

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY, THE 24TH DAY OF MARCH, 2017
BEFORE HIS LORDSHIP, THE HON. JUSTICE G.O. KOLAWOLE
JUDGE

SUIT NO. FHC/ABJ/CS/637/2016

BETWEEN:

1. MR. MARTIN ADENIYI OGUNLEYE
2. PRINCE BASIL IKPENWA
3. MR. ABIOYE AKERELE

PLAINTIFFS

AND

1. CORPORATE AFFAIRS COMMISSION
2. INCORPORATED TRUSTEES OF THE
NIGERIAN BAR ASSOCIATION
3. PRESIDENT, NIGERIA BAR ASSOCIATION
*(For himself and on behalf of all National
Officers of the Association)*

DEFENDANTS

JUDGMENT

By an "Originating Summons" dated 24/8/16 and filed on 25/8/16, the Plaintiffs instituted the instant action against the Defendants and set down three (3) questions for determination. These are:

1. "Whether **"EXHIBIT B"**, the amended Constitution of the Nigerian Bar Association, purportedly amended

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and adopted at the Annual General Meeting held in Abuja on 27th August, 2015 pursuant to which the administration and affairs of the Nigerian Bar Association has been and is being conducted, has satisfied all the requirements for amendment/alteration under Section 598 of the Companies and Allied Matters Act, 2004, and Section 68 of the Companies Regulation 2012 and therefore, not full and void by virtue of Section 600 of the Companies and Allied Matters Act, 2004."

IN THE ALTERNATIVE to question 1 above:

2. *"Whether Section 16 of the Constitution of the Nigerian Bar Association, 2015 is in conflict with Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 in that it curtails the right of access of its members to seek redress in Court and to that extent null, void and of no effect?"*
3. *"Whether the 3^d Defendant, under Section 8(5)(a) of the Constitution of the Nigerian Bar Association lacks the power to make financial regulations for the branches of the Nigerian Bar Association?"*

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In the event that these questions are answered and resolved in such way as will be favourable to the Plaintiffs' cause of action against the Defendants, the Plaintiffs seek the following reliefs:

1. **"A DECLARATION** that **"EXHIBIT C"**, the Amended Constitution of the Nigerian Bar Association adopted at the Delegates Conference held in Calabar on 31st August, 2001 as registered with and approved by the Corporate Affairs Commission in compliance with the provisions of the Companies and Allied Matters Act, 2004, is the extant and valid Constitution of the Nigerian Bar Association."
2. **"A DECLARATION** that by the provision of Section 600 of the **Companies and Allied Matters Act, 2004, "EXHIBIT B"**; the amended Constitution of the Nigerian Bar Association purportedly amended and adopted at the Annual General Meeting held in Abuja on 27th August, 2015 and pursuant to which the administration and affairs of the 2nd Defendant has been, and is being conducted is null and void."
3. **"A DECLARATION** that all actions, decisions and activities, howsoever described, already taken or intended/planned to be taken and/or carried out by the 2nd & 3rd Defendants, their officers, staff, organs,

*committees, branches, members, representatives and/or any other person acting on behalf of, or in the name of the Nigerian Bar Association in any manner whatsoever, including but not limited to the conduct of elections in branches of the Nigerian Bar Association and the conduct of election into the national offices of the Nigerian Bar Association, on 30th and 31st July, 2016 pursuant to "EXHIBIT B" the constitution of the Nigerian Bar Association purportedly amended and adopted at the Annual General Meeting held in Abuja on the 27th August, 2015, are null and void to the extent of their inconsistency with "EXHIBIT C" THE AMENDED Constitution of the Nigerian Bar Association adopted at the delegates Conference held in Calabar on the 31st August, 2001 as registered with and approved by the 1st Defendant in compliance with the provisions of the **Companies and Allied Matters Act, 2004.**"*

4. **"AN ORDER** of perpetual injunction restraining the 2nd & 3rd Defendants, their officers, Staff, organs, committees, branches, members, representatives and/or any other person acting on behalf of or in the name of the Nigerian Bar Association in any manner

howsoever described jointly and severally from conducting, continuing to conduct and/or purporting to conduct the affairs of the Nigerian Bar Association on the basis of "EXHIBIT B", the Constitution of the Nigerian Bar Association purportedly amended and adopted at the Annual General Meeting held in Abuja on 27th August, 2015."

5. **"AN ORDER** of perpetual injunction restraining the 1st Defendant, its officers, staff, and/or any other person acting on behalf of or in the name of the 1st Defendant from giving effect to any Act done by the 2nd and 3^d Defendants pursuant to **"Exhibit B"**."

IN THE ALTERNATIVE TO THE FOREGOING RELIEFS AND IF THE ANSWERS TO QUESTIONS 2 AND 3 ABOVE ARE ANSWERED IN THE AFFIRMATIVE, THEN THE PLAINTIFFS ALSO SEEKS THE FOLLOWING RELIEFS:

1. **"A DECLARATION** that Section 16 of the Constitution of the Nigerian Bar Association, 2015 is in conflict with Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 and to the extent of its inconsistency, is therefore NULL and VOID."

2. **"A DECLARATION** that the NBA Uniform Financial/Accounting Manual purportedly promulgated by the 3rd Defendant for the branches of the Nigerian Bar Association is UNCONSTITUTIONAL, ILLEGAL, NULL and VOID in that the 3rd Defendant lacks the powers under Sections 8(5)(a) of the Constitution of the Nigerian Bar Association, 2015, to make such financial regulations."
3. **"SUCH FURTHER ORDER(S)** as this Honourable Court may deem fit to make in the circumstance."

The Plaintiffs' "Originating Summons" is supported by a 29 paragraphed Affidavit deposed to by the 1st Plaintiff who in paragraph 1 of the deposition, says that he is a "legal practitioner" and the "Chairman of the Lagos Branch of the Nigerian Bar Association ("NBA")".

The Plaintiffs attached our (4) *documentary exhibits* to their "Originating Summons" and they are marked as Exhibits "A"; "B"; "C" and "D", respectively. Exhibit "A" is the 1st Plaintiff's "Practice Licence – 2016"; Exhibit "B" is the 2nd Defendant's constitution adopted in 2015 which the Plaintiffs are challenging its *validity*; Exhibit "C" is the 2nd Defendant's "Amended constitution" adopted in 2001 and Exhibit "D" is a "Search Report" of the 2nd Defendant's record kept with the 1st Defendant.

The Plaintiffs' Counsel filed a "Written Address in Support of the Originating Summons". It's dated 24/8/16 and was filed on 25/8/16.

The Plaintiffs' learned Counsel, Simon I. Ugbe, Esq. having prefaced the written address with the "Introduction" and "Factual Background" in paragraphs 1.1 – 1.2 and 2.1 – 2.12 of the address filed, in paragraph 3, sets down two (2) issues for determination. These are:

- (i) *"Whether **"EXHIBIT B"**, the Constitution of the Nigerian Bar Association purportedly amended and adopted at the Annual General Meeting held in Abuja on 27th August, 2015 pursuant to which the administration and affairs of the NBA has been and is being conducted has not satisfied all the requirements for amendment/alteration under Section 598 of the Companies and Allied Matters Act, 2004, and Section 68 of the Companies Regulation 2012, and therefore null and void."*
- (ii) *"Whether having regard to the overriding constitutional provisions of Section 6(6) of the **Constitution of the Federal Republic of Nigeria, 1999 (as Amended)**, Section 16 of Exhibit B is not null and void to the extent of its inconsistency in seeking to curtail the right of any member of the*

Nigeria Bar Association to seek redress of Court of competent jurisdiction."

But shortly after these processes were filed, the Plaintiffs by a "Motion on Notice" dated 27/9/16, applied to amend the "Originating Summons" by adding paragraphs 3(a) and 4(a) to the reliefs which the Plaintiffs seek. The questions originally set down for resolution remained the same. The said "Motion on Notice" was granted on 27/10/16. The *reliefs being sought* by the Plaintiffs, with the amendments read thus:

1. **"A DECLARATION** that **"EXHIBIT C"**, the Amended Constitution of the Nigerian Bar Association adopted at the Delegates Conference held in Calabar on 31st August, 2001 as registered with and approved by the Corporate Affairs Commission in compliance with the provisions of the Companies and Allied Matters Act, 2004, is the extant and valid Constitution of the Nigerian Bar Association."
2. **"A DECLARATION** that by the provision of Section 600 of the **Companies and Allied Matters Act, 2004, "EXHIBIT B"**; the amended Constitution of the Nigerian Bar Association purportedly amended and adopted at the Annual General Meeting held in Abuja on 27th August, 2015 and pursuant to which the

administration and affairs of the 2nd Defendant has been, and is being conducted is null and void."

3. **"A DECLARATION** *that all actions, decisions and activities, howsoever described, already taken or intended/planned to be taken and/or carried out by the 2nd & 3rd Defendants, their officers, staff, organs, committees, branches, members, representatives and/or any other person acting on behalf of, or in the name of the Nigerian Bar Association in any manner whatsoever, including but not limited to the conduct of elections in branches of the Nigerian Bar Association and the conduct of election into the national offices of the Nigerian Bar Association, on 30th and 31st July, 2016 pursuant to "EXHIBIT B" the constitution of the Nigerian Bar Association purportedly amended and adopted at the Annual General Meeting held in Abuja on the 27th August, 2015, are null and void to the extent of their inconsistency with "EXHIBIT C" THE AMENDED Constitution of the Nigerian Bar Association adopted at the delegates Conference held in Calabar on the 31st August, 2001 as registered with and approved by*

the 1st Defendant in compliance with the provisions of the **Companies and Allied Matters Act, 2004.**"

3A. **"A DECLARATION** that pursuant to Article 8(c) of the extant 2001 Constitution of the Nigerian Bar Association, if at any time, due to unavoidable circumstances or any emergency, an election cannot be held at the appropriate time in the biennial General Conference or the National Executive Committee is incapable of functioning, the General Council of the Bar shall be convened with powers to constitute a 10 member caretaker committee of members of the Association to run the affairs of the Association for not more than the unexpired tenure of the National Officers or until the next Annual General Conference (whichever is shorter), where new National Officers shall be elected."

4. **"AN ORDER** of perpetual injunction restraining the 2nd & 3^d Defendants, their officers, Staff, organs, committees, branches, members, representatives and/or any other person acting on behalf of or in the name of the Nigerian Bar Association in any manner howsoever described jointly and severally from conducting, continuing to conduct and/or purporting

to conduct the affairs of the Nigerian Bar Association on the basis of "**EXHIBIT B**", the Constitution of the Nigerian Bar Association purportedly amended and adopted at the Annual General Meeting held in Abuja on 27th August, 2015."

