

IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA
IN THE UGHELLI JUDICIAL DIVISION: HOLDEN AT COURT 1, UGHELLI
BEFORE HIS LORDSHIP: HONOURABLE JUSTICE J.A. EDUN (JUDGE)
ON TUESDAY THE 10TH DAY OF MAY, 2022

SUIT NO. UHC/231/2020

BETWEEN:-

REGISTERED TRUSTEES OF CENTRE FOR
TRANSPARENCY AND DEFENCE OF HUMAN
RIGHTS

CLAIMANTS

AND

1. THE GOVERNMENT OF DELTA STATE OF NIGERIA

2. MR SAMUEL ONYEKA OBI

DEFENDANTS

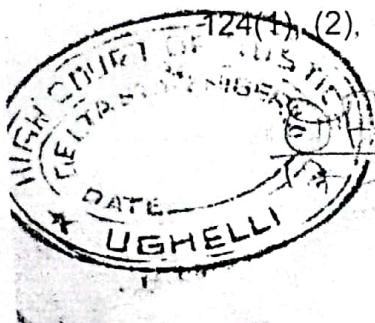
(Former Speaker, Delta State House of Assembly)

JUDGMENT

The Claimants herein by virtue of an originating summons dated and filed on 23/12/2020 prayed the court to determine the following questions:

- (1) Whether the provisions of Sections 3(2), 6(1) Table "C" of the Schedule I and Part 3 of Schedule 2 of the Delta State Governor and Deputy Governor Pension Rights and other Benefits Amendment Law 2019 to the extent that they provide for life pension and benefits for a person who discharged the functions of Governor in his capacity as Acting Governor of Delta State do not materially conflict with the clear provisions of Sections 124(1), (2), (3) & (4) of the Constitution of the Federal Republic of Nigeria Cap. C23, LFN 2010 Section 6(d) of the Revenue Mobilization Allocation and Fiscal Commission Act Cap RT LFN 2004 and Section 3(D) of the National Salaries Incomes and Wages Commission Act Cap N72, LFN 2004.

- (2) Whether the Delta State Government of Nigeria (1st defendant) can validly oust or act outside the combined clear provisions of Sections 124(1), (2), (3) and (4) of the Constitution of the Federal Republic of



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Nigeria, 2010; Section 6(d) of the Revenue Mobilization Allocation and Fiscal Commission Act Cap R7, LFN 2004 and Section 3(D) of the National Salaries, Incomes and Wages Commission Act Cap N72 LFN 2004 providing for the pensions entitled to pension and gratuities as Governor and Deputy Governor of a State and the sums they are entitled thereto; and create a new regime of retirement benefits for a person who discharged the functions of a Governor as Acting Governor of the State that was never contemplated by the Constitution of the Federal Republic of Nigeria.

(3) Whether the Assent/implementation by the 1st Defendant of the provisions of Sections 3(2) 6(1). Table "C" of the Schedule 1 is not a gross abuse of power particularly the provisions of Part 3 of Schedule 2 of the Delta State Governor and Deputy Governor Pension rights and other benefits (Amendment Law) 2019 which provides for the life benefit in favour of the 2nd Defendant and any other person that acted as a Governor for one day to wit:

- (a) An officer not below Grade level 12 shall be the Administrative officer.
- (b) A personal Secretary not below Grade level 09 who shall be selected by the former acting Governor and by the state Government.
- (c) Two armed Policemen
- (d) One State Services Officer to be attached for life and paid by the Department of State Services.
- (e) One vehicle to be provided by the State Government and replaced every four years with a Driver to be selected by the Acting Governor but paid by the State Government.
- (f) Free within Nigeria Medical treatment for the former Acting Governor and his immediate family (Number not Limited).



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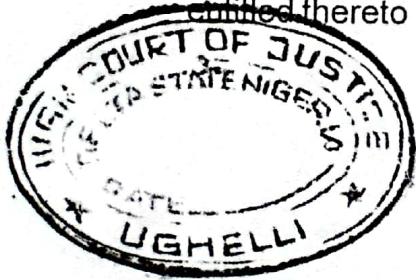
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- (g) Treatment abroad for former acting Governor and his immediate family where necessary at the State Government expenses.
- (h) A well furnished and equipped office in any location of his choice in the State.
- (i) One direct telephone line provided at the expense of the State Government.

