submitting a report whilst this suit was pending, to proceed to invoke the disciplinary powers of the Court in nullifying and setting aside the purported report of the Panel".*

As if these "Affidavits" and "Further Affidavits" were not enough, the Plaintiffs, through the same deponent, Harrison Obi on 28/2/17 filed a "*Plaintiffs' Better and Further Affidavit No.2 in Answer to the 2<sup>nd</sup> Defendant's Counter-Affidavit to the Plaintiffs' Originating Summons*".

The said "Further and Better Affidavit No.2" was essentially used by the Plaintiffs, to put across to the Court, the Report of INEC's own domestic administrative investigation it conducted in relation to the Re-run National and State House of Assembly Election conducted on 10/12/16. The reports which the Plaintiffs have produced are certified true copies of Newspapers' publications attached to the said "Further

and Better Affidavit No.2” as Exhibits ‘N1’, ‘N2’, ‘N3’ and ‘N4’, respectively. The contents of each of the said publications *indicted* INEC officials and security personnel, and in particular, the police officers deployed to Rivers State for the purpose of providing security during the re-run election on 10/12/16.

The exercise I have done so far, was to review the processes filed and exchanged by both parties.

On 3/3/17, I listened to the oral submissions of all three (3) Counsel to the parties. The Court, also during the hearing, watched in the full glare of both the parties or their representatives and Counsel, the contents of two (2) DVDs attached to the Plaintiffs’ “Originating Summons” as Exhibit “AGR-9”. The delay in delivering this Judgment on 2/5/17 was to seek one more opportunity to view the footage in the said DVDs which are the *telecast* of the Channels News – it’s a privately owned news medium established about 24 years ago which by the estimation of right thinking Nigerians, has gathered for itself, a profound record of independence, non political and accurate and reliable news broadcast and it’s one of the leading television stations in Nigeria which enjoy, by my personal experience, a wide range of acceptability amongst Nigerians who live abroad where its signals can be accessed.

The Plaintiffs’ Counsel, Chief Mike Ozekhome, SAN was heard first in his oral submissions and he drew the Court’s attention to the Plaintiffs’

filed processes which I have reviewed in some great details. The Plaintiffs' Counsel took time to *wade* through the *documentary exhibits* which were produced and attached to the series of the "Affidavits", "Further Affidavits" and "Further and Better Affidavits" deposed to, largely by the same deponent, Harrison Obi – a Counsel in the Mike Ozekhome's Chambers.

These processes were adopted, and the Plaintiffs' learned Counsel submitted that "*the gravamen of this case is that the Defendants cannot set up a "Special Panel of Investigation notwithstanding the Police powers under the **Police Act**, i.e. Section 4, and Section 214 of the **CFRN, 1999 As Altered** to specifically target the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs with a premeditated, designed, contrived intention to rubbish the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs after they had already made up their mind to indict them"*.

The Plaintiffs' Counsel took advantage of his oral submissions, to refer to the depositions in paragraph 8 of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' "Counter-Affidavit" by which the 1<sup>st</sup> and 3<sup>rd</sup> Defendants had already made their findings even before the "Special Joint Investigation Panel" was set up and have *indicted* the 2<sup>nd</sup> Plaintiff.

It was his argument, that the Panel set up by the 1<sup>st</sup> Defendant with the 3<sup>rd</sup> Defendant being named as its "Chairman", is nothing but a "Commission of Inquiry" which he argued, that the 1<sup>st</sup> Defendant has no power to constitute. The Plaintiffs' Counsel also submitted, that

there are occasions when the Court can intervene to stop the performance of the 1<sup>st</sup> Defendant's *statutory duty* to conduct investigation and referred to the four (4) instances which I had earlier reproduced in this Judgment. I had also, in the course of this Judgment, expressed by way of *obiter*, the *fallacy embedded* in the wide *legal proposition* that the Court can be *incapacitated* in the exercise of its *judicial powers*, to intervene where a *statutory body*, *ostensibly* seen to be exercising its *statutory powers*, can be stopped when such will result in abuse of such powers or may lead to a *violation any of the guaranteed fundamental rights* by the **Constitution.**

The Plaintiffs' Counsel contended, that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs having set up a "Judicial Commission of Inquiry" in relation to the acts of violence that occurred during the Re-run election in Rivers State on 10/12/16 – this was pursuant to an extant law of Rivers State, that the Panel set up by the 1<sup>st</sup> Defendant is by the Plaintiffs' Counsel's words, "*a Kangaroo Panel*". The learned Counsel adopted all the processes filed and concluded that "*the police can do its job, and must do so within the law*".

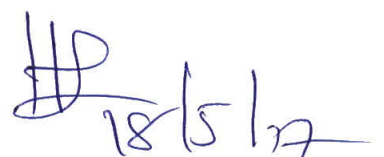
The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel, Femi Falana, Esq. SAN was heard next after the Plaintiffs' Counsel's oral adumbration.

In his oral submissions, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel invited the Court's attention to the "Counter-Affidavit" filed on 27/1/17 on behalf

of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants by Olawale Ernest, and drew the Court's attention to the five (5) exhibits marked as 'A' – 'E'. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel adopted the written address filed as his oral submissions. It was argued that the Plaintiffs' case is one which seeks the Court to stop the 1<sup>st</sup> and 3<sup>rd</sup> Defendants from performing their duty to investigate "*the sundry criminal offences that occurred in Rivers State during the re-run election on 10/12/16*".

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel argued, that the "*INEC has also conducted its investigation*" and that the Plaintiffs also say that they want to conduct their own investigation, but that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants "*cannot conduct investigation*". The learned silk referred to Exhibit "AGR-2" attached to the Plaintiffs' "Originating Summons". It was argued that the investigations being conducted by the Plaintiffs and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants are different. It was contended that after the Plaintiffs would have concluded their investigation, "*that the Report will be turned over to the Defendants*". He referred to Exhibit "AGR-8" and that as at when it was written to the 1<sup>st</sup> Defendant, "*there was no expression of fear of bias against the Defendants by the Plaintiffs*". It was submitted, that a "*Commission of Enquiry set up by the 2<sup>nd</sup> Plaintiff cannot investigate the commission of criminal offences*".

It was also argued, that the "*Plaintiffs have not stated what rights are being violated by the investigation conducted by the Defendants*".

Handwritten signature and date: 18/5/17

Whilst referring to Exhibits "AGR-2" and "AGR-2A", it was submitted that *"it is not the law, that a Governor cannot be investigated"*, but that *"he cannot be arrested or prosecuted"*.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel argued that *"the Plaintiffs have not provided any evidence to show that their right to fair hearing has been violated"* and *"the evidence before the Court"*, he submitted, *"shows that all the policemen indicted have been dismissed and will be prosecuted"*.

On the issue as to whether the 1<sup>st</sup> Defendant can set up a "Panel", the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel argued that *"the Defendants cannot be told how to carry out their duty, once the purpose is to carry out investigation"*. Mr. Falana, SAN submitted that *"the case of **BAMAIYI v. A.G. OF FED.** is the answer to the Plaintiffs' case"*.