4A. "**AN ORDER** directing the General Council of the Bar to run the Affairs of the Association for not more than the unexpired tenure of the National Officers or until the next Annual General Conference, where new National Officers shall be elected."

5. "**AN ORDER** of perpetual injunction restraining the 1st Defendant, its officers, Staff, and/or any other person acting on behalf of or in the name of the 1st Defendant from giving effect to any Act done by the 2nd and 3rd Defendants pursuant to "**Exhibit B**"."

IN THE ALTERNATIVE TO THE FOREGOING RELIEFS AND IF THE ANSWERS TO QUESTIONS 2 AND 3 ABOVE ARE ANSWERED IN THE AFFIRMATIVE, THEN THE PLAINTIFFS ALSO SEEKS THE FOLLOWING RELIEFS:

1. "**A DECLARATION** that Section 16 of the Constitution of the Nigerian Bar Association, 2015 is

*in conflict with Section 6(6) of the **Constitution of the Federal Republic of Nigeria, 1999** and to the extent of its inconsistency, is therefore NULL and VOID."*

2. *"**A DECLARATION** that the NBA Uniform Financial/Accounting Manual purportedly promulgated by the 3^d Defendant for the branches of the Nigerian Bar Association is UNCONSTITUTIONAL, ILLEGAL, NULL and VOID in that the 3^d Defendant lacks the powers under Sections 8(5)(a) of the Constitution of the Nigerian Bar Association, 2015, to make such financial regulations."*
3. *"**SUCH FURTHER ORDER(S)** as this Honourable Court may deem fit to make in the circumstance."*

The "Amended Originating Summons" was supported by a 31 paragraphed Affidavit deposed to by Martin Adeniyi Ogunleye of Counsel who says in paragraph 1 of the Affidavit, that he is "a legal practitioner and the Chairman of the Lagos Branch of the Nigerian Bar Association ("NBA"). The said Affidavit has three (3) documentary exhibits attached to it and they are marked as Exhibits "A"; "B" and "C" respectively.


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The "Amended Originating Summons" was argued in a written address dated 27/9/16 and filed on 29/9/16.

In paragraph 3 of the written address, the Plaintiffs' Counsel sets down two (2) issues for determination. These are:

- (i) *"Whether **"EXHIBIT B"**, the Constitution of the Nigerian Bar Association purportedly amended and adopted at the Annual General Meeting held in Abuja on 27th August, 2015 pursuant to which the administration and affairs of the NBA has been and is being conducted has not satisfied all the requirements for amendment/alteration under Section 68 of the Companies Regulation 2012, and therefore null and void."*
- (ii) *"Whether having regard to the overriding constitutional provisions of Section 6(6) of the **Constitution of the Federal Republic of Nigeria, 1999 (as Amended)**, Section 16 of Exhibit B is not null and void to the extent of its inconsistency in seeking to curtail the right of any member of the Nigeria Bar Association to seek redress of Court of competent jurisdiction."*

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The Plaintiffs' Counsel argued issue one from the perspective of the provisions of the **Companies and Allied Matters Act (CAMA)** by which every Association of the status of the 2nd Defendant is required to have a Constitution in order to be registered under Part C of the said Act. Reference was made to Section 593 of **CAMA** which according to the Plaintiffs' Counsel, provides for "*the mandatory requirements*" an association such as the 2nd Defendant must meet for it to be registered and approved by the 1st Defendant.

By the Plaintiffs' Counsel's arguments, the 2nd Defendant was originally registered on 8/4/83 under the **Land Perpetual Succession Act**, Cap.98 and that it was then the substantive Act that governed associations such as the 2nd Defendant until 1990 when the **CAMA** was *promulgated* initially as a Decree. The original Act was repealed by Section 611 of **CAMA** and a new provision, i.e. Section 612 was enacted by which associations such as the 2nd Defendant are deemed to be registered under **CAMA**. It was submitted that the 2nd Defendant's constitution attached as Exhibit "C" to the "Amended Originating Summons", was registered with the 1st Defendant after it was adopted at the "*Delegates Conference held in Calabar on 31st August, 2001*". It was submitted, that since "*the filing of this Exhibit "C", no other amendment has been filed till date*".

The Plaintiffs' Counsel reproduced the provisions of Section 26 of Exhibit "C" and Section 598 of **CAMA**. Section 26 of the 2nd

Defendant's constitution attached as Exhibit "C" stipulates the mode of amendment of the 2nd Defendant's constitution, while Section 598 of **CAMA** prescribes that constitution of associations such as the 2nd Defendant which has been amended, shall be by a "*resolution passed by simple majority of its members and approved by the commission*". The provision of Section 600 of the **CAMA** was reproduced which prescribes a *penalty* for failure to comply with the provisions of Sections 597, 598 or 599 of **CAMA** when "*any change or alterations*" are purportedly made to the constitution of the association such as the 2nd Defendant. It was argued, that whilst Section 598 of **CAMA** allows an amendment to be made to the constitution of the 2nd Defendant by a "*simple majority of its members*", such amendment must be "*approved*" by the 1st Defendant for it to be *valid*. It was contended by the Plaintiffs' Counsel, that there can be no *approval of alterations* to the 2nd Defendant's constitution unless it is submitted to the 1st Defendant. It was argued, that for the 2nd Defendant's constitution when amended to be *valid*, it must be approved by the 1st Defendant pursuant to Section 598 of **CAMA**. The Plaintiffs' Counsel argued, that "*no resolution passed by simple majority of its members was filed by the NBA when the Plaintiffs' Solicitors conducted a search at the Corporate Affairs Commission on the 22nd day of July, 2016*". It was submitted, that "*the non satisfaction of this first requirement disables the realization of the second requirement of approval by the Corporate Affairs Commission*".

The Plaintiffs' Counsel also referred to the provision of Section 68 of the **Companies Regulation 2012** and argued that the "*approval of the 1st Defendant is contingent upon the satisfaction by the NBA of all the requirements listed in Section 68 of the **Companies Regulations 2012**' made "and published by the Corporate Affairs Commission pursuant to Sections 16, 585 and 609 of **CAMA**". It was argued that the said Section 68 of the **Companies Regulation, 2012** used the word "*shall*" on the requirements to be fulfilled when an association seeks to *amend* or *alter* its constitution, and that the "*NBA acting through the 2nd and 3^d Defendants have failed to comply with the above mandatory requirements of the law by their failure to obtain the approval of the Corporate Affairs Commission BEFORE commencing the operation of the "amended Constitution". The "amended Constitution" which is in issue is Exhibit "B" attached to the Plaintiffs' "Amended Originating Summons"*".*

The Plaintiffs' Counsel argued in paragraph 4.10 of the address filed, that the "*reason and justification for the mandatory requirement for any "amended Constitution" of a body like the 2nd Defendant", to "be registered and approved by the Corporate Affairs Commission is to afford members of the association, such as the present Plaintiffs and the general public opportunity to know the actual constitution in force and regulating the affairs of the association at any given time"*". It will also, by the Plaintiffs' Counsel's argument, "*enables members of such*

association to watch over the management of the affairs of the association and to hold their officers and or leaders accountable". It also prevents "surreptitious and arbitrary change or amendment ... at the whims and caprices of some individuals, like the present 2nd and 3^d Defendants". The "resolution and approval by the Corporate Affairs Commission", he submitted, "confers legal validity and enforceability status on any such "amended constitution" and enables any interested member of the society to apply for and obtain a copy of the constitution at any time".

In paragraph 4.12 of the address, it was argued that, having regard to the materials before the Court, *"that the 2nd and 3rd Defendants have changed or altered "EXHIBIT C" into EXHIBIT B" and adopted same in the Annual General Meeting of the NBA held in Abuja on 27th August, 2015"* and they have not complied with the law to have it *submitted to and approved* by the 1st Defendant in line with the Act.

The Plaintiffs' Counsel argued that *"Exhibit C" "which was adopted at the Delegates Conference held in Calabar on 31st August, 2001 and registered with and approved by the Corporate Affairs Commission ... remains and still is the extant and valid constitution of the Nigerian Bar Association to the exclusion of any other amended Constitution"*.

It was argued, that the failure of the 2nd and 3rd Defendants to *"comply with the requirements of the law is indeed very fatal to "Exhibit B" and renders it null and void"*. The Plaintiffs' Counsel

argued, that the 2nd Defendant now has *"two constitutions governing the conduct of the affairs of the NBA"*. The Court was urged to hold, that the 2nd Defendant cannot have or operate two constitutions at the same time, and that the extant and current constitution of the 2nd Defendant is Exhibit "C" attached to the "Amended Originating Summons".

The Plaintiffs' Counsel argued, that Exhibit "B" which has *"been demonstrated not to have amended (sic) and/or altered in accordance with the relevant provisions of the law"*, should be declared *"illegal, null and void"*. The Court was urged to declare *"all actions, decisions and activities howsoever described, already taken or intended/planned to be taken and/or carried out by the 2nd and 3rd Defendants, their officers, staff, organs and/or any other person... pursuant to Exhibit "B" be declared void to the extent of their inconsistency with Exhibit "C"*.


On issue 2 in the Plaintiffs' written address, the Plaintiffs' Counsel reproduced Section 16 of Exhibit "B" as well as Section 6(6)(b) of the **Constitution** and submitted that *"the intendment of this Section clearly denies and curtails access to Court such that aggrieved members of the NBA cannot be able to ventilate their perceived grievances"*.

When I read the Plaintiffs' Counsel's submissions on issue 2, I was wondering as to why, in the event that there is substance in issue one

already argued, by which the *validity* of Exhibit "B" was questioned, why would the Plaintiffs' Counsel, by issue 2, decides to isolate the provision of Section 16 in Exhibit "B" and urged that it be declared null and void as it is inconsistent with the provision of Section 6(6)(b) of the **Constitution of the Federal Republic of Nigeria (CFRN), 1999 As Amended** which guarantees right of access to the Courts. This is because, if issue one succeeds, it means that the whole of Exhibit "B" will be declared *null and void* so any of its provisions cannot by that event, be operational.

It was argued that "*Exhibit "B" cannot validly operate to oust the right of any member of the NBA, including the Plaintiffs, from resorting to Court to ventilate their perceived grievances*". The Plaintiffs' Counsel further submitted, that "*the NBA or its Dispute Resolution Committee, cannot usurp or take away the judicial powers of the Court to constituting itself into a Court of law that hears and determines the jural rights of its members*". It was argued, that Section 16 of the 2nd Defendant's constitution produced as Exhibit "B" "*is null and void to the extent of its inconsistency*" and this Court was urged to strike it down.

