

CERTIFIED TRUE COPY
IN THE HIGH COURT OF JUSTICE OF KWARA STATE
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN

ON FRIDAY, THE 8TH DAY OF OCTOBER, 2021

SUIT NO: KWS/117/2021

BEFORE HIS LORDSHIP: HON. JUSTICE H.A. GEGELE – JUDGE

BETWEEN:

**THE INCORPORATED TRUSTEES OF ELITES
NETWORK FOR SUSTAINABLE DEVELOPMENT
(ENETSUD)**

APPLICANT

AND

- 1. KWARA STATE GOVERNMENT**
- 2. GOVERNOR OF KWARA STATE**
- 3. ATTORNEY GENERAL OF KWARA STATE**

RESPONDENTS

JUDGMENT

The Applicant instituted this action against the Defendants by way of Originating Summons seeking for determination of the following questions and reliefs:

- 1. Whether or not by virtue of Section 7 (1) of the Constitution of Federal Republic of Nigeria 1999 (as amended) Kwara State Governor can suspend/dissolve democratically elected Local Government Councils.**
- 2. Whether or not Section 29 (1) to (5) of the Kwara State Local Government Law, 2005 is in conflict with Section 7 (1) of the constitution of Federal Republic of Nigeria 1999 (as amended) and thus null, void and of no effect whatsoever to the extent that it empowered Governor of Kwara State to dissolve the democratically elected Local Government Councils.**

136/883

1

12/10/2021

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

3. Whether or not by virtue of Sections 1 (1), 7 (1) and 15 (5) of the constitution of Federal Republic of Nigeria 1999 (as amended) Kwara State Government can appoint Transition Implementation Committees (TIC) of Local Governments in Kwara State.
4. Whether or not Transition Implementation Committees (TIC) of Local Governments in Kwara State is recognized by any law.

The Reliefs Sought:

1. **A declaration** that Section 29 (1) to (5) of the Kwara State Local Government Law, 2005 is in conflict with Section 7 (1) of the Constitution of Federal Republic of Nigeria 1999 (as amended) and thus null, void and of no effect whatsoever to the extent that it empowered Governor of Kwara State to dissolve the democratically elected Local Government Councils and replace them with Transition Implementation Committees/Care Taker or whatsoever name called appointed by the Governor or any other body.
2. **A Declaration** that by virtue of the combined effect of Section 7 of the constitution of Federal Republic of Nigeria 1999 (as amended) and the provisions of Section 18 and 28 of the Kwara State Local Government Law, 2005 the Governor of Kwara State (i.e. the 2nd Respondent) had no power to dissolve the democratically elected councils of sixteen local governments of Kwara State.
3. **A Declaration** that 1999 constitution of Nigeria (as amended) does not recognize the purported Transition Implementation Committees/Care Taker or any other name whatsoever called in Kwara State and the creation or appointing of such is therefore unconstitutional.

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

4. **A Declaration** that the Respondents lack vires to release or use Kwara State resources to fund purported Transition Implementation Committees/Care Taker or any other name whatsoever called in view of Sections 1 (1), 7 (1) and 15 (5) of the Constitution of Federal Republic of Nigeria 1999 (as amended).
5. **An Order** setting aside the purported appointment of Transition Implementation Committee by the Kwara State Government of 5th March, 2021 or any other dates whatsoever.
6. **An Order** directing the 2nd Respondent (Kwara State Governor) to recover/refund back to the State Treasury all fund, remunerations and benefits already paid to members of the said Transitional Implementation Committees.
7. **An Order** directing the 2nd Respondent (Kwara State Governor) to conduct Local Government election in the whole Local Government area of Kwara State with immediate effect in accordance with Section 7 (1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

The Originating