It was argued, that the powers of the 2<sup>nd</sup> Plaintiff to *"set up an Enquiry is not at large"* and that the 2<sup>nd</sup> Plaintiff *"has not power to investigate the horrendous criminal offences that occurred in Rivers State on 10/12/16"*. The Court was urged to dismiss the Plaintiffs' suit.

The 2<sup>nd</sup> Defendant on its part, was heard through its Counsel, T.A. Gazali, Esq. In his oral submissions, the learned Counsel drew the Court's attention to the "Counter-Affidavit" filed by Bamai Abu Nehemiah on behalf of the 2<sup>nd</sup> Defendant on 9/2/17. He also adverted to the written address filed and submitted, that *"the entire suit of the*

Plaintiffs rotates around a letter written by the 1<sup>st</sup> Defendant to the 1<sup>st</sup> Plaintiff, i.e. Exhibit "AGR-2". It was argued, that the *"said letter did not set up the team being challenged by the Plaintiffs"*, rather it *"merely conveyed to the Plaintiffs the intention of the 1<sup>st</sup> Defendant"*. It was argued that Exhibit "AGR-2" is *"a courtesy letter to inform the 1<sup>st</sup> Plaintiff of the proposed investigation"*. It was contended that *"the prayers to set aside the letter, i.e. Exhibit "AGR-2", will only amount to setting aside the information to the Plaintiffs, and it will not set aside the validity of the team because, the team was not set up by the said letter"*.

The 2<sup>nd</sup> Defendant's Counsel argued that Exhibit "AGR-2" is dated 20/12/16, and that the stamp of the 1<sup>st</sup> Plaintiff office, shows that it was received on 21/12/16 and that the 1<sup>st</sup> Defendant's Panel, was not set up to disrupt the Plaintiffs' "Commission of Enquiry" which was only set up on 22/12/16. He argued that the 1<sup>st</sup> Plaintiff's Commission was an afterthought and that the 1<sup>st</sup> Plaintiff did not summon the courage *"to investigate what happened in his State until the 1<sup>st</sup> Defendant set up the investigation team"*. It was further argued that the *"Enquiry set up by the 2<sup>nd</sup> Plaintiff cannot make any findings on the issues which Exhibit "AGR-2" listed for investigation"*. It was contended that the *"2<sup>nd</sup> Defendant was joined because, it formed part of the investigating team"* and that *"there is no law that prohibits two*

*(2) sister Agencies from working together in order to carry out investigation".*

On the two (2) "Further Affidavits" filed by the Plaintiffs, the 2<sup>nd</sup> Defendant's Counsel argued that they were meant to *"react to our Counter-Affidavit, but it ended up brining up new issues and attached newspapers publications"*. The publications, it was argued, *"relate to issues which arise whilst the proceedings are pending"* and urged the Court to apply the provision of Section 83(3) of the **Evidence Act**, supra. to strike out the two (2) "Further Affidavits". By this submission, the 2<sup>nd</sup> Defendant's Counsel seem to ignore an important *legal issue* by which such matters cannot be used in the application of Section 83(3) of the **Evidence Act**, which is that it must be by a *"person interested at a time when proceedings were pending or anticipated"* and *"which involve dispute as to any fact"* which such *"statement or matters on the said depositions and publications might tend to establish"*. Except if the 2<sup>nd</sup> Defendant is able to prove that the series of publications which the Plaintiffs have produced, were made by the Plaintiffs or sponsored by them in order to establish some of the facts which they have alleged against the Defendants, it will be *futile* for the Court to be called upon to invoke the provision of Section 83(3) of the **Evidence Act**, supra to strike out the two (2) "Further Affidavits" and the exhibits produced by the Plaintiffs as 'N', 'N1", 'N2' 'N3' and 'N4' respectively. They relate to the "findings"



made by INEC who is not a party to this proceeding in its domestic investigation into the incidents that occurred in Rivers State during the 10<sup>th</sup> December, 2016 Re-run Elections and which Report was published by the newspapers produced by the Plaintiffs. None of the newspapers is a party to this action, so the occasion when Section 83(3) of the **Evidence Act**, supra can be invoked had not arisen in favour of the 2<sup>nd</sup> Defendant.

On Exhibit "AGR-9" being the DVDs which this Court watched on 3/3/17, the 2<sup>nd</sup> Defendant's Counsel argued that Mr. Clement Nwankwo who was interviewed as a Coordinator of "*Situation Room*" during the said election, "*did not say that the persons wearing police uniform we saw in the Channels Television 'are police officers'*". So, the question is: Who are they? I asked this question because, if the 1<sup>st</sup> Defendant had by their "Counter-Affidavit" deployed 28,000 police officers to Rivers State for the purpose of providing security during the re-run election on 10/12/16, then, the Nigeria Police Force under the Command of the 1<sup>st</sup> Defendant has a lot of questions to answer, if non-police officers, wear its official uniforms and were seen openly and in broad day light, going round collation centres with arms, and were unable to do anything about them – These really tell so much about the *effectiveness or otherwise* of the police officers deployed to the State. Exhibit "AGR-9" is in my view, a good testament of the role

the police played to maintain law and order in Rivers State during the 10<sup>th</sup> December, 2016 Re-run Elections.

It was also argued, that the said Mr. Fakorede Akeem "*which the Plaintiffs identified in Exhibit "AGR-9" was not joined as a party*". It was submitted, that it will be an "*infringement of his right to be heard if findings were made against him*".

The 2<sup>nd</sup> Defendant's Counsel asked a *rhetorical* question as to "*in what way will the team set up by the 1<sup>st</sup> Defendant, affect the Commission of Enquiry which the 1<sup>st</sup> Plaintiff had also set up?*"

In rounding up his submissions, the 2<sup>nd</sup> Defendant's Counsel submitted that by virtue of Section 251(q) of the **Constitution**, that "*there are issues of State Laws raised in this case*" which according to the learned Counsel, "*require the Court to interpret a State Law*". He cited the decision in **GAFAR v. GOVT. OF KWARA STATE (2007) 29 NSCQR 34 @ 55-56**. He concluded that the Supreme Court's decision in **FAWEHINMI v. I.G.P.** supra. is to the effect that "*the police cannot be compelled to investigate a matter but that it can investigate a governor*".

When all the Defendants' Counsel have been heard, the Plaintiffs' Counsel, Chief M. Ozekhome, SAN was heard on his "Reply on Points of Law".

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ADUWA

  
18/5/17

On Section 251(1)(q) of the **Constitution** which the 2<sup>nd</sup> Defendant's Counsel cited, the Plaintiffs' Counsel submitted that it is not *applicable*. It was further contended that the 2<sup>nd</sup> Defendant is "*approbating and reprobating*" because, he has argued that what was involved, were "*federal offences*" and that the State has no power to investigate them.