On issue 3 in the written address which was not listed in paragraph 3 of the Plaintiffs' written address, but was argued, the Plaintiffs' Counsel argued that Section 8(5)(a) of Exhibit "B", that the 3rd


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Defendant lacks the powers "*to make financial regulations for the branches of the NBA*".

It was also argued, that "*there is nothing in this provision that gives the 3^d Defendant power to impose penalties on branches for non-compliance with financial regulations*".

It seems that issues 2 and 3 in the Plaintiffs' written address, are argued as alternative to issue one because, if issue one succeeds, the whole of Exhibit "B" will be liable to being set aside and in which case, it becomes *judicially idle*, to begin to consider the *efficacy* and *validity* of the provisions of Sections 16 and 8(5)(a) of the 2nd Defendant's constitution attached as Exhibit "B".

When the Defendants were served with the Plaintiffs' "Amended Originating Summons" and the "Written Address" which I have just reviewed, the 1st Defendant through its Counsel, Ihuoma Uwalaka, Esq. filed a "Notice of Preliminary Objection" dated 13/12/16. It was filed on 14/12/16. The 1st Defendant, whom I had expected will play a rather passive role in the matter because, its position in this matter is largely that of a statutory body *saddled* with the duty to be repository of records of incorporated companies and registered trustees under Part C of its enabling Act, but got itself actively involved in the maelstrom of the Plaintiffs' dispute with the 2nd and 3rd Defendants.

By the said objection, the 1st Defendant contends that the “*Court lacks the jurisdiction to entertain*” the Plaintiffs’ action, and this was predicated on two (2) grounds: (1) “*That the Plaintiffs lack locus standi to institute this action*”. (2) “*That the action does not disclose any reasonable or cognizable cause of action against the 1st Defendant.*”

The 1st Defendant’s Counsel filed a written address to argue the objection and in paragraph 2 of the address, canvassed legal “arguments” to sustain the grounds of the objection.

The often cited Supreme Court’s decision in **MADUKOLU v. NKEMDILIM (1962) 1 All NLR 587 @ 595** was cited with the *excerpts* of its four (4) *judicial criteria* spelt out by the said decision to indicate when a Court will have jurisdiction to entertain a matter.

In paragraphs 2.04 – 2.13 of the 1st Defendant’s written address, arguments were *canvassed* to the effect, that the Plaintiffs lack *locus standi* to institute the instant suit. A good number of case law authorities were cited to buttress the submissions, and one of which is the Supreme Court’s decision in **ADESANYA v. PRESIDENT OF NIGERIA (1981) NSCC 146 @ 179**. It remains in my view, one of the apex Court’s *seminal* discourse of the concept of *locus standi* in the context of Nigeria’s **1979 Constitution**, which has been repealed, perhaps, abrogated by Decree No.1 of 1984 upon the ouster

of the democratic government of former President Shehu Shagari by the military.

It was argued that *"for a Plaintiff to be able to sue and invoke the judicial powers of the Court, he or she must show sufficient interest, injury or threat of injury he would suffer which he is seeking to protect"*.

On the second ground, the 1st Defendant's Counsel *canvassed* arguments to support the objection that the Plaintiffs' suit does not disclose a *reasonable cause of action* against it. The 1st Defendant's Counsel contended that when the "Affidavit filed in Support of the Plaintiffs' Amended Originating Summons" are read, that *"there is no single fact deposed therein that discloses any wrongful act by the 1st Defendant which entitles the Plaintiff to maintain an action against the 1st Defendant or seek any relief whatsoever against the 1st Defendant"*.

The 1st Defendant's Counsel reproduced relief 5 in the "Amended Originating Summons" and also, the provision of Section 598 of **CAMA**, and submitted that *"the approval of the commission is the second leg of alteration of the constitution of an incorporated trustee"*. It was submitted that the Plaintiffs' relief 5 *"is to simply asking the Court to restrain the 1st Defendant from performing her statutory duty"*. The 1st Defendant's Counsel referred to Section 68 of the **Companies Regulations 2012** and submitted that it is the

"statutory duty of the 1st Defendant to impose any sanction for failure to bring the application for approval or for not complying with the requirements for change of object and amendment of constitution of the association".

The Court was urged to refuse to grant any relief the Plaintiffs are seeking against the 1st Defendant, and that *"no cause of action has yet arisen to entitle the Plaintiffs to sue the 1st Defendant"*. The 1st Defendant submitted that *"the worst the Plaintiffs ought to have done... is to bring a petition before the 1st Defendant being the custodians of the **CAMA** and in line with her functions as provided under Section 7(e) Cap.20 "LFN 2004 to investigate the affairs of the 2nd Defendant to decipher whether the Association is being operated with an unapproved constitution"*. It was further argued, that it *"is only upon failure of the 1st Defendant to act will the Plaintiffs' cause of action arise against the 1st Defendant"*.

In rounding up on the 1st Defendant's objection, the 1st Defendant's Counsel argued that if it is conceded that the Plaintiffs have enough interest to *"institute an action against the 1st Defendant, they have exercised that power too hastily"*. It was argued, that *"they ought to have brought the issue of infringement by the 2nd Defendant to the attention of the 1st Defendant with a view to getting the 1st Defendant to investigate the alleged infringement"*. The 1st Defendant's Counsel concluded by his submission *"that there is no shred of law that*

supports the case of the Plaintiffs against the 1st Defendant", and urge the Court to uphold the objection and dismiss the Plaintiffs' "Originating Summons".

When the Plaintiffs' Counsel was served with the 1st Defendant's "Notice of Preliminary objection", and the written address filed to argue it, the Plaintiffs' Counsel filed a "Plaintiffs' Reply to the 1st Defendant/Applicant's Notice of Preliminary Objection". It's dated 14/12/16 and filed on 15/12/16.

The Plaintiffs' Counsel in the Reply, endeavoured to summarize the issues on which the 1st Defendant's objection were based under three (3) headings. (a) *"Whether this Honourable Court has jurisdiction to entertain the suit of the Plaintiffs";* (b) *"Whether the Plaintiffs' suit as presently constituted discloses a reasonable cause of action;"* and (c) *"Whether the Plaintiffs possess the requisite locus standi to commence this action."*

The first leg was argued with reference to Section 251(1)(e) of the **Constitution** and this was argued by the Plaintiffs' Counsel's submissions that *"the major issue is the non-compliance of the purported 2015 constitution of the NBA with the **CAMA**".*

The Plaintiffs' Counsel argued that it is the Plaintiffs' claim as endorsed on the "Writ of Summons" and "Statement of Claim" that the Court should look at in order to determine whether or not it has

jurisdiction. The Court's attention was drawn to Section 600 of **CAMA** where "Court" was defined as the "Federal High Court".

On whether or not, the Plaintiffs' suit discloses a *reasonable cause of action*, the Plaintiffs' Counsel submitted that "*from the totality of the uncontroverted Affidavit evidence before this Honourable Court, the Plaintiffs' suit discloses a reasonable cause of action*" and cited the Supreme Court's decision in **A.G. ADAMAWA STATE & ORS. v. A.G. OF FEDERATION (2014)**.

The Plaintiffs' Counsel also submitted, that the 1st Defendant is a necessary part in this suit because, the decision of this Court will affect the 1st Defendant and cited the Supreme Court's decision in **JAYI & ORS. v. JOLAYEMI (2001)**.

On the third issue as to whether or not, the Plaintiffs possess the locus standi to bring this suit, the Plaintiffs' Counsel argued that the Plaintiffs have shown *sufficient interest* by the facts in their Affidavit. It was argued, that "*the Court has been consistently enjoined to adopt a liberal approach in respect of the issue of locus standi so that aggrieved parties will not be unconscionably denied access to Court*". The Court of Appeal's decision in **BEWAJI v. OBASANJO (2008) 9 NWLR (pt.1093) 540** was cited, and that this attitude be adopted when it relates to *interpretation of the Constitution or a Statute*. The Court was urged to resolve these issues in favour of the Plaintiffs and discountenance the 1st Defendant's objection.

The 1st Defendant's Counsel filed a "Reply on Points of Law" to the Plaintiffs' response to the objection filed to challenge the competence of the Plaintiffs' suit against the 1st Defendant. The "Reply on Points of Law" is dated and filed on 20/12/16.

In his "Reply on Point of Law", the 1st Defendant's Counsel argued that the Plaintiffs' Counsel misapprehended the issue one which was argued on the provision of Section 251(1)(e) of the **Constitution** and that the 1st Defendant never contended that the Plaintiffs approached the wrong Court. The 1st Defendant's Counsel submitted that the objection raised is to the effect that the Plaintiffs' *cause of action* had not yet *crystallized* against the 1st Defendant.

On the issue of *locus standi*, the 1st Defendant's Counsel submitted, that the **Constitution** which **BEWAJI v. OBASANJO's** decision referred to is the **CFRN, 1999 As Amended** and not the constitution of the 2nd Defendant. It was submitted that the Plaintiffs' suit is not on the interpretation of the 2nd Defendant's constitution as a "*professional association*", but "*on allegation of impropriety of amendment of its constitution*". It was submitted that the Supreme Court's decision in **BEWAJI v. OBASANJO** supra was inapplicable. The Court was urged to follow the Supreme Court's decision in **THOMAS v. OLUFOSOYE** supra to deny the Plaintiffs locus standi to bring this action.

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The 2nd Defendant on its own part when served with the Plaintiffs' "Amended Originating Summons", "Affidavit" and "Written Address" filed to argue it, reacted by a "Counter-Affidavit against the Originating Summons". It's a 15 paragraphed "Counter-Affidavit" deposed to on 16/1/17 by Chief Rafiu O. Balogun who in paragraph 1 of the "Counter-Affidavit", says that he is "*the incumbent National Legal Adviser of the N.B.A.*". I am surprised, that as a Counsel in the matter, he was still able to stick out his neck to depose to a "Counter-Affidavit", perhaps, unmindful of the "*dangers*" it may entail in the event that the deponents are to be cross-examined in the event that likely conflicts cannot otherwise be resolved than to have the deponents cross-examined. See the decision in **HORN v. RICHARD** (1963) N.M.L.R. 39.

The 2nd Defendant's Counsel filed a written address to argue the facts in the "Counter-Affidavit".