AND THE CLAIMANT CLAIMS AGAINST THE DEFENDANTS JOINTLY/SEVERALLY AS FOLLOWS:

1. A DECLARATION that the provisions of Sections 3(2) 6(1) Table "C" of the Schedule 1 and Part 3 of Schedule 2 of the Delta State Governor and Deputy Governor Pension Rights and other Benefits (Amendment Law) 2019 to the extent that they provide and benefits for a person who discharged the functions of Governor in his capacity as Acting Governor of Delta State are materially in conflict with the clear provisions of Sections 124(1)(2)(3) & (4) of the Constitution of the Federal Republic of Nigeria Cap C23 LFN 2010. Section 6(d) of the Revenue Mobilization, Allocation and Fiscal Commission Act Cap R7 LFN 2004 and Section 3(P) of the National Salaries Incomes and Wages Commission Act Cap N72 LFN 2004 and therefore unconstitutional, null and void.
2. A DECLARATION that the Delta State Government of Nigeria (1st defendant) Lacks the vires and power to oust or act outside the combined clear provisions of Sections 124 (1)(2)(3) & (4) of the constitution of the Federal Republic of Nigeria Cap C23 LFN 2010 Section 6(d) of the Revenue Mobilization Allocation and Fiscal Commission Act Cap R7 LFN 2004 and 3(p) of the National Salaries Incomes and Wages Commission Act Cap N72 LFN 2004 providing for the categories of persons entitled to pension and gratuities as Governor and Deputy Governor of a state and the sums they are entitled thereto and cannot therefore create a new regime of retirement



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benefits for a person who discharged the functions of a Governor as Acting Governor of the State.

3. A DECLARATION that the implementation by the 1st defendant of the provisions of Sections 3(2), 6(1) Table "C" Schedule 1 amounts to a gross abuse of power particularly, the provisions of Part 3 of Schedule 2 of the Delta State Governor and Deputy Governor Pension Rights and other Benefits (Amendment Law) 2019 which provides the following Life benefit in favour of the 2nd defendant an any other person that acted as Governor even for one day to wit:

- (a) An officer not below level 12 shall be the administrative officer.
- (b) A personal Secretary not below Grade level 09 who shall be selected by the former Acting Governor and paid by the State Government.
- (c) Two armed Policemen.
- (d) One State Services Officer to be attached for life and paid by the Department of State Services.
- (e) One vehicle to be provided by the State Government and replaced every four years with a driver to be selected by the former Acting Governor Acting Governor but paid by the State Government.
- (f) Free within Nigeria Medical treatment for the former Acting Governor and his immediate family (Numbers not Limited).
- (g) Treatment abroad for former Acting Governor and his immediate family where necessary at the State Government expense.
- (h) A well furnished and equipped office in any location of his choice in the state.
- (i) One direct telephone at the expense of the State Government.

4. AN ORDER of this Honourable court striking down provisions of Sections 3(2) 6(1); Table "C" of Schedule 1 and Part 3 of Schedule 2 or the Delta State Governor and Deputy Governor Pension Rights and other benefits (Amendment Law) 2019 for being in material conflict with the clear provisions of Sections 124(1), (2), (3) and 4 of the Constitution of the Federal Republic of Nigeria Cap C23 LFN 2010. Section 6(d) of the Revenue Mobilization Allocation and Fiscal Commission Act Cap

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Ratio 7 LFN 2004 and Section 3(p) of the National Salaries Incomes and Wages Commission Act Cap N72 LFN 2004.

5. AN ORDER of this Honourable court compelling the 1st defendant to recover from the 2nd defendant within one month all such monies and/or benefits paid/given to the 2nd defendant pursuant to the purported provisions of Sections 3(2), 6(1) Table "C" of Schedule 1 and Part 3 of Schedule 2 of the Delta Governor and Deputy Governor Pension Rights and other Benefits (Amendment Law) 2019.
6. AN ORDER of this Honourable court compelling the 2nd defendant to refund back to the bank Account of the 1st defendant within one month all such monies and/or benefits paid/given to him pursuant to the purported provisions of Sections 3(2), 6(1) Table "C" of Schedule 1 and Part 3 Schedule 2 of the Delta State Governor and Deputy Governor Pension Rights and other Benefits (Amendment Law) 2019.
7. AN ORDER of perpetual injunction restraining the 1st defendant either by himself and/or through his agents, officials and servants from further carrying into effect the purported provisions of Sections 3(2), 6(1) Table "C" of Schedule 1 and Part 3 Schedule 2 of the Delta State Governor and Deputy Governor Pension Rights and other Benefits (Amendment Laws 2019) or make any payment or grant any special privilege or benefit to the 2nd defendant and/or any person that discharges the functions of the Governor of Delta State as Acting Governor.
8. The sum of N10,000,000.00 (Ten Million Naira) as general punitive and exemplary damages against the 1st and 2nd defendants.