On the Plaintiffs' "Further and Better Affidavit" filed which the 2<sup>nd</sup> Defendant's Counsel, citing the provision of Section 83(3) of the **Evidence Act**, supra. invited the Court to strike out the said Affidavits, the Plaintiffs' Counsel replied that in relation to Exhibits 'N1' – 'N4', that "*INEC is not a party to this proceeding and its not a party interested in what goes on in Court*". The Plaintiffs' Counsel cited the decision in **GBADAMOSI v. KABO LTD. (2000) 8 NWLR (pt.668) C.A. 243** and Sections 14 and 15 of the **Evidence Act**, supra.

The Plaintiffs' Counsel also cited the decision in **LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE v. FAWEHINMI (1985) LPELR 1776** to support the proposition that "*any administrative body that has a duty to obtain evidence is required to act fairly*". The Plaintiffs' Counsel also argued, that the "*Plaintiffs have shown their powers under the Commission of Enquiry Laws of Rivers State to set up the said Commission*". It was submitted, that the Defendants "*have not shown where their powers lie to set up the Joint Investigation Panel*".

On reference to the decision in **BAMAIYI v. A.G. OF FEDERATION**, supra. cited by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' Counsel, the Plaintiffs' Counsel argued that the said decision is irrelevant to the instant case as it considered the application of Sections 174 and 150 of the **Constitution**. He argued that the Plaintiffs' case is that "*the Defendants have no power to set up the Joint Investigation Panel as stated in Exhibit "AGR-2A"*". He submitted that the "*setting up of a Commission of Enquiry is within the powers of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs*" and cited the decision in **KABIRIKIM v. EMEFOR (2009) LPELR 902**; and **ONYEKULUJE v. BENUE STATE GOVT. (2015) LPELR 24780**. The Court was urged to enter Judgment in favour of the Plaintiffs.

After I had listened to all Counsel, I reserved the Judgment till 2/5/17 because, I had quite a number of Rulings and Judgments which I had earlier reserved. Then, on 2/4/17, I was bereaved and the incident took its toll on my time and *personal psyche* and *emotion*. By the time I set out to prepare this Judgment, I found out that I had underrated the volume of processes filed and exchanged. As at 1/5/17, I have only been able to do as much as 65% of the Judgment, and so when it came up on 2/5/17, I was constrained to adjourn it till today.

I had at the beginning of this Judgment, prefaced it with *the constitutional issues* in relation to the concept of "federalism" which the makers of the **CFRN, 1999 As Amended**, endeavoured to

entrench into the *structure* and *machinery* of the Nigerian State as well as the *principles of separation of powers* which are recognized *constitutional concepts* and *safeguards* to prevent abuse of powers by any of the arms of government, and or to avoid the oppression of one tier of government by another. I have also reproduced the questions or issues which the Plaintiffs have set down in their "Originating Summons" as well as the reliefs being claimed which largely, are *declaratory in nature*. *Declaratory remedies* are *equitable reliefs* which the Court has a judicial discretion to grant or refuse.

As it was clearly identified by the 2<sup>nd</sup> Defendant's learned Counsel, the *fulcrum* of the Plaintiffs' suit "*rotates around the contents of Exhibits "AGR-2" and "AGR-2A"*". Exhibit "AGR-2" is the 1<sup>st</sup> Defendant's letter dated 20/12/16 addressed to the 1<sup>st</sup> Plaintiff and it's titled: "*Investigation Into allegations of Crimes Committed During the Last Re-Run Elections in Rivers State.*" The purpose of the said letter was clearly expressed in its second paragraph where the 1<sup>st</sup> Defendant states that: "*This is to inform you of the Inspector General of Police intention to investigate series of complaints, allegations and petitions of crimes and various acts of criminality during the just concluded re-run elections in Rivers State which held on 10<sup>th</sup> of December, 2016.*" In its paragraph 4, the 1<sup>st</sup> Defendant enjoins the 1<sup>st</sup> Plaintiff, "*to furnish the investigative team with all necessary information and other exhibits that may assist them during the course of their investigation*

*activities*". Exhibit "AGR-2A" is a letter dated 30/12/16 written by the 3<sup>rd</sup> Defendant who describes himself in the said letter addressed to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, as the "*Chairman, Special Joint Investigation Panel on Rivers State Re-Run Election*". The said Exhibit is titled: "*Courtesy Visit*" and in its opening paragraph, the 3<sup>rd</sup> Defendant states that: "*The Inspector-General of Police, IGP, Ibrahim K. Idris NPM, mni on 22/12/16 inaugurated a fifteen man Special Joint Panel of Investigation on Rivers State Re-Run Elections of 10<sup>th</sup> December, 2016.*" The said letter, seek to have audience with the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs on 11/1/17. It was in relation to this fact, that I have posed the question, whether the "audience" with the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs is being sought by the 3<sup>rd</sup> Defendant's Panel as a "suspect" or as a "witness" in view of the provisions of Part 2 of the **ACJA, 2015** which I had earlier adverted to. But, it certainly was not to seek for his permission or blessing to embark on the investigative assignment for which the 1<sup>st</sup> Defendant had sent the "Special Joint Investigation Panel" to perform.

By the analysis of the 2<sup>nd</sup> Defendant's Counsel, the ten (10) questions which the Plaintiffs have set for determination in their "Originating Summons", revolve around the contents of these two (2) exhibits, and *ipso facto*, the reliefs which they seek against the Defendants. By relief 10 in the "Originating Summons", the Plaintiffs seek for *an order to quash and set aside* the said 1<sup>st</sup> Defendant's letter, and by relief 11,

the Plaintiffs seek *for an order of perpetual injunction to restrain the Defendants "whether by themselves, their agents, servants, employees, privies and operatives or in any manner howsoever, from enforcing, executing, or carrying into effect, the matters or similar matters contained in the 1<sup>st</sup> Defendant's letter dated 20<sup>th</sup> December, 2016". All of the reliefs being sought by the Plaintiffs are equitable reliefs which are in law discretionary. Whether or not they will be granted remains an issue which this Court will determine based on my understanding of the Plaintiffs' cause of action vis-à-vis the applicable laws. But a central issue to the Plaintiffs' suit arising from Exhibits "AGR-2" and "AGR-2A", is the legality of the "Special Joint Investigation Panel on Rivers State Re-Run Election" which Exhibit "AGR-2A" acknowledged as a 15 man "Special Joint Panel of Investigation on Rivers State Re-Run Elections of 10<sup>th</sup> December, 2016". It is in this regard, that reliefs 10 and 11 in the "Originating Summons" were sought as by these reliefs, the Plaintiffs conceived that their right arising from the powers conferred on the 1<sup>st</sup> Plaintiff by virtue of Section 2(1) of the **Commissions of Inquiry Law of Rivers State (Cap.30) Laws of Rivers State of Nigeria, 1999** were being *trampled* upon by the 1<sup>st</sup> Defendant. Exhibit "AGR-1" is the "Statutory Instruments" by which the 1<sup>st</sup> Plaintiff constituted a "Judicial Commission of Inquiry to Investigate the Killings and other violent acts/matters that occurred during the December 10, 2016 Re-*

A handwritten signature in blue ink, followed by the date 18/5/17.

*run/Supplementary Elections to elect members of the National Assembly and House of Assembly in Rivers State*".