The 2nd Defendant's Counsel having done a summary of the facts of the Plaintiffs' case as he understood it, in paragraph 2.0 of the written address filed, highlighted certain issues as "*Preliminary Fact/Issues*" which he considers crucial as they "*will affect the determination of the case of the Plaintiffs in one way or the other*". These issues are: (1) "*None-joinder of necessary parties and misjoinder of parties*"; (2) "*Improper Certification of public documents attached to the "Affidavit in Support of the Originating Summons" upon which the case of the*

Plaintiffs is built affects the case of the Plaintiffs negatively"; (3) "Depositions in Plaintiffs "Affidavit in Support of their Originating Summons" are in contravention of the Evidence Act and liable to be discountenanced"; and (4) "The Incorporated Trustees of the NBA is not a decision making body of the Association and cannot be sued on the matter related to the legality of the constitution of the Association."

In paragraphs 4.1 of the written address, the 2nd Defendant's Counsel on the first issue, referred the Court to reliefs 3, 4 and 4A in the Plaintiffs' Amended Originating Summons", and posed a question as to whether this Court can nullify the elections of the numerous branches officers and the incumbent National officers without being heard? By this, it was argued, that they ought to have been joined as parties in this suit. The Court's attention was referred to paragraphs 6, 7 and 8 of the 2nd Defendants' "Counter-Affidavit", and urged this Court to refuse the Plaintiffs' reliefs 3, 4 and 4A as it was contended, that they are not grantable *"without the joinder of all the Executives of all the Branches and the National Officers whose election were conducted pursuant to Exhibit "B"*.

On the issue of misjoinder, it was argued that the 3rd Defendant sued in this suit, is *"not a juristic person and/or is unknown to law"*. It was submitted, that where a party is *"so misjoined as in the instant case, the Court can suo motu strike out the name of such a party from the*

suit or refuse to make any order against him". The 2nd Defendant's Counsel contended that "the person sued as 3^d Defendant in this case is vague because, this suit was filed on 25/8/16 – a day before the swearing in of the incumbent President of the Association when this matter was filed was Augustine Alegeh, SAN". The 2nd Defendant's Counsel contended "that the necessary parties that can assist the Court to arrive at just determination of this case" in order to "grant reliefs 3, 4 and 4A are not joined as defendants". It was also contended, that the 3rd Defendant "is a misjoined party against whom no relief can be granted".

In paragraph 4.7 of the address, the 2nd Defendant's Counsel made submissions on a subtitled issue that "NBA – Non-Juristic Person: Whether the NBA is a non-juristic person". This was argued by reproducing the dictum of Agbaje, JSC (of blessed memory) in **CHIEF GANI FAWEHINMI v. N.B.A. & ORS. (No.2) (1989) 2 NWLR (pt.105) 558.**

It was submitted, that the Plaintiffs ought to "mention the names of the National Officers with their post and sue for themselves and on behalf of the Association".

In paragraph 5.0 of the address, the 2nd Defendant's Counsel canvassed legal arguments on "Improper Certification of Public documents attached to the Affidavit in Support of the Originating Summons upon which the case of the Plaintiffs is built". It was argued

that "most of the public documents attached to the "Originating Summons" are not duly certified as required by law and are therefore liable to be discountenanced". The 2nd Defendant's Counsel cited Exhibits "C" and "D" attached to the Plaintiffs' "Originating Summons". It was contended that "there is no evidence of payment of required fees for the certification". In relation to the Receipt of Payment for the search allegedly conducted, the 2nd Defendant's Counsel argued that the receipt "qualifies as a computer generated evidence and can only be if it is accompanied with a certificate in accordance with Section 84 of the **Evidence Act**".

It was also argued, that Exhibit "D" – being the "Report of Search" the Plaintiffs got conducted by Messrs Ikotun Temowo & Co. that it was a "public document which ought to be certified as required by law". Exhibit "D", it was also argued, "qualifies as a computer generated which requires to be accompanied with certificate in accordance with Section 84 of the **Evidence Act**". The Court was urged not to attach any weight to Exhibits "C" and "D".

In paragraph 5.6 of the 2nd Defendant's written address, the issue that "payment of fee for certification crucial in public documents" was argued.

The 2nd Defendant's Counsel cited the Supreme Court's decision in **TABIK INVESTMENTS LTD. & ANOR. v. G.T.B. PLC (2011)**.

In paragraph 5.9 of the address, the 2nd Defendant's Counsel made submissions on the issue of "*Public Documents/Computer Generated Documents*". By the style of the 2nd Defendant's Counsel's presentation, it is difficult to weave together, in an *understandable* and *logical* manner, the tenor and the theme of his submissions. If he intends to argue preliminary objection, he should do so on clearly ascertained grounds. With the way he lifted *excerpts* from electronic law reporting media, and just sub-titled them, I have found it rather difficult to have a clear theme of his submissions. Whilst written address which the Federal High Court's new Rules, 2009 endeavoured to incorporate in order to *fast track* the disposal of civil cases is being abused by some Counsel, it seems that the convenience of and access to electronic law reporting is also making a few Counsel to be lazy because, case law authorities are, by the practice of old, meant to be used to support and polish well articulated legal submissions and analysis by their *ratio decidendi* distilled from the facts of the cases they decided. What I have seen so far, looks like the 2nd Defendant's Counsel will just check on a topic, and whatever the LPELR has thrown up will be printed out and argued as part of the 2nd Defendant's legal submissions. I have not found his written address helpful by the style of his presentation.

In paragraph 6.0 of the address, another topic was argued. It's "*Depositions in Plaintiffs' Affidavit in Support of their Originating*

Summons” are in contravention of the **Evidence Act**”. On this, reference was made to Section 115(2) of the **Evidence Act, 2011**. The Court was urged to “*expunge or discountenance paragraphs 11 – 30 of the "Affidavit in Support of the Originating Summon having contained extraneous, matters by way of conclusion, argument, prayer, objection*”.

In paragraph 6.5 of the address, the 2nd Defendant’s Counsel began his submissions on the Plaintiffs’ suit on its merit, and urged that the two (2) issues which the Plaintiffs have set down for determination, be resolved against them.

It was submitted, that the 2nd Defendant’s constitution was amended in 2007, i.e. Exhibit “NBA1” attached to the 2nd Defendant’s “Counter-Affidavit” and it was argued that if Exhibit “B” was found *invalid*, that the 2nd Defendant’s constitution which should operate is Exhibit “NBA-1” which was amended in 2007 during the tenure of Mr. Rotimi Akeredolu, SAN as the President of the NBA. I take judicial notice, by Section 122(2)(j) of the **Evidence Act**, that as a senior Counsel, he is the current Governor of Ondo State. It is the hope of many of us as stakeholders in the legal profession, that the gradual involvement of seasoned advocates such as Mr. Akeredolu, SAN in politics and public administration will bring the desired result of having entrenched in the polity, a culture of an accountable government run *scrupulously* on

the *principles of rule of law* and which *inevitably* entails *unqualified obedience* to orders made by Courts of competent jurisdiction.

In paragraph 6.7 of the address filed, the 2nd Defendant's Counsel canvassed legal arguments to the effect, that the NBA's constitution "*needs not be submitted to Corporate Affairs Commission for Approval in all amendments to the constitution*". It was argued that where the amendments to the NBA's constitution has nothing to do with its name, object or trustees, that it needs not be submitted to the 1st Defendant for approval. The 2nd Defendant's Counsel submitted, that "*a community reading of Sections 597 – 599 and other relevant provisions of the CAMA will reveal that, it is not in all cases of amendment or alteration of the constitution of the Association that approval of the Corporate Affairs Commission is required*".

In paragraph 6.9 of the 2nd Defendant's address, the 2nd Defendant's Counsel argued the issue that the "*Court to Declare Sections 598 and 600 of the **CAMA** unconstitutional*". Really? As an issue arising from a defence to an existing suit in which the said Section is being called to be *interpreted* and *applied* to *vindicate* or *nullify* Exhibit "B" attached to the Plaintiffs' "Amended Originating Summons"? I do not think that the Court has or will exercise such generous jurisdiction so casually to do so on the *sidelines* of the 2nd Defendant's defence to the Plaintiffs' suit, but it will require possibly, a substantive action to seek such a far reaching relief in order to *maul down* the provisions of existing Acts of

the National Assembly, and the Attorney General of the Federation will in my view, be required to be a *principal party* to such action. It is not the rule or practice that *judicial power* of the Court in the exercise of its *interpretative jurisdiction* can be so *casually invoked* to strike down provisions of an existing Act of the National Assembly. It is an exercise that will involve an *exhaustive examination* and a solemn *consideration* of the said provision vis-à-vis the provisions of the **Constitution**. It cannot be *casually invoked* as was done by the 2nd Defendant's Counsel, otherwise many of the Acts of the National Assembly will much sooner than later, become only empty shells of their cover papers!

On this issue, the 2nd Defendant's Counsel argued that "*what is registered before the Corporate Affairs Commission are the trustees, the objects and the name of the Association, the Corporate Affairs Commission has no business in approving the constitution of an Association hook line and sinkers, that would have infringed on the freedom of association guaranteed by the 1999 Constitution*".

The 2nd Defendant's Counsel asked: "*Can the Corporate Affairs Commission write the constitution for an Association or withhold approval?*" He answered this question in the negative and further argued that "*seeking for approval is unconstitutional and to that extent we pray Your Lordship to struck (sic) down the provision in Section 598 of **CAMA** to the extent that it provides for approval of the*

*Corporate Affairs Commission after the alteration of the constitution by a resolution passed by simple majority of the members of the Association". It was also contended that "Section 600 ought to be declared void as it relates to failure to seek approval from Corporate Affairs Commission in accordance with Section 598 of **CAMA**".*

In paragraph 6.10 of the address filed, the 2nd Defendant's Counsel argued the issue as to "*failure to furnish the Court with alteration or amendments made in Exhibit "B"*". The 2nd Defendant's Counsel, perhaps misunderstood the Plaintiffs' *cause of action* which in my view, is that the failure to register Exhibit "B" which was the 2nd Defendant's "Amended Constitution" adopted at the August 27th 2015 Conference with the Corporate Affairs Commission, is to the extent of that failure and lack of *approval* of Exhibit "B", that the said Exhibit "B" is *invalid*.

The submissions which the 2nd Defendant's Counsel *canvassed* in the said paragraph 6.10 of the written address was that "*the Plaintiffs failed woefully to clearly place before this Court, the specific amendments or alterations they are complaining of or the amendments done to Exhibit "C" which produced Exhibit "B" and to that extent, their case is bound to fail as the Court will not embark on cloistered justice and do the case of the Plaintiffs for them*". He submitted further, perhaps in ignorance of the point that the Plaintiffs' case is that Exhibit "B" as the "Amended Constitution" of NBA,

although was ratified at the 27th August, 2015 General Conference, but that as at July 2016 shortly before this suit was filed in Court, it had not been registered with or *approved* by the 1st Defendant in line with Section 598 of **CAMA**, supra. The 2nd Defendant's Counsel submitted that "*they ought to specifically set out the amendments or alterations they claim to have been done to Exhibit "C" in Exhibit "B" so that the Court may decide on the matter and declare the specific amendments null and void if truly it is established that the constitution is not registered or approval of Corporate Affairs Commission the 1st Defendant not sought*".

It was argued that the "*constitution of NBA is a private document and Corporate Affairs Commission cannot and must not be allowed to intervene*". The Supreme Court's decision in **FAWEHINMI v. NBA & ORS. (No.2)** supra. was cited "*in support of this proposition*". The Court was urged to resolve issue one in the Plaintiffs' address against the Plaintiffs.

In paragraph 11.1 of the address, the 2nd Defendant's Counsel argued issues 2 and 3 together and submitted that the "*Plaintiffs cannot approach this Court on issues two and three formulated by them without first and foremost complying with provision of section 16 of the "Constitution of NBA" amended and adopted on 27th August, 2015 which provides for dispute resolution*". It was argued that "*this Court ought not to have entertained this matter because the condition*

precedent to approaching this Honourable Court by the Plaintiffs has not been fulfilled".

In paragraph 10.2 of the address filed, the 2nd Defendant's Counsel submitted *"that Section 16 of the "NBA Constitution" never infringed on the right of access of members to Court"*, and he submitted, that the said *"Section only provides for a condition precedent before a member can approach the Court to seek redress"*.

The 2nd Defendant's Counsel alluded to the provision of Section 593 of **CAMA** which he argued, *"makes it mandatory for an association to have its constitution"* and that once the constitution *"has been ratified by members at General Meeting like the instant Constitution"*, it shall *"bind" all its members"*.

In paragraph 10.4 of the address, the 2nd Defendant's Counsel argued that issue 3 *"is bound to fail even on the singular reason that the Purported Financial Regulations is not brought before this Honourable Court for the Court to review and consider it, with a view to knowing whether the President of the NBA has the power to make such Regulation or not"*.

The Court was urged to resolve issue 3 against the Plaintiffs and to dismiss *"their case"*.

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The 2nd Defendants also filed a "Notice of Preliminary Objection" to the Plaintiffs' suit. It's dated 6/12/16 and was filed on 7/12/16. The objection is predicated on 8 grounds and they state as follows:

- i. *"The Federal High Court is not the appropriate forum convenience to entertain the case of the Plaintiff."*
- ii. *"The case as presently constituted, discloses no cause of action or reasonable cause of action and liable to be struck out."*
- iii. *"The condition precedent for the invocation of the jurisdiction of this Honourable Court has not been fulfilled by the Plaintiff as set out under Section 16 of the Constitution of Nigerian Bar Association."*
- iv. *"The Claimant lacks the requisite locus standi to institute this action on the basis of the aged long Principle established in the locus classicus of **FOSS v. HARBOTTLE** as the wrong done to the Association can only be redressed by the Association itself."*
- v. *"There is no dispute arising from the operation of **Companies and Allied Matters Act** or operation of companies incorporated under the Act to warrant the invocation of the Federal High Court jurisdiction under Section 251(1)(e) of the 1999 Constitution."*

- vi. *"This matter ought not to be commenced by Originating Summons as facts are seriously in dispute or likely to be in dispute which required filing of pleadings."*
- vii. *"The matter does not borders (sic) on the interpretation of the provision of the **Constitution** or **Companies and Allied Matters Act**, but anchored on non-approval of NBA Constitution, an Association registered under Part C of the **Companies and Allied Matters Act**."*
- viii. *"This action never challenged any administrative decision or action of Corporate Affairs Commission an Agency of Federal Government and Consequently this Honourable Court is not clothed with jurisdiction to entertain this matter."*

The 2nd Defendant's Counsel filed a written address dated 6/12/16 and filed on 7/12/16.

On the first ground of the objection, the 2nd Defendant's Counsel submitted, that in order to determine whether or not the Court has jurisdiction, it is the Plaintiffs' claim that must be examined. The Court's attention was drawn to the reliefs being sought by the Plaintiffs in their "Originating Summons", and it was submitted, that

reliefs (a), (b) and (c) represent the "*principal reliefs*" being claimed, and that all other reliefs "*revolve*" around these "*principal reliefs*". The 2nd Defendant's Counsel whilst citing the provision of Section 251 of the **Constitution**, argued that "*only matters which principally challenge the validity or otherwise of Executive and or Administrative actions of the Federal Government and or its Agencies are covered*". It was argued that the Plaintiffs' suit never challenged "*the Administrative act or decision of any Agency of the Federal Government*". The 2nd Defendant's Counsel also contended that the Plaintiffs' suit has nothing to do with "*the operation of any provision of the **CAMA** or operation of Company registered under the **CAMA***". It was argued that the Federal High Court has no jurisdiction to entertain the Plaintiffs' suit "*when the Defendant is not a company but an association registered under Part C of the **CAMA***". It was argued that for the Federal High Court to have jurisdiction, both the party and the subject matter of the dispute must be *cognizable* under Section 251(1) of the **Constitution**. The Supreme Court's decision in **GARBA v. MOHAMMED (2016)** was cited.

In paragraph 3.00 of the address filed, the 2nd Defendant's Counsel argued the issue that "*the case discloses no cause of action or reasonable cause of action/The Plaintiff lacks locus standi to institute this matter*".

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It was contended, that the Plaintiffs' *"have not shown any peculiar interest which is over and above other members of the NBA which will vests him the right to come to challenge the purported or alleged failure to seek for approval of the 1st Defendant the NBA Constitution with the Corporate Affairs Commission"*.

The 2nd Defendant's Counsel argued that *"if it is true that the Constitution was not approved with the Corporate Affairs Commission"*, that *"it is only the Association that can complain and not one of the members"*. He cited the old English decision in **FOSS v. HARBOTTLE (1843)**.

In paragraph 5.00 of the address filed, the 2nd Defendant's Counsel argued the issue that *"Court cannot interfere in Decision of an Association"*. The 2nd Defendant's Counsel as he did in the substantive *"written address filed in Support of the Counter-Affidavit"*, in this written address, he was just lifting *excerpts* from the Law Pavilion Electronic Law Report ("LPELR") and pasting them on his written address without any form of *legal analysis* or submissions which make a particular case cited apposite and applicable. He made the review of his address, by the style of presentation, a very tortuous exercise for me to undertake. It's almost *scandalous* as a written address.

In paragraph 6.00 of the address, the 2nd Defendant's Counsel also made submission on what he termed: *"Interference with the domestic relationship of an association: When Court will not interfere in*

domestic relationships and when it will." The Court of Appeal's decision in **CHINWO v. OWHONDA (2008) 3 NWLR (pt.1074) 341 @ 362** was cited, and it was argued, that Court will only interfere in *domestic relationship* where for instance, a crime was committed which will be regarded as a "*fundamental vice*".

In paragraph 7.00 of the address, the 2nd Defendant's Counsel in his usual style of copy and "pasting" from LPELR, titled his submissions as "*Rule in **FOSS v. HARBOTTLE**: Justiciability of suit relating to Internal Affairs of Corporations, unincorporated associations and political parties*". He argued this by reproducing *excerpts* of the Court of Appeal's decision in **PAM v. A.N.P.P. (2008) 4 NWLR (pt.1077) 219**. There was *no legal submissions or analysis* made. This is a presentation which can at best be described as *lazy and intellectually poor* because, it was so unhelpful for the purpose of a judicial determination.

In paragraph 8.00 of the address, the 2nd Defendant's Counsel listed another topic as submissions. It is: "Essence of Submitting the Constitution/Registering the Association." Excerpts of the Court of Appeal's decision in **THE REGISTERED TRUSTEES OF ASSOCIATION OF TIPPERS AND QUARRY OWNERS OF NIG. v. CHIEF RAMONI YUSUF & ORS. (2011) LPELR 5024** were reproduced, and in paragraph 9.00 of the address, the 2nd Defendant's Counsel reproduced LPELR in **PDP & ANOR. v. SYLVA & ORS.**

(2012) to argue yet another topic titled: "*Internal decision of a Political Party/Doctrine of Ultra-vires has no place.*"

In paragraph 10.00 of the address, the 2nd Defendant's Counsel reproduced excerpt of the Supreme Court's decision which was not stated to address the issue which he titled: "*Decision or action of the Association Final Even if Unreasonable.*"

In paragraph 11.00 of the address, the 2nd Defendant's Counsel titled this as: "*Some Authorities on Cause of Action and Reasonable Cause of Action/Locus.*" He used this aspect to reproduce a long *excerpt* of the Supreme Court's decision in **THOMAS v. OLUFOSOYE (1986) 1 NWLR (pt.18)**, and in paragraph 12.00 of his address, titled it: "*What it Consider While Determining Locus Standi.*"

This written address is in my view, a *disservice* to the provision of Order 22 of the **Federal High Court (Civil Procedure) Rules, 2009**. By written address, a Counsel is required to reduce his *legal submissions* into writing, and *legal submissions* necessarily will entail analysis vis-à-vis facts in contention between both parties and the law or its application as well as extant applicable judicial decisions that confirm the tenor of the *legal submissions* made. What I have seen is a general reproduction of *excerpts* from LPELR on topics which I find it difficult to relate to the issues in dispute between both the Plaintiffs and the 2nd Defendant. It is one of the most *unhealthy legal*

submissions, if it can be classified as such, I have ever come across on the Bench.

In paragraph 3.00 of the address, the 2nd Defendant's Counsel has another topic for consideration, and it's titled: "*Originating Summons not suitable for this matter having regard to its contentious nature.*" Under this heading, the 2nd Defendant's Counsel, and without reference to the 2nd Defendant's "*Counter-Affidavit to the Plaintiffs' Originating Summons*", submitted that "*it is crystal clear that the matter will be largely contentious and this will require filing of pleadings*". It was argued, that "*this is not the kind of cases envisage (sic) under the provisions of Order 3 of the **Federal High Court (Civil Procedure) Rules, 2009***". The Court was referred to the Court of Appeal's decision in **ETIM v. PDP & ORS. (2016) LPELR 40129**.

In paragraph 14.00 of the address, the 2nd Defendant's Counsel – who describes himself as the "*National Legal Adviser of the NBA*", concluded his written address which I am still unable to find a proper words to qualify it and he urged the Court to uphold "*that this Honourable (sic) lacks the requisite jurisdiction to entertain this matter*" and to "*strike out this matter*".

When the Plaintiffs' Counsel was served with the "2nd Defendant's Written Address on the Notice of Preliminary Objection", he filed a

"Plaintiffs' Reply to the 2nd Defendant/Objector's Preliminary Objection". Its' dated and filed on 8/12/16.

In paragraph 2.0, the Plaintiffs' Counsel distilled, despite the unwieldy nature of the 2nd Defendant's Counsel's address, (5) issues for determination arising from the 2nd Defendant's "Notice of Preliminary Objection". These are: (a) "*Whether this Honourable Court has jurisdiction to entertain the suit of the Plaintiffs*"; (b) "*Whether the Plaintiffs' suit as presently constituted discloses a reasonable cause of action*"; (c) "*Whether this suit was rightly commenced by Originating Summons*"; (d) "*Whether the rule in **FOSS v. HARBOTTLE** is applicable in the instant suit*", and (e) "*Whether the Plaintiffs possess (sic) the requisite locus standi to commence this action*".

In paragraph 3.1 of the Written Reply, the Plaintiffs' Counsel argued issue (a) from the perspective of the provision of Section 251(1)(e) of the **Constitution** and submitted that "*the Plaintiffs' major issue is the non-compliance of the purported 2015 Constitution of the NBA with the **CAMA***". It seems to me, that the Plaintiffs instituted this action in the Federal High Court because of the joinder of the 1st Defendant as a party. But it does not appear that any of the *principal declaratory reliefs sought* is against the said 1st Defendant apart from reliefs 1 and 5 which is *injunctive relief*. The *declaratory relief 1 being sought* against the 1st Defendant when viewed against the *statutory status* of the 1st Defendant and *contextualized* within the facts "in support of the

Plaintiffs' Originating Summons", when it is pressed down to its basics, sounds rather *academic*, and the 1st Defendant can hardly be an *effective contradictor* to the said relief having regard to the provisions of Sections 598 and 600 of **CAMA**. The question which the Plaintiffs will be required to address, is *whether an order of injunction can on its own being sought against the 1st Defendant, sustain the suit of the Plaintiffs in the Federal High Court?* The ancillary issue to this, is the question as to the wrong which the 1st Defendant has done against the Plaintiffs?

The Plaintiffs' Counsel also cited the provision of Section 600 of CAMA which defines "Court" to be the Federal High Court. The Plaintiffs will need to seek a substantive relief, in the context of the provision of Section 251(1)(p); (q) and (r) of the **Constitution** in order to be able to maintain their action against the 1st Defendant in the Federal High Court as an "Agency" of the Federal Government of Nigeria.

On issue (b) which the Plaintiffs' Counsel calls "issue two" in paragraph 3.2 of the Reply address, it was argued that "*the Plaintiffs' claim (sic) of action is the non-compliance of the Constitution with the mandatory provision of **CAMA***". It was submitted that in order to determine whether a suit discloses a *cause of action*, the Court should only consider the "Writ of Summons" and "Statement of Claim" filed. It was argued that from the "*totality of the uncontroverted affidavit evidence, the Plaintiffs' suit discloses a reasonable cause of action*".

The submissions urged in his Reply are similar to the ones which the Plaintiffs' Counsel had urged in their response to the 1st Defendant's objection.

In paragraph 33 of the address, which deals with whether "Originating Summons" was a proper *mode of commencement* of the Plaintiffs' suit, it was submitted that "*Originating Summons is most suitable for the commencement of suits bordering on interpretation of Statutes just like in the instant suit as the reliefs sought by the Plaintiffs therein will clearly reveal*".

In paragraph 3.3.2 of the address, the Plaintiffs' Counsel submitted that "*the 2nd Defendant cannot successfully posit that the facts are hostile when they have not filed their "Counter Affidavit" as required by the rules of Court*". It was argued as an alternative issue, that even if "Originating Summons" should not have been filed, that what the Court will do is to order both parties to file their pleadings instead of striking out the Plaintiffs' suit.

In paragraph 3.4 of the address, the Plaintiffs' Counsel argued issue four on the applicability of the rule in **FOSS v. HARBOTTLE** to the instant case. It was argued that "*the principle in the English case of **FOSS v. HARBOTTLE (1843) 67 ER 189** do not apply to this case. It was argued, that the principle in the said decision, deals with the concept of "majority rule" and that "*while in the instant case, the Plaintiffs have shown that there is a breach of a Statute, which is the**

CAMA in this case". The Plaintiffs' Counsel also submitted that the rule in **FOSS v. HARBOTTLE** supra has exceptions, and that if the said rule applies, the Plaintiffs' case falls within its exceptions because, the Plaintiffs' *cause of action* is founded on a "*breach of mandatory provisions of a Statute*".

On issue five which the Plaintiffs' Counsel addressed in paragraph 3.5 of the Reply filed to the 2nd Defendant's Objection, the Plaintiffs' Counsel, whilst relying on the Court of Appeal's decision in **BEWAJI v. OBASANJO** supra which had earlier been cited in relation to the issue of *locus standi* raised by the 1st Defendant's Counsel, the Plaintiffs' Counsel contended that the Plaintiffs' suit "*relates to the interpretation of the **CAMA***" and urge the Court to adopt a liberal approach to the issue of *locus standi* when it involves *interpretation* of the **Constitution** or a Statute. The Supreme Court's decision in **A.G. OF BENDEL STATE v. A.G. FED. (1981) 12 NJCC 314 @ 393** was cited to buttress the need for the Court to be *flexible* on the issue of *locus standi* when it relates to *interpretation* of the **Constitution** or of a Statute.

The 3rd Defendant when served with the Plaintiffs' "Amended Originating Summons" and "Written Address" filed therein, filed a "Counter Affidavit to the Plaintiffs' Originating Summons". It was deposed to by Damilare Ojo of Counsel on 16/12/16. It's a 12 paragraph Counter Affidavit.

The 3rd Defendant's Counsel, Olalekan Thanni, Esq. appears to have filed two (2) different written addresses to argue the facts in the Counter Affidavit of Damilare Ojo, Esq. The first one which is undated bears the stamp of the Registry for 20/12/16 and the second address which I will appraise, is dated 8/1/17 and was filed on 12/1/17.

In paragraph 2.2 of the address filed on 12/1/17, the 3rd Defendant's Counsel submitted two (2) issues for determination. These are: (1) "*Whether the Plaintiffs can be heard complaining when they have participated in the running the (sic)*" Association in total compliant of the constitution and benefited from the operation of the constitution they are challenging. (2) "*Whether Section 16 of the constitution is in conflict with the **Constitution of Federal Republic of Nigeria, 1999 (as amended)***".

The 3rd Defendant's Counsel advanced *legal arguments* in respect of issue one based on the fact that the Plaintiffs "*had been participating fully in the authority of the Association without any condition whatsoever at national and branches level including attending meetings and taking steps pursuant to the provision of the said Constitution*". It was argued that the Plaintiffs are *estopped* from challenging a process from which they have taken benefit. He cited the decision in **WILLIAM AGIDIGBI v. DANAHA AGIDIGBI & ORS. (1996) 6 NWLR (Pt. 434) 300**. It was contended, that "*the Plaintiffs had immensely benefited from the stamp and seal regime of*

the Association which became operational under the 2015 constitution of the Association and so they are estopped from denying and challenging its existence”.

When I read this submission, I felt that the 3rd Defendant’s Counsel may have intended it to be a “*legal joke*” or the “*Bar humour*” amongst Counsel, because, I thought that the *equitable defence of estoppel* can hardly be called in *aid* of an issue in which the *legal validity* of the 2nd Defendant’s constitution amended in 2015 was being challenged. *Estoppel*, in the *common law jurisprudence*, is often used as a “*shield*” and can hardly be called in *aid* as a defence to allegation that the Amended 2015 Constitution although, adopted at the Annual General Conference in August, 2015, that it was not submitted to the 1st Defendant for its “*approval*” in accordance with the provision of Section 598 of the **CAMA**, *supra*? It just doesn’t sound right even if it appears right to the 3rd Defendant’s Counsel that the continued operation of an alleged *invalid* constitution of the 2nd Defendant, can be *resisted*, *preserved* and or *protected* on the basis of *equitable principle of estoppel*! An *invalid* constitution of an organization or body such as the 2nd Defendant herein, can hardly be “*ratified*” or *validated* on account of conduct of the members by *equitable doctrines of waiver or acquiescence embedded in estoppel*.

On issue two, the 3rd Defendant’s Counsel argued that the provision of “*Section 16 of the Constitution of the Nigerian Bar Association 2015 is*

a species (sic) of a pre-action notice", and submitted that as it is, it is a "*condition precedent in instituting an action in Court*". The 3rd Defendant's Counsel contended that "*this does not oust the Court jurisdiction*". He cited and relied on the Court of Appeal's decision in **P.H.R.C. LTD. v. OKORO (2010) LPELR 4861 (CA)**. The 3rd Defendant's Counsel argued that section 16 of the 2nd Defendant's 2015 Amended Constitution is not in conflict with the provision of the **Constitution, 1999 as Amended**. The Court was urged to uphold the 3rd Defendant's submissions.

On the same 13/1/17, the 3rd Defendant's Counsel also filed a "Notice of Preliminary Objection" dated 8/1/17. The jurisdiction of the Court was challenged on five (5) grounds: (1) "*That the Plaintiffs action has not disclosed any reasonable cause of action*"; (2) "*That nothing in the Plaintiffs' Originating Summons and other originating processes filed before this Honourable (sic) disclose any reasonable cause of action*"; (3) "*The Plaintiffs lack the locus standi to institute this action*"; (4) "*The 3rd Defendant is not a juristic person*"; and (5) "*The suit as presently constituted is incompetent*".

The 3rd Defendant's Counsel filed a written address in support of the "Notice of Preliminary Objection" and in paragraphs 3.1 – 3.24 of the address, argued issues one and two together.

Considerable time and efforts were needlessly expended in proffering the definitions of "*pleadings*" and of what constitutes a "*cause of*

action". It is time, that Counsel save the Court all of these "kindergarten" mode or style of legal submissions, but rather canvass concrete and substantial legal arguments tied to the facts or lack of it of the case under contestation by both parties. I had expressed a similar view concerning the written address filed on behalf of the 2nd Defendant which was largely lifting excerpts from LPELR and "pasting" them in a form of a written submission without any form of analysis or informed discourse of the facts which made such excerpts of legal authorities applicable to the issues being argued. Likewise, a written address which devotes considerable space to elementary definitions of concepts or legal terms is in my view, an unhelpful legal submission.

In paragraph 3.18 of the address, the 3rd Defendant's Counsel submitted that "a careful perusal of the totality of statements and or averments made in the affidavit in support of the Originating Summons does not (sic) disclose any such facts". It was argued that the "pleadings of the Plaintiffs did not disclose such facts which can establish the wrong suffered by the Plaintiffs as a result of Defendants actions they complained of". The Court of Appeal's decision in **JULIUS BERGER NIG.PLC & ANOR. v. TOKI RAINBOW COMMUNITY BANK LTD. (2009) LPELR 4381 (CA)** was relied upon.

In paragraphs 3.25 – 3.28 of the address filed, the 3rd Defendant's Counsel canvassed submissions on issue three. The submissions

canvassed on issue three are similar to the submissions which the 3rd Defendant's Counsel had urged based on *estoppel*, and in paragraph 3.28 submitted that "*the Plaintiffs having benefitted from the operation of the Nigerian Bar Association Constitution 2015 its not equitable for them to be heard seeking nullification of same*". In paragraphs 3.29 – 3.34 of the address filed, the 3rd Defendant's Counsel made *legal submissions* on issue four which deals with whether the Plaintiffs' suit as constituted, is competent. This issue was argued from the stand point that the 3rd Defendant is not a *juristic* person that can sue or be sued. The 3rd Defendant's Counsel cited the Supreme Court's decision in **ATAGUBA & CO. v. GURA (NIG.) LTD. (2005) 8 NWLR (pt.927) 429**. The Court was urged to strike out the 3rd Defendant's name as a "party" and he cited the Court of Appeal's decision in **BEBEJI OIL ALLIED PROD. LTD. v. PANCOSTA LTD. (2007) (VOL.31) WRN 163**.

When I browsed through the Court's processes' file, I was unable to lay my eyes on any Plaintiffs' process to join issues with the 3rd Defendant's processes – whether on its Counter Affidavit or Notice of Preliminary Objection. Even though this case, by my assessment, revolves around the "life" and "soul" of the 2nd Defendant as a professional body for lawyers in Nigeria, I am constrained to say that the presentation of the case, especially by the 2nd and 3rd Defendants' Counsel left much to be desired. The filing of processes and issues

canvassed are so *unwieldy* and *untidy* even though the simple issue which the case has thrown up for resolution is whether or not the 2nd Defendant's extant constitution as presented by Exhibit "B" attached to the Plaintiffs' "Amended Originating Summons" is *valid* without it being submitted to the 1st Defendant for registration and *approval*. It's an issue which can be resolved by a *judicial interpretation* of the provision of Section 598 of **CAMA** and which provision the 2nd Defendant in his submissions, urged the Court to *strike down* as *unconstitutional* – an issue, strangely as it is, was raised by the *sideline* as a defence in a suit in which the Attorney General of the Federation, pursuant to Section 150(1) of the **CFRN, 1999 As Amended**, was not made a party!

It appears that only the 1st Defendant's Counsel, appreciated the issues for determination as are contained in the Plaintiffs' "Amended Originating Summons" and has filed appropriate processes to challenge the Plaintiffs' suit. I will come to this later on in this Judgment.

On 16/1/17, I listened to the oral submissions of the Counsel to each of the parties beginning with the Plaintiffs' lead Counsel, Chief Solo Akuma, SAN who drew the Court's attention to the processes filed on behalf of the Plaintiffs. The learned Counsel adopted the written addresses filed in support of the Plaintiffs' processes as his oral submissions. He argued that the 2nd and 3rd Defendants did not

comply with the procedure prescribed by Section 598 of **CAMA** to have the 2nd Defendant's Amended 2015 Constitution properly *registered* and *approved* by the 1st Defendant, and that if they had done so, they would have showed this by their "Counter Affidavit". He drew the Court's attention to the provision of Section 600 of **CAMA** which prescribes the *penalty* for the failure to have the 2nd Defendant's Amended 2015 Constitution *registered* with and *approved* by the 1st Defendant. He rounded up his submissions by submitting that "*the 1st Defendant who is supposed to sanction the 2nd Defendant was on their side*". This submission seems to assume, that the 2nd Defendant is under any form of regulatory supervision by the 1st Defendant. It is in this regard, that the issue which the 1st Defendant's Counsel raised in his objection as to the competence of the Plaintiffs' suit, appears to find some meaning, that the Plaintiffs, in order to get the 1st Defendant to exercise any of the powers which it has in relation to *registration* and *approval* of the 2nd Defendant's 2015 Amended Constitution, should have in line with the provision of Section 7(e) of its enabling Act, petition to the 1st Defendant and urge it to initiate investigation into whether or not, the 2nd Defendant was running its affairs on the basis of an Amended 2015 Constitution which was never submitted to it for *registration* and or for *approval*. That it is when the 1st Defendant fails to take any step on such petition or complaint, that the Plaintiffs can sue it or join it as a Defendant to this suit, and that as it is, the Plaintiffs' suit does not

disclose either a *cause of action* or a *reasonable cause of action* against the 1st Defendant.

The 1st Defendant's Counsel, O.O. Olowolafe, Esq. was heard next to the Plaintiffs' Counsel. The 1st Defendant's Counsel drew the Court's attention to the "Notice of Preliminary Objection" dated 13/12/16 which the 1st Defendant's Counsel argued by adopting the written address filed to argue it. The 1st Defendant's Counsel submitted that relief 1 which the Plaintiffs seek against the 1st Defendant – being a *declaratory order*, have not yet arisen against the 1st Defendant as a competent relief.

The 2nd Defendant's Counsel, Chief R.O. Balogun was heard next and he drew the Court's attention to the Counter Affidavit which he deposed to on behalf of the 2nd Defendant as its "National Legal Adviser". The 2nd Defendant's Counsel adopted the written address he filed which I have criticized as a bad example of what an address should not be in this day and age!

The 2nd Defendant's Counsel attacked the admissibility of Exhibits "C" and "D" attached to the Plaintiffs' "Amended Originating Summons" as well as several paragraphs of the Affidavit which he argued that they contravened the provision of Section 115(2) of the **Evidence Act**. It was part of the submissions of the 2nd Defendant, that the requirement to *register* and seek the *approval* of the 1st Defendant is only when the amendment or alteration relates to the name, object of

the association or its trustees and not when the constitution was just amended without any of these subjects being affected. It was also argued that the Plaintiffs failed to join necessary parties in order to get some of the reliefs which if granted, will affect such persons who were not made parties and that they misjoined the 3rd Defendant who is not known to law.

After the 2nd Defendant's Counsel was heard, the 3rd Defendant's Counsel, Olalekan Thanni, Esq. was heard in his oral adumbration of the 3rd Defendant's Counter Affidavit and the Notice of Preliminary Objection filed.

The Plaintiffs' Counsel was heard in his reply on points of law. In his oral submissions, the Plaintiffs' Counsel, Chief Solo Akuma, SAN addressed the objections raised to the admissibility of Exhibits "C" and "D" and on the alleged non-compliance with the provisions of Section 84 (4) of the **Evidence Act** in relation to the Bank teller by which the Plaintiffs paid to conduct search in the 1st Defendant's record on 2nd Defendant.

On the issue of contravening Section 115 (2) of the **Evidence Act**, the Plaintiffs' Counsel argued that none of the paragraphs of their Affidavit violated the said provisions.

On the issue of *locus standi*, the Plaintiffs' Counsel referred to the decision in **FAWEHINMI v. PRESIDENT** supra. and **FAWEHINMI**

v. AKILU supra. to argue that the concept has been expanded by the Courts. The Plaintiffs' Counsel also referred to the Supreme Court's decision in **BADEJO v. FED. MIN. OF EDUCATION (1990) 4 NWLR (pt.143) 254**. He urged the Court to dismiss the Preliminary Objections filed by the Defendants.

The 1st Defendant's Counsel, O. Olowolafe, Esq. was also heard on his "Reply on Points of Law to the Plaintiffs' Reply to the 1st Defendant's Objection". The said Counsel adopted the address filed and argued that the decision in **FAWEHINMI v. PRESIDENT** was a Court of Appeal's decision and that it cannot over rule the Supreme Court's decision. He submitted that the Supreme Court's decision in **BADEJO v. FED. MIN. OF EDUCATION** cited by the Plaintiffs' Counsel does not apply.

The 2nd Defendant's Counsel, Chief R.O. Balogun also addressed the Court on the 2nd Defendant's "Reply on Points of Law" and drew the Court's attention to Section 113 of the **Evidence Act** supra

After all the Counsel to both parties have been heard, I reserved the Judgment till 22/2/17. However, I was out of jurisdiction on the said date because, I was attending a judicial training in the United Kingdom which held between 20th – 24th February, 2017. When I returned, I advised the Registrar to re-schedule the Judgment till today.

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When I read the addresses filed, in view of the objections raised by each of the Defendants which border on the jurisdiction of this Court, it may be expedient to resolve the issues raised as grounds of the objection. The grounds contested by each of the Defendants appear similar except for the 2nd Defendant who also added that the Plaintiffs' suit is not suited to be heard by an Originating Summons. I really do not find any difficulty in dismissing this ground of objection because, the *gravamen* of the Plaintiffs' *cause of action*, is that the 2nd Defendant's 2015 Amended Constitution, although was adopted at the Annual General Meeting held on 27/8/15 in Abuja, but it was not registered with and/or approved by the 1st Defendant in accordance with the provision of Section 598 of **CAMA**. I do not see any "hostile" issue in such matter which cannot be resolved by a suit commenced by way of "Originating Summons". This is because, it calls for the *interpretation* and application of the provision of Section 598 of **CAMA** which the 2nd Defendant's Counsel had submitted, only applies to *alterations* or *amendments* to the 2nd Defendant's name, object or trustees. It is a pure question of *interpretation* of the said provision in relation to the *validity vel non* of Exhibit "B" attached to the "Amended Originating Summons" if the 2nd Defendant's Counsel was right. So, I agree that the Plaintiffs' suit can be determined by an "Originating Summons" and as such, that ground of objection lacks merit and it fails.

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The issue of the Plaintiffs' *locus standi* was also challenged and this was on the basis that there are over 150,000 lawyers in Nigeria and the Plaintiffs need to demonstrate that they have suffered a peculiar injury by the use of the 2nd Defendant's 2015 Amended Constitution which was not registered with or approved by the 1st Defendant and which *injury* the Plaintiffs need to prove as being over and above that of other lawyers in Nigeria. The other side to it was based on the *doctrine of estoppel* which the 3rd Defendant has raised. When I looked at the official status of the 1st Plaintiff as the Chairman of Lagos Branch of the NBA, it's arguably, the largest branch in Nigeria, and the 2nd and 3rd Plaintiffs as financial members of the 2nd Defendant – when these are viewed vis-à-vis the narrow issues in dispute, it is my view that it will be a wrong application of judicial decisions to refuse to accord the Plaintiffs with *locus standi* on the old English rule in **FOSS v. HARBOTTLE (1843) 67 E.R. 189** because, the Plaintiffs' complaint is that the 2nd Defendant as a professional body or association of lawyers, is being run on the basis of an Amended Constitution made in 2015 which is yet to fulfill all the prescribed *statutory conditions precedent* for it be valid. That is its *registration* with and *approval* by the 1st Defendant. By reason of the alleged invalidity of the 2nd Defendant's 2015 Amended Constitution which is at the heart of the Plaintiffs' suit, it is my decision that any financial member of the 2nd Defendant ought to be accorded a standing to challenge the *validity* or otherwise of the said constitution

attached as Exhibit "B" to the Plaintiffs' "Amended Originating Summons". The Plaintiffs have the *locus standi* to institute this action in order to *judicially ascertain* the *legal validity* or otherwise of the 2nd Defendant's 2015 Amended Constitution produced as Exhibit "B" to the Plaintiffs' "Amended Originating Summons".

The other ground of objection is that the Plaintiffs' suit against the 1st Defendant does not disclose a *cause of action* or a *reasonable cause of action*. It is my view, that when one reads the totality of the Plaintiffs' Affidavit, except if the Plaintiffs are able to show that the 2nd Defendant as a "*professional Association*" can, except in relation to the provision of Section 598 of **CAMA**, is subject to a general *supervisory authority* of the 1st Defendant beyond its *statutory duty* as a "*repository of incorporation records of registered companies*" – whether private or public limited liability and of incorporated trustees such as the 2nd Defendant which it has the *primary statutory mandate* to register for the purpose of acquiring *juristic personality* in Nigeria, it is difficult to find any allegation of wrong doing against the 1st Defendant by the Plaintiffs for which the Plaintiffs can competently seek either a *declaratory* and/or *injunctive relief* against the 1st Defendant. When I read and pondered on the *injunctive relief* 5 in the "Amended Originating Summons", I was minded to ask whether it was meant to restrain the 1st Defendant from accepting for *registration* and to grant *approval* for the 2nd Defendant's Amended 2015

Constitution when and if submitted to it as a document which both parties agreed, has been adopted at the 2nd Defendant's 2015 Annual General Meeting held on 27/8/15, or to intervene to stop the 2nd Defendant from being run by the 3rd Defendant on the basis of the said 2015 Amended Constitution? It's a power which can hardly be exercised under any of the provisions of the 1st Defendant's enabling Act save the *sanction* prescribed by Section 600 of **CAMA**. The *sanction* itself cannot be imposed, in my view, unless and until the 1st Defendant is duly and formally informed by the Plaintiffs of the 2nd and 3rd Defendants' contravention of Section 598 of **CAMA**. It is in this regard, that I agree with the 1st Defendant's Counsel, that a *cognizable cause of action* is, perhaps yet to arise or *crystallize* against the 1st Defendant by the Plaintiffs who never filed any complaint or petition to the 1st Defendant on the alleged failure of the 2nd Defendant to register its 2015 Amended Constitution with the 1st Defendant and to seek for its *approval* as an objection that is *legally sound* and *evidentially sustainable*. It is impossible, having regard to these facts, to view the 1st Defendant as an "*effective contradictor*" to the Plaintiffs' *declaratory reliefs* and a *fortiori*, to the *injunctive relief being sought* against it. It is my decision, that the Plaintiffs' suit against the 1st Defendant does not disclose a *cognizable cause of action* fit to be determined in order to ground the grant of any of the *declaratory or injunctive reliefs* which the Plaintiffs seek against the 1st

Defendant. Accordingly, the 1st Defendant ought to be, and it's accordingly struck out as a "party" to the Plaintiffs' suit.

In relation to the 2nd and 3rd Defendants, the Plaintiffs' suit disclosed a *reasonable cause of action* and the objection of the 2nd and 3rd Defendants on this ground is overruled. See the old English decision in **WENLOCK v. MOLONEY (1965) 1 W.L.R. 1238** and the Supreme Court's more recent decision in **EMIATOR v. NIGERIAN ARMY (1999) 12 NWLR (pt.631) 362 @ 369 – 370.**

The 2nd and 3rd Defendants have also challenged the competence of the 3rd Defendant as party, and as the 2nd Defendant's Counsel has argued, which of the Presidents of Nigerian Bar Association is sued? He raised this question because, according to him, this suit was filed on 25/8/16. The incumbent President of Nigerian Bar Association, Mr. A.B. Mahmud, SAN took oath of office on 26/8/16. The Nigerian Bar Association's President who was in office as at 25/8/16 when this suit was filed in the Registry was its former President, Augustine Alegeh, Esq. SAN. The Plaintiffs have not been able to show any law, by which the 3rd Defendant as it was sued is clothed with a *juristic personality*. See the Supreme Court's decision in **THOMAS v. LOCAL GOVT. SERVICE BOARD (1965) 1 All NLR 168.** It is to the extent of this failure, that I uphold the objection to strike out the 3rd Defendant as a "party". See **AGBONMAGBE BANK LTD. v. GENERAL MANAGER, G.B. OLLIVANT LTD. (1961) 1 All NLR 116.**

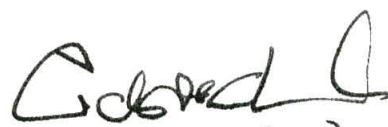
By this decision, the Plaintiffs are only left with the 2nd Defendant. The question then remains, in the light of the objections raised by the Defendants, inclusive of the 2nd Defendant, whether the Federal High Court has jurisdiction to entertain the Plaintiffs' suit in the context of the provision of Section 251(1)(p); (q) and (r) of the **Constitution**. There is no doubt, that the only remaining Defendant is not an "Agency" or Department of the Federal Government of Nigeria. See the Court of Appeal's decision in **N.I.M.R. v. AKIN-OLUGBADE (2008) 5 NWLR (pt.1078) 68 @ 95.**

When I read the reliefs endorsed on the "Amended Originating Summons", it is doubtful if these *reliefs are sustainable* against the 2nd Defendant in the Federal High Court by the operation of Section 251(1)(e), (p), (q) and (r) of the **CFRN, 1999 As Amended**. It is my decision to decline jurisdiction as neither the party nor the subject matter of the Plaintiffs' dispute are *cognizable* as they are in the Federal High Court having regard to the *reliefs being sought*. It occurred to me, in the exercise of my inherent jurisdiction pursuant to the provision of Order 56 Rule 1 of the **Federal High Court (Civil Procedure) Rules, 2009** to make a recourse to the saving provision of Section 22(2) of the **Federal High Court Act, Cap. F 12, LFN, 2004** to order that the Plaintiffs' suit as its now so badly "fractured" with only the 2nd Defendant left as a "Defendant" to be transferred to the FCT High Court, Abuja, but when I realized that some of the

reliefs being sought by the Plaintiffs can hardly be granted unless the national officers and such other officers of the 2nd Defendant who will be affected by the success of some of the *reliefs sought* are specifically named and joined as Defendants, I *surmised* that its rather *futile* to do so as the Court has no jurisdiction to make orders or grant reliefs that will affect the interests of persons who were not sued as Defendants. See: Supreme Court's decision in **EGOLUM v. OBASANJO (1999) 7 NWLR (pt.611) 355 @ 399**; and its decision in **EHIDINHEN v. MUSA (2000) 8 NWLR (pt.669) 569**. It is better that this suit be terminated in order to leave the Plaintiffs with the option as to whether they intend to have a "*second bite*" at the "*cherry*". It is this disposition that informed my decision to refrain from embarking on the *interpretation* of section 598 of **CAMA** and the effect of failure by the 2nd and 3rd Defendants to register Exhibit "B" and obtain the *approval* of the 1st Defendant to it after it was adopted at the 2nd Defendant's Annual General Conference held on 27th August, 2015 in Abuja. To do so will be resolving a major crucial issue which goes to the foundation of the Plaintiffs' suit and which for the analysis and reasons I had given, has become too badly "*fractured*", that it ought not to enjoy the benefit of such consideration of the provision of Section 598 of **CAMA**. It may prejudice any future suit which the Plaintiffs may want to institute if they desire to do so on the same issue. This Court consciously refrained from establishing a proper *cause of action* in *estoppel* or *res judicatum* in favour of or

against any of the parties in this proceeding. See the Court of Appeal's decision in **SALAMI v. NEW NIGERIAN NEWSPAPERS LTD.** [1999] 13 NWLR (pt.634) 315 @ 330. It is the same logic that informed my refusal to determine whether Section 16 of the 2nd Defendant's 2015 Amended Constitution *depitched* in Exhibit "B" conflicts with the provision of Section 6(6)(b) of the **CFRN, 1999 As Amended** and or whether the 3rd Defendant has the powers to make the "**NBA Uniform Financial/Accounting Manual**", the said 3rd Defendant having been struckout as a person not known to law that can be sued in the name by which it was sued by the Plaintiffs.

This case is accordingly struckout for the reasons which I have expressed in this Judgment. There shall be no order as to costs. The Plaintiffs' suit is struckout.




**HON. JUSTICE G.O. KOLAWOLE
JUDGE
24/3/2017**

COUNSEL'S REPRESENTATION:

- 1. CHIEF SOLO AKUMA, ESQ. with him are E. IBEAGBUNAM, ESQ. and M.C. NWOYE, ESQ. for the PLAINTIFFS.**
- 2. O.O. OLOWOLAFE, ESQ. with him are MRS. I. DAKO; MRS. I. IWALAKA and I. INYANG, ESQ. for the 1ST DEFENDANT.**

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3. CHIEF R.O. BALOGUN with him is M.K. ABDULKADIR, ESQ. for the 2ND DEFENDANT/APPLICANT.
4. OLALEKAN THANNI, ESQ. for the 3RD DEFENDANT/APPLICANT.


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ABUJA Registrar
28/3/2017
Ben Molo Kuru.