It is on record that in support of the originating summons is a 12 paragraph affidavit with written address.

The Claimants also filed further affidavit in support of the originating summons with Exhibit which is the judgment of the National Industrial Court



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in suit NINC/CA/17/2020 Rt. Hon. Lawrence Okori-Odey V The Governor of Cross River State & 2 others.

The 1st defendant filed a counter affidavit and written address in response to the main case. The 1st defendant also filed a motion dated 21/1/21 on the 25th day of January 2021 praying the court for the following reliefs:

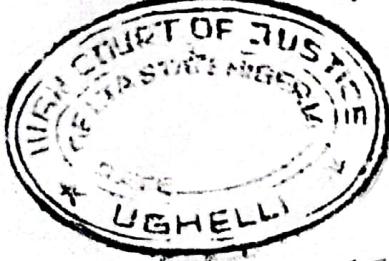
- "(1) An order of this honourable court striking out this suit for want of jurisdiction.
- (2) An order of this honourable court striking out this suit as the Claimant/Respondent lacks the locus standi to institute same
- (3) Any other order(s) as this honourable court may deem fit to make in the circumstances."

The 1st defendant based the grounds on non-disclosure of any legal right to the subject matter; and by Order 2 Rule 6 of the High Court of Delta State (Civil Procedure) Rules 2009, the action ought to have commenced in Asaba Division and that the Delta State House of Assembly has power to make laws for the good governance of the State and that the Delta State House of Assembly is not joined as a party in the suit. The 1st defendant's motion is supported by a 12 paragraph affidavit and written address.

The Claimant filed a written address in opposition to the preliminary objection.

This court will deal with the motion for preliminary objection first before proceeding to the main case.

The gist leading to this application is that the Governor of Delta State assented to a bill which amended the Delta State Governor and Deputy Governor Pension Rights and Other Benefits Law 2005 known as the Delta State Governor and Deputy Governor Pension Rights and Other Benefits (Amendment Law 2019). The Claimant filed this originating summons challenging the legality of the said law which was passed by the Delta State House of Assembly.



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It is on record that both counsel addressed court and adopted their respective written addresses relating to the Preliminary Objection and the main case.

The totality of the submission of the 1st Defendant as earlier indicated is that the Claimant has no locus standi to institute the action as it failed to show interest and personal right over the case. The 1st Defendant relied on **ADESANYA V FEDERAL REPUBLIC OF NIGERIA 1 at 81 5 SC 69** in support of the submission that the Claimant has no locus standi to maintain this action. The 1st Defendant also submitted that the Claimant failed to show locus standi in the originating processes. See **ODIMEGWU V IBEZIN (2020) ALL FWLR (Part 1040) Page 1019 at 1030**, **THOMAS V OLUFOSOYE 1986 NWLR (Part 18), 669, PRINCESS STELLA ADAEZE ODUAH V SENATOR MARGERY CHUBA OKADIGBO (2019) ALL FWLR (Part 2015) 212 at 249 paras C and E.**

However the Claimant submitted that it is a constitutional matter and therefore the courts have moved from the position in **Adesanya V President of the Federal Republic of Nigeria (supra)** to where every citizen or resident now has the Locus to institute action in constitutional matters as the Attorney General cannot indeed institute action on behalf of the people against the government. He cited **FAWEHINMI V AKILU (1987) 4 NWLR (Part 67) 797** where the court has whittled down the issue of locus standi on the basis that we are our brothers keepers.

It is not in doubt that the Claimant in instituting this action must show that it has the locus standi to do so. Even though the Supreme Court has departed from the former narrow approach in the Adesanya's case and the subsequent decisions on the issue of Locus standi as stated by ABOKI J.C.A. at Page 384 that:

"In our present reality, the Attorney General of the Federation is also the Minister of Justice and a member of the Executive Cabinet. He may not be disposed to instituting an action against the Government in which he is a part of, it may tantamount as the Federal Government suing itself. Definitely he will not



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perform such duty. Importantly too, there is no provision in the 100 Constitution for the State to sue itself. Since this Country attained independence and almost forty-seven years ago I know no reported case of any superior court in Nigeria where the Attorney General of a State suing his State Government on account of a violation of the provisions of the constitution of a legislation contrary to the provisions of the constitution.

The question now is who will approach the court to challenge the Government where it violates or fails to enforce any provisions of the constitution or the Laws where an Attorney General will not judicial function must primarily aim at preserving legal order by confining the legislative and executive within their powers in the interest of the public and since the dominant objective of the rule of law is to ensure the observance of the law, it can best be achieved by permitting any person to put the judicial machinery in motion in Nigeria whereby any citizen could bring an action in respect of a public interest derelict. Thus the requirement of Locus standi becomes unnecessary in constitutional issues as it will merely impede judicial functions." I am of the opinion that the Claimant must show interest.