When close attention is paid to the analysis I endeavoured to preface this Judgment with, it is obvious that the *constitutional law concept* of "covering the field" which is often an issue in the exercise of *legislative powers* between the Federal Government and State Government in the context of the Court of Appeal's decision and analysis in **CHIKELUE v. IFEMELUDIKE (1997) 11 NWLR (pt.529) 390 @ 403** has *obliquely arisen albeit* in the exercise of executive powers when attention is given to the intendment of relief 5 in the Plaintiffs' "Originating Summons". The two (2) legislations involved in this matter, are the "**Commissions of Inquiry Law**", **Cap.30 Laws of Rivers State, 1999** and the provision of Section 4 of the **Police Act** made pursuant to Section 214(2)(b) of the **CFRN, 1999 As Amended**.

But before I delve into the substance of the issues which have been raised, it is important that I reflect a little on the issue of jurisdiction which the 2<sup>nd</sup> Defendant's Counsel, T.A. Gazali attempted to raise at the closing session of his oral submissions. I used the word "attempted" advisedly, because, the 2<sup>nd</sup> Defendant's Counsel did not raise the said issue clearly and specifically as to give the Court, and perhaps the Plaintiffs' Counsel, sufficient materials to fully understand his position in relation to the provision of Section 251(1)(q) of the



**Constitution, 1999 As Amended** as all he said, was that the Plaintiffs' suit, calls for the *interpretation* of **State Laws**. What are the Laws, which substantively arise for *interpretation* in this matter that can be described as the **Rivers State Laws**? Is it Section 2(1) of the **Commissions of Inquiry Law of Rivers State (Cap.30) Laws of Rivers State of Nigeria, 1999** that is the **State's Laws**? Is the said provision, one that requires any consideration as a substantive issue in order to determine the ten (10) questions which the Plaintiffs have set down for resolution in order to ground the success of the reliefs which they seek? As I had said, apart from relief 5 in the "Originating Summons" which calls into play, a *constitutional concept* of "*covering the field*" albeit in the exercise of executive powers, I really do not see any other **State Law** which the determination of any of these ten (10) questions calls for *interpretation*. All the Defendants sued by the Plaintiffs are either a Federal Government of Nigeria's Agents or Agency and are all based in Abuja. I really cannot find any merit in the said objection which by the submissions made on 3/3/17, T.A. Gazali, Esq. as 2<sup>nd</sup> Defendant's Counsel in my view, merely threw up as a diversionary "*legal kite*" to give additional mental work for the Plaintiffs' Counsel to do because, by the provision of Order 22 Rule 4 of the **Federal High Court (Civil Procedure) Rules, 2009**, such objection to jurisdiction can be raised at the conclusion of the hearing of the case where it is not raised within 21 days of the 2<sup>nd</sup> Defendant being served with the

Plaintiffs' "Originating Summons". There is no merit in the 2<sup>nd</sup> Defendant's objection on jurisdiction and its accordingly dismissed.

In relation to the provisions of the laws that call for consideration in the determination of the Plaintiffs' suit, it is my view that Sections 214 and 215 of the **CFRN, 1999 As Amended** as well as Section 4 of the **Police Act**, Cap.P.19, LFN 2004 are the substantive provisions which when construed, should *affirm* or deny the powers of the 1<sup>st</sup> Defendant to constitute a *15 man "Special Joint Investigation Panel on Rivers State Re-run Elections of 10<sup>th</sup> December, 2016"*. The position of the Plaintiffs is that, the 1<sup>st</sup> Defendant does not have the power to constitute such an inter-agency investigation panel which the Plaintiffs have cleverly, perhaps ingeniously dubbed as a "Commission of Inquiry" which they argued, that the 1<sup>st</sup> Defendant lacks the *statutory power to constitute*. The Defendants on their part, argued that the Defendants who have the *statutory powers* to conduct criminal investigations, have the *prerogative* to decide, perhaps a *discretion* to exercise in what manner they can exercise their *statutory powers*. It is the consideration of these provisions that will serve as a *judicial and legal compass* as to whether or not, the Defendants or the Plaintiffs were right by their respective *postulations*.

Let me quickly begin with the provisions of the **Constitution**. The Nigeria Police Force which the 1<sup>st</sup> Defendant commands, is established pursuant to Section 214(1) and its subsection (2)(a), (b) and (c)

clearly defines its organization and powers etc. The said provision read thus:

- 2 *"Subject to the provisions of this **Constitution** –*
- (a) the Nigeria Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly;*
  - (b) the members of the Nigeria Police Force shall have such powers and duties as may conferred upon them by law;*
  - (c) the National Assembly may make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation or for the protection of harbours, waterways, railways and air fields."*

Section 215(1)(a) of the **Constitution**, creates the Office of the 1<sup>st</sup> Defendant and its subsection (2) puts the 1<sup>st</sup> Defendant to be the "commander-in-chief" of the Nigeria Police Force subject to such lawful directions as it may receive from the President or such other Minister of Government of the Federation as the President may authorize. Let me reproduce these provisions too:

*Section 215(1) "There shall be –*

- (a) an Inspector-General of Police who, subject to section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Nigeria Police Force."*
- (2) "The Nigeria Police Force shall be under the command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in a State shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that State."*
- (3) "The President or such other Minister of the Government of the Federation as he may authorize in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those directions or cause them to be complied with."*

In view of the fact that State Governors are seen as "Chief Security Officers" of their States, Section 215(4) of the **Constitution** appears

to give them an illusion of powers and authority on the Police Commands in their States. Section 215(4) of the **Constitution** states:

(4) *"Subject to the provisions of this section, the Governor of a State or such Commissioner of the Government of the State as he may authorize in that behalf, may give to the Commissioner of Police of that State such lawful directions with respect to the maintenance and securing of public safety and public order within the State as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with –*

*Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions."*

*(Underline is mine)*

I have used the word "illusion" advisedly, because, when the said subsection (4) of Section 215 is carefully read, it is obvious that a Commissioner of Police in a State is not under any obligation to comply with lawful *direction* or *instruction* given to him by a State Governor until such *instruction* or *direction* is referred to the President

or such Minister of the Federation as the President may authorize. It's *proviso* takes off the strength in the capacity or power of State Governors to be able to give effective directions to the Commissioner of Police serving at the level of the States' Commands of Nigeria Police Force.

The provision of Section 215(5) of the **Constitution** was conclusive proof, that the drafters of the **Constitution** who had provided Section 215(4) never really wanted the State Governors even as "Chief Security Officers" of their States to have any form of control over the operational use of the State Commands of the Police. Section 215(5) of the **Constitution** reads:

215(5) "The question whether any, and if so what, directions have been given under this section shall not be inquired into in any Court." (Underline is mine for emphasis)

When one reads Section 215(4) and (5) of the **Constitution**, it cannot be any wonder why the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs faced series of frustrations as expressed in Exhibits "AGR-4", "AGR-5", "AGR-6" and "AGR-7" attached to the Plaintiffs' "Originating Summons". It may be argued, that this *exemplifies* some of the arguments often *canvassed* about the *lopsidedness* of the federalism which the Nigerian **Constitution** claims to have established in terms of the governmental powers prescribed for the tiers of Government where

the States ought normally, in Constitutional Law Theory (see **Prof. K.C. Wheare's "Modern Constitutions"** supra.) to enjoy a level of autonomy as it applies in advance democracy such as the USA whose **Constitution the CFRN, 1999 As Amended** pretended as it were, to copy in spirit but not in its letters and or in its practical applications. This Judgment is not meant to be a forum to *canvass legal arguments* and *disputations* in relation to the concept of "federalism" in Nigeria, but it suffices for the purpose of this case, to expose the weakness of the **Constitution** which on the one hand, clothed State Governors with the *garb* of the "Chief Security Officers" of the States, but which on the other hand, takes from them the *coercive State's instruments* by which they can exercise (Section 5(2)(a) and (b) and 176(2) of the **Constitution**) the function of the said office as "Chief Security Officers" and which is manifested in the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' frustrations as shown in Exhibits "AGR-4", "AGR-5", "AGR-6" and "AGR-7".

The other provision which the Plaintiffs' suit calls for its consideration is the **Police Act**, Cap.P.19, LFN 2004. This is because, the provision of Sections 214 and 215 of the Constitution which I have just analyzed, never made any detailed provisions for the exercise of the powers of the Nigeria Police Force created pursuant to Section 214(1) of the Constitution. Rather, its Section 214(2)(b) delegated to the National Assembly, the making of **Act** as to what powers and duties

the Police Force shall exercise. Section 214(2)(b) of the **Constitution** provides thus: "*The members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law.*" It was in the exercise of these powers, that the National Assembly enacted the **Police Act**, Cap.P.19, LFN 2004 and its Section 4 makes provision for the "*General duties of the Police*". The said provision states:

*Section 4: "The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act." (Underline is mine)*

Section 5 of the Act, creates the Office of the 1<sup>st</sup> Defendant and other subordinate officers, while Section 6 re-states the provision of Section 215(2) of the **Constitution**. Sections 5 and 6 state thus:

*Section 5: "There shall be an Inspector-General of the Nigeria Police, such number of Deputy Inspectors-General, Assistant Inspectors-General as the Nigeria Police Council considers appropriate, a Commissioner*



*for each State of the Federation and such ranks as may, from time to time, be appointed by the Nigeria Police Council."*

*Section 6: "The Force shall be under the command of the Inspector-General, and contingents of the Force stationed in a State shall, subject to the authority of the Inspector-General, be under the command of the Commissioner of that State." (Underline is mine)*

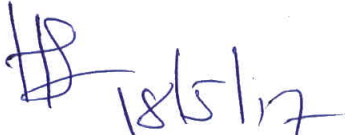
When I judicially swept through the **Police Act**, supra one other provision that caught my attention, in view of the *legality vel non* of the composition of the "Special Joint Investigation Panel" which is the *fulcrum* of the Plaintiffs' suit, is the provision of Section 11 of the **Police Act**. The said provision reads thus:

*11. "The Inspector-General may, with the consent of the President by writing under his hand, delegate any of his powers under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or defined in the instrument of delegation." (Underline is mine)*

The question which has become apposite, is whether any of these provisions or a combination of them can be construed as empowering

the 1<sup>st</sup> Defendant to constitute the 15 man investigation panel which Exhibit "AGR-2A" attests to? Can or will when Section 4 of the **Police Act**, read with Section 11 of the Act, be construed as enabling the 1<sup>st</sup> Defendant to constitute the said "Special Joint Investigation Panel"?

Let me state that by the *sheer* provision of Section 4 which provides for the "*general duties of the police*" when read with Section 11 of the **Police Act**, it is a legitimate exercise of the 1<sup>st</sup> Defendant's power as the one who commands the Nigeria Police Force, to "*delegate*" the power to conduct investigation into any matter to any of its subordinate officers, but even in relation to Section 11 of the **Police Act**, it seems that the 1<sup>st</sup> Defendant requires "*the consent of the President by writing under his hand*" to delegate "*any of his powers under this Act*". This is *permissible* when the *delegation of the powers* is being done and confined to Police officers under its Command by the provision of Section 6 of the **Police Act**, supra. which I have just reproduced. But when such *delegation* will involve officers from a sister Agency, such as the 2<sup>nd</sup> Defendant, the question remains whether the 1<sup>st</sup> Defendant has the *statutory powers* to constitute such a "Special Joint Investigation Panel". The **Constitution** and the **Police Act** which I have examined, do not have any specific provisions by which the 1<sup>st</sup> Defendant could have *legally* done what Exhibits "AGR-2" and "AGR-2A" conveyed in relation to the composition of the "Special Joint Investigation Panel" which was

  
18/5/17

chaired by the 3<sup>rd</sup> Defendant who is a subordinate officer to the 1<sup>st</sup> Defendant and which also comprised of officers of the 2<sup>nd</sup> Defendant. So, my "*judicial excursions*" into the provisions of the **Constitution** and the **Police Act**, supra. have not yielded any positive result to confirm the *legal validity* of the act/decision of the 1<sup>st</sup> Defendant as conveyed in Exhibit "AGR-2" and which was confirmed in detail in Exhibit "AGR-2A".

The next step to take is to look at the enabling Act which creates the 2<sup>nd</sup> Defendant. But unlike the Nigeria Police Force which is a creation of the **Constitution**, the 2<sup>nd</sup> Defendant is a *statutory body* created as the "3<sup>rd</sup> Security Agency" by virtue of Section 1(c) of the **National Security Agencies Act**, Cap.N.74, LFN 2004. The said provision states:

1. *"There shall, for the effective conduct of national security, be established the following National Security Agencies, that is to say –*  
  
*(c) the State Security Service."*

The "*General Duties of the National Security Agencies*" are as provided in Section 2 of the **National Security Agencies Act**, and it's subsection (3) prescribes the "*general duties*" of the 2<sup>nd</sup> Defendant. It states:

CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

*[Handwritten signature]*  
8/5/17

2(3) *"The State Security Service shall be charged with responsibility for –*

- (a) the prevention and detection within Nigeria of any crime against the internal security of Nigeria;*
- (b) the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and*
- (c) such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary."*

When I read through the whole of the said Act, I was unable, even with the most generous disposition one may want to accord to subsection (3)(c) of Section 2 of the Act, to find any provision by which the 1<sup>st</sup> Defendant is empowered to constitute a "Special Joint Investigation Panel" which will comprise officers of the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant is not one of the authorities mentioned in Section 2(3)(c) of the **National Security Agencies Act**, supra. that may co-opt the 2<sup>nd</sup> Defendant's officers into any such "Special Joint Investigation Panel". By the provision of Section 3(2)(a) of the **National Security Agencies Act**, supra. the principal officer of the

92 CERTIFIED TRUE COPY  
FEDERAL HIGH COURT  
ABUJA

  
18/5/17

2<sup>nd</sup> Defendant shall be "*directly responsible to the President*". The said provision states:

*3(2) "The principal officers of the agencies shall in the discharge of their functions under this Act –*

*(a) in the case of the State Security Service and the National Intelligence Agency, be responsible directly to the President."*

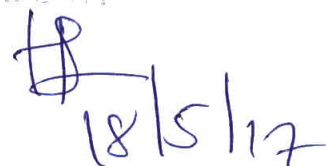
It is obvious by this provision, that the officers of the 2<sup>nd</sup> Defendant co-opted by the 1<sup>st</sup> Defendant into the 15 man "Special Joint Investigation Panel" are not responsible to the 1<sup>st</sup> Defendant. So, how did the 1<sup>st</sup> Defendant come by this contraption which is as far as these provisions which I have examined are concerned, is unknown to the Nigerian Criminal Justice System? The Defendants shied away from addressing this issue, but deliberately and cleverly confined their submissions to the provision of Section 4 of the **Police Act**, supra by which the 1<sup>st</sup> Defendant can conduct investigation into any allegation of commission of crime. That, arguably may not be in dispute, but what is in dispute is whether it can deploy a body unknown to any law, i.e. the "Special Joint Investigation Panel to execute a *bona fide* powers conferred on it by Section 4 of the **Police Act**, supra.

In the light of the results of my *judicial exploration* into extant laws in terms of what it has yielded or failed to yield, my take on the legal

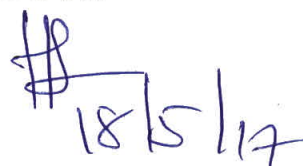
issues in relation to the "Special Joint Investigation Panel" is as its name connotes, appears to be a "Special Panel" set up by the 1<sup>st</sup> Defendant and it is to be chaired by the 3<sup>rd</sup> Defendant for the *particular purpose* in relation to the 10<sup>th</sup> December, 2016 Rivers State Re-run election for which it was constituted. The said "Special Joint Investigation Panel" is neither a *statutory body* nor an *agency* created or recognized by any Statute – whether the **Police Act**, supra. or the **National Security Agencies Act** or by the **Constitution, 1999 As Amended**. I have no doubt, on the authority of the Privy Council in **BALEWA v. DOHERTY (1963) 1 WLR 949**, that it is open to anyone to set up a "Special Panel" to conduct investigation or enquiry of whatever nature *provided* that such panel is not vested with *compulsive* or *coercive power* which *ordinarily*, a police officer would have except if it is created pursuant to an extant law. But I am clear in my view, that an act done by a person or a body or authority which can only be performed under the authority of law is, where it is done without such authority an illegality and the constitution of the "Special Joint Investigation Panel" by the 1<sup>st</sup> Defendant – which the Plaintiffs have described as *usurpation* of their *statutory powers* to constitute a Commission of Inquiry which the 1<sup>st</sup> Defendant does not have the power to constitute, is in my view, a *ministerial* act which it did for the *limited purpose* which Exhibits "AGR-2" and "AGR-2A" have stated. By my modest understanding of the Nigerian Legal System, the duties, powers and functions of bodies or agencies established by law, as I

have endeavoured to demonstrate, are always clearly spelt out under the written laws that established such agencies or bodies and it is only then, that the boundaries of such duties, powers and functions of such agencies or bodies can be ascertained and determined. It is my decision, that the "Special Joint Investigation Panel" which the 1<sup>st</sup> Defendant set up by Exhibits "AGR-2" and "AGR-2A", in so far as *it was not limited to the Nigeria Police Force over which the 1<sup>st</sup> Defendant has its command, but comprised officers of the 2<sup>nd</sup> Defendant – who by its enabling Act, report directly to the President, it is to this extent, that the said "Special Joint Investigation Panel" is unknown to Nigerian law as it is a body, on account of the provisions of the Constitution and the extant Acts of the National Assembly which I have endeavoured to scrutinize, not known to the Nigerian Criminal Justice System* even though its findings, in the course of its investigation may be useful to *bona fide* law enforcement agencies recognized and empowered by the Constitution and extant Acts of the National Assembly.

The resolution of the *legality* of the "Special Joint Investigation Panel", by the analysis which I have made, seems by my assessment, to have resolved the substantial issues in controversy between the parties. The question remains whether or not on the account of my finding that the "Special Joint Investigation Panel" being unknown to Nigeria Criminal Justice System, will nevertheless make the grant of the

Handwritten signature and date: 18/5/17

Plaintiffs' reliefs legitimate. This is an issue which again, I need to consider in the context of the *constitutional concept of "covering the field"* as it relates to the exercise of executive powers prescribed by the **Constitution**. Whilst the Plaintiffs, by virtue of Section 2(1) of the **Commissions of Inquiry Law (Cap.30) Laws of Rivers State, 1999** have the powers to constitute the "Judicial Commission of Inquiry" which the 1<sup>st</sup> Plaintiff inaugurated on 22/12/16, it is my view, that because, the 1<sup>st</sup> Defendant or all the Defendants sued, serve and operate as Agents of the first tier of the government, i.e. the federal government, it will be a wrong exercise of my *judicial discretion* in relation to the *equitable reliefs* which the Plaintiffs seek, to *disband* the "Special Joint Investigation Panel" which from the observation made by the Defendants, had already concluded its investigation and submitted its Report to the 1<sup>st</sup> Defendant who is poised to submit it to the Attorney General of the Federation. It is an *elementary proposition of law as a legal principle*, that the Court will not act in vain, because if this Court decides to grant relief 10 in the "Originating Summons", it would have granted a relief which smacks of "*bolting the gate*" after the horse has escaped. It is sufficient for me, that I have come to the decision that the "Special Joint Investigation Panel" constituted by the 1<sup>st</sup> Defendant, is not only unknown to Nigerian Criminal Justice System, it remains a *contraption* whose questionable existence will put grave legal doubts on its Report as a valid legal document on which any criminal prosecution can

A handwritten signature in blue ink, followed by the date 18/5/17.



legitimately be initiated by the Attorney General of the Federation to whom the said Report will be submitted by the 1<sup>st</sup> Defendant.

When the Report which was allegedly produced and already submitted to the 1<sup>st</sup> Defendant by the 3<sup>rd</sup> Defendant is eventually transmitted or submitted to the Attorney General of the Federation, it will be left for the Attorney-General of the Federation, to take a decision in clear knowledge of its powers pursuant to Section 174(1)(a) of the **Constitution** whether any viable legal charge can be predicated on a Report that emanates, from a body whose *legal existence* is shrouded, by the analysis which I have made, in *grave judicial doubts*. Although, as I had earlier remarked, that its Report may be useful if it is turned over to a law enforcement body duly created and recognized by law and which can work on its findings to conduct proper, perhaps, fresh investigation and to follow the conventional method/procedure of a proper police investigations.

In relation to the questions which the Plaintiffs have set down, I will answer question one that although, by the way and manner the said "Special Joint Investigation Panel" was set up, it smacks of such a "Commission of Inquiry", but that it is not, as Exhibits "AGR-2" and "AGR-2A" did not describe it as such. Although, in terms of conducting investigation, its style is somewhat *weird* and *absurd* as investigative teams, when set up any of the security agencies, they are often "headed" by a "team leader" and is not the practice, when the

provisions of Sections 6 – 18 of **ACJA, 2015** are read, that an investigative body will be calling for information and other exhibits from a named person when the said person, i.e. the 2<sup>nd</sup> Plaintiff is not advised, if he will be doing so as a “suspect” or as a “witness” and perhaps, as the glorified “Chief Security Officer” of Rivers State. These are the *factual issues* which *ex facie*, betrayed and distort the real intention of the 1<sup>st</sup> Defendant, but I have no doubt, that what it set up as a “Special Joint Investigation Panel” did not constitute a “Commission of Inquiry” even though the *modus operandi* of the “Special Joint Investigation Panel” by Exhibit “AGR-2” smacks of such body which incidentally and curiously, was headed by the 3<sup>rd</sup> Defendant as its “Chairman” – see Exhibit “AGR-2A”.

In relation to question 2, I will answer the said question in the *negative* as Exhibit “AGR-2” only states the areas of concern (by the use of the word “purview in Exhibit “AGR-2”) for the investigation based on “complaints” and “petitions” which the 1<sup>st</sup> Defendant received in the wake of the violence that characterized the 10<sup>th</sup> December, 2016 Rivers State Re-run Election.

On question 3, I will also answer it in the *negative* because, the constitution of the “Special Joint Investigation Panel” which I have described as a strange legal contraption does not in any way inhibit or violate the *statutory performance* of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs powers pursuant to Section 2(1) of the **Commission of Inquiry Law of**

**Rivers State.** This is because, the "Commission of Inquiry" which the 1<sup>st</sup> Plaintiff has the *statutory power* to set up, can only be a "*fact finding*" commission and lacks power, on extant *judicial authorities*, to conduct investigation into allegation of crimes such as killings, kidnapping, etc. and even where it may have done so, and certain individuals were found *culpable*, the Report of such findings must of necessity be turned over to the Nigeria Police Force to conduct further criminal investigation with a view to prosecuting the persons so indicted. A Judicial Commission of Inquiry has no power to *indict* persons found *culpable* of criminal offences and can only recommend such persons to the police based on its findings for further investigation with a view to prosecuting them in a Court of law. Let me take the liberty of this analysis, to refer to an **Inaugural Lecture Series 137 of Obafemi Awolowo University, Ile-Ife, Nigeria** delivered on 7/9/99 by an eminent and distinguished scholar of law, **Prof. M.O. Adediran** which he titled: "**Reflections on Public Inquiries As Instruments of Governance in Nigeria.**" I also read through **Prof. H.W.R. Wade & C.F. Forsyth on Administrative Law, 8<sup>th</sup> Edition, pages 972** on their academic discourse on "**Tribunals of Inquiry**". So, question 3, is for these reasons, answered in the *negative* by the application of the concept of "*covering the field*" as both bodies have different "jurisdictions" within the extant Law and Act of the National Assembly as I have analyzed in great detail in this Judgment.

On question 4, I will answer the question in the *negative* and add that the powers conferred on the 1<sup>st</sup> Defendant by Section 4 of the **Police Act**, supra is *investigative* in nature and which in Administrative Law language, it is *ministerial* in its amplitude as it leaves the person or authority exercising the powers, wide *discretion* and it is not *encumbered* by the requirements to act *judicially* once it acts fairly within the prescribed *parameters* of the **ACJA**, supra and the relevant provisions of the **Constitution** in relation to a suspect under investigation by a law enforcement body.

On question 5, I have answered this by my consideration of Exhibit "AGR-2" that the 1<sup>st</sup> Defendant merely states the areas (by the use of the word "*purview*" in Exhibit "AGR-2") which the investigation will cover and it does not amount to a *definitive pronouncement* against the Plaintiffs even though, the 2<sup>nd</sup> Plaintiff may come under the category of "*highly placed politicians within and outside the State*" in the said exhibit.

On question 6, I have answered this question in the course of this Judgment firstly, on the ground that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' constitution of a Judicial Commission of Inquiry pursuant to Section 2(1) of the **Judicial Commissions of Inquiry Law of Rivers State** does not in any way disturb the 1<sup>st</sup> Defendant's "Special Joint Investigation Panel" from carrying on its duties – even when I have declared the said body as an unknown "*legal contraption*" to the

Nigerian Criminal Justice System. Secondly, the said "Special Joint Investigation Panel", by the deposition of the Defendants had concluded its assignment and submitted its Report to the 1<sup>st</sup> Defendant who is poised as it was stated to submit the Report to the Attorney General of the Federation.

On question 7, I will answer it in the *negative* as the contents of Exhibit "AGR-2" hardly afford any detailed facts by which such views or conclusions may be reached without the Court seeing the alleged Report of the "Special Joint Investigation Panel".

On question 8, I will answer it too in the *negative* because, Exhibit "AGR-2" indicates the areas on which the 1<sup>st</sup> Defendant had received "petitions" and "complaints" arising from the incidents which occurred during the 10<sup>th</sup> December, 2016 Rivers State Re-run Elections. The second paragraph of Exhibit "AGR-2" is not conclusive, but covers areas on which complaints had allegedly been made to the 1<sup>st</sup> Defendant.

On question 9, it too will be answered in the *negative* as the exercise which the "Special Joint Investigation Panel" set out to execute, is purely *investigative* which I have described as *ministerial* rather than *judicial* or *quasi-judicial* in nature. An investigator who fails to avail itself with "*the side of the story*" of the one who is being investigated as a suspect, may find out at the end of the day, that some of its *findings* have been "punctured" at its bottom when the matter gets to

Court for adjudication in criminal prosecution in which the suspect as a "Defendant" will be obliged to give evidence as a witness.

On question 10, I will answer it too in the *negative* as I am unable to read all of these issues into Exhibit "AGR-2" even though by Exhibits "AGR-4", "AGR-5", "AGR-6" and "AGR-7", the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs appear to be having a "running battle" with some of the police officers posted to Rivers State, and exhibits 'N1', 'N2', 'N3' and 'N4' – which are publications in relation to the investigation conducted by INEC, also mentioned or identified one of the said officers by name Fakorede Akeem as one of the officers who allegedly abused their offices as security officers during the 10<sup>th</sup> December, 2016 Rivers Re-run Election. I will not on the basis of this, answer question 10 differently as I am concerned only with the decision of 1<sup>st</sup> Defendant conveyed by Exhibit "AGR-2".

Having regard to the answers which I have proffered to each of these questions, the Plaintiffs' relief 1, having regard to the analysis which I have made on the *legal status* of the "Special Joint Investigation Panel" as an unknown body to the Nigerian Criminal Justice System ought to succeed and its granted as prayed. Relief 2 fails and its dismissed; Relief 3 too fails as the constitution of the "Special Joint Investigation Panel" has not in any way, under the *constitutional concept of covering the field* in the exercise of executive powers, inhibit the exercise of the 2<sup>nd</sup> Plaintiff's *statutory power* pursuant to

Section 2(1) of the **Judicial Commissions of Inquiry Law of Rivers State, 1999**. Relief 4 also fails because, I have held that the exercise of investigative power is neither *judicial* nor *quasi-judicial in nature*, but purely *ministerial* and does not carry with it, the *obligation* that pertains to one who is required to decide a dispute because, the primary obligation of an investigation, from the *prism* of investigative and prosecutorial agencies, is to establish facts that can be used to *indict* a suspect rather than to *vindicate* him except where he is to be used as a prosecution witness.

Relief 5 in the "Originating Summons" also fails for the same reasons and analysis I had given on relief 3 which has been refused. Relief 6 is bound to fail as I was unable to reach the same conclusion by my reading of Exhibits "AGR-2" and "AGR-2A", and I say this regardless of the issues which the 2<sup>nd</sup> Plaintiffs had raised in Exhibits "AGR-4", "AGR-5", "AGR-6" and "AGR-7" which appear to have been confirmed in Exhibit "AGR-9" – the DVDs which the Court watched on 3/3/17 and Exhibits 'N1', 'N2', 'N3' and 'N4' as well as Exhibits '11', '11A', '11B', '11C' and '11D'. Relief 7 also fails as I was unable to reach the same conclusion by my reading the contents of Exhibit "AGR-2". Relief 8 in the "Originating Summons" fails as the *obligation* of the investigative body is *ministerial* and not *judicial* or *quasi-judicial*.

Relief 9 is ungrantable as it smacks of a relief "seasoned" with political considerations which this Court lacks the power or jurisdiction to

enquire into and or to ascertain. Relief 10 too is ungrantable as the said exhibit "AGR-2" had already executed its mandate and the 3<sup>rd</sup> Defendant's "Special Joint Investigation Panel" had by the Defendants' depositions in their "Counter-Affidavit", already submitted its Report to the 1<sup>st</sup> Defendant. An order granted in relief 10 in the "Originating Summons" will be one made in vain as the event it seeks to *quash* had been accomplished. Although, the Court can exercise its disciplinary jurisdiction pursuant to Section 6(6)(a) of the **CFRN, 1999 As Amended** to quash the Report which was not only prepared by a body that is unknown to the Nigerian Criminal Justice System, but allegedly prepared in the middle of a pending proceeding in which the investigation which the Report was meant to prepare was in issue being contested by both parties and can be seen as an act of *defiance* by the Defendants. It is an *elementary proposition of the law*, that in the exercise of its powers pursuant to the provision of Order 34 Rule 9(2) of the **Federal High Court (Civil Procedure) Rules, 2009** on "*Judicial Review*", that the Court will not make such an order unless the Report is produced before it in whatever form the Plaintiffs can oblige it. But no Court of law, will grant an order to *quash* a Report not produced before it on the *ipse dixit* of even the Defendants' deponents who have not stated personally that he has seen and read the said Report and or that he was a member of the 15 man "Special Joint Investigation Panel" that prepared it and submitted it to the 1<sup>st</sup> Defendant on an unstated date, time and place.



Relief 11 is bound to fail as the Plaintiffs have not established any of their *legal or constitutional rights* which the Defendants' decision by Exhibits "AGR-2" and "AGR-2A" has contravened.

In conclusion, the Plaintiffs' suit only succeeds in relation to relief 1 which is granted as prayed. Reliefs 2 – 11 fails and they are dismissed.

In the light of the decision which I have reached on relief 1 of which the *legality* of the "Special Joint Investigation Panel" was *judicially flawed*, it remains whether its alleged Report will not, continually as it were, bear a "*brand of invalidity of upon its forehead*" except if it is turned to a law enforcement body duly created and established by law, that can work on it as *materials* upon which a proper investigation can be carried out. In any event, it is left to the Attorney-General of the Federation if it can, in the exercise of its powers pursuant to Section 174(1)(a) of the **Constitution**, use the said Report, against these issues which relate to its *legality*, when presented to it, to initiate a *valid* criminal charge on the strength of Section 174(1)(a) of the **Constitution** against those that the Report, with its *ostensible invalidity*, may have *indicted*.

The Plaintiffs' Counsel had argued that the said Report which was prepared whilst this proceeding was pending be quashed. I could have done so in the exercise of the disciplinary jurisdiction of this

Court pursuant to Section 6(6)(a) of the **Constitution**, but the said Report was not produced before this Court so that an appropriate judicial disciplinary order could be made to *vindicate* the *pristine* authority of the **Constitution** which this Court is bound to uphold by the exercise of its *judicial powers*. See the Supreme Court's decisions in **GARBA v. F.C.S.C. (1988) 1 NWLR (pt.71) 449 @ 480** per Nnaemeka-Agu, JSC (Rtd.) and now late; and the decision in **IWO LOCAL GOVT. v. ADIGUN (1992) 6 NWLR (pt.250) 723 @ 750<sup>C-D</sup>**.

I can hardly rely on the *ipse dixit* of the deponents to the Defendants' "Counter-Affidavit", none of who is a member of the "Special Joint Investigation Panel", to make an order to *quash* a report I have not seen. But, far from this, I am contented, judicially speaking, with the decision I have reached to declare that the Report allegedly produced and submitted to the 1<sup>st</sup> Defendant, was a product of a body not known to any law in Nigeria. This, in my view has put its validity for the purposes of any *judicial proceedings* in grave doubts except a law enforcement body duly created by law, would use its contents as a "*working document*" to conduct a proper investigation for the use of the Attorney General of the Federation.

In all, the Plaintiffs' suit succeeds only in respect of relief 1 and it fails on reliefs 2 – 12 and these reliefs are accordingly dismissed.

*HP*  
18/5/17

This shall be the Judgment of this Court which I re-scheduled till today on 2/5/17 when it came up and was not ready for delivery.

There shall be no order as to costs.



**HON. JUSTICE G.O. KOLAWOLE  
JUDGE  
9/5/2017**

**COUNSEL'S REPRESENTATION:**

1. **CHIEF MIKE OZEKHOME, SAN; SYLVANUS OGWEMOH, SAN and WALE ADESOKAN, SAN with them are HENRY CHICHI, ESQ.; S. IENLANYE, ESQ.; K. OGBONNA, ESQ.; J.O. OKOSUN, ESQ.; ALEXANDER IKHANE, ESQ.; K. ORANUGO, ESQ.; H. OBI, ESQ.; MS. Z.Z. OMETERE, ESQ. and AJIBOLA LAWAL-AKAPO, ESQ. for the PLAINTIFFS.**
2. **FEMI FALANA, SAN with him are A. KALU KALU, ESQ.; A. MARSHAL, ESQ. and JUSTIN ARIYAMALE, ESQ. for the 1<sup>ST</sup> and 3<sup>RD</sup> DEFENDANTS.**
3. **T.A. GAZALI, ESQ. with him are OYIN KOLEOSHO, ESQ; T.S. OLOWOKERE, ESQ.; MS. O.V. OGBONNAYA; MS. O.A. HATHDAY and U.V. OHABUGHIRO for the 2<sup>ND</sup> DEFENDANT.**