Candidly speaking the Supreme Court has settled the issue of Locus standi on public litigation in the case of Centre for Oil Pollution Watch V NNPC (2019) 8 NWLR (Part 1666) 518.

The affidavit in support of the case and the reliefs sought did not in my view sufficiently disclose the interest of the Claimants. Mere assertion that the body was registered for transparency and accountability is not sufficient and I therefore hold that the Claimant lacks the Locus to institute this action.

On the issue of non-compliance with the Rules of the High Court of Delta State (2009) it is my view that the case cannot be struck out on the said non-compliance even though the action was in the "wrong" Division, as Order 2 Rule 5 of the Delta State High Court (Civil Procedure) Rules 2009 provides:



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"If any suit is commenced in the wrong Judicial Division, it may be tried in that Division or transferred by the Judge to the proper Judicial Division."

I do not therefore agree with the submission of the learned counsel for the Defendant that this case be struck out on this ground. The Preliminary Objection is overruled. It is noteworthy to mention that this court has earlier set out the reliefs in the originating summons.

Both counsel adopted their written addresses and addressed the court. I have read all the processes and I have also considered the written addresses and the submissions of both counsel in respect of the main case.

It is on record that the 1st Defendant in their written address raised issues of law to the effect that this court lacks jurisdiction to entertain this case on the ground that Section 254C(1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) confers exclusive jurisdiction of this claim on the National Industrial Court and not the High Court.

He submitted that Section 254C (1) provides as follows:

(1)"Notwithstanding the provisions of Section 251, 257,272 and anything contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters ...

In relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto."

1st Defendant's counsel submitted further that the recent case of **Aviation Logistic Management Limited V United Bank for Africa Capital Plc & Ors. (2018) LPELR 44790** where the court opined that it is the claim of the



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O. G. OMUKORO
STATE REGISTRAR
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Claimant that determines the jurisdiction of the court. He further submitted that Section 254C has been given judicial flavor in the case of **Imperial Medical Centre & Anor V Ahamafule (2017) LPELR 42886 (CA) Page B 14, paragraphs E – F.**

He submitted that this case relates to pension and it is the National Industrial Court that has exclusive jurisdiction.

The 1st Defendant submitted further that the 2nd Defendant is dead and thus the issues or claim should ordinarily terminate as it will amount to mere academic exercise to continue with the case. See **Attorney General Anambra V Attorney Genera Federation (2005) ALL NLR 90, State V Azeez (2008) 4 SCNJ 325, PDP V Jarigbe (2021) ALL FWLR 1574 at 1587.**

He stressed that since there is no acting Governor the entire case should ordinarily terminate. However the Claimant conceded that all claims relating to the 2nd Defendant be struck out and the other reliefs bother on the interpretation of the constitution as stated in reliefs 1, 2, 4, 8 and that these reliefs survived the death of the 2nd Defendant.

I have considered the submissions of both counsel in respect of the main case and I will deal with the preliminary issues raised first.

I have set out the reliefs before this court. This court has considered the submission of the 1st Defendant and it is inclined to agree with the submission of the 1st Defendant that it is the National Industrial Court that has exclusive jurisdiction to entertain this case.

The plain words of Section 254(C) of the constitution relate to "disputes arising from payment or non payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employer, worker political or public office holders, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto."

I have also considered the reliefs sought by the Claimant and it is indeed related to pension and other benefits of a political or public office holder. The reliefs before this court is that the Delta State Governor and Deputy Governor



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Pension Rights and other benefits (Amendment Law 2019) be struck down and the said law relates to pension and gratuity to an Acting Governor.

I am of the view that this case ought to be initiated at the Nigeria National Industrial Court which has exclusive jurisdiction. My view is also strengthened by the judgment of the National Industrial Court exhibited by the Claimant in this case. The Claimant submitted that it is on all fours with the case at hand.

It is my view that the death of the 2nd Defendant terminates the case. In the final analysis, this case is hereby struck out. There shall be no order as to costs.



HON. JUSTICE J.A EDUN

J U D G E

10/05/2022

COUNSEL:

Olukunle O. Edun Esq., - for the Claimant

Omamuzo Erebe, Esq.,
Solicitor General & Permanent Secretary,
Delta State Ministry of Justice,
Asaba.

- for the Defendants

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Agent for C.C.UWUKORO
REGISTRAR
SIGN
DATE 10/05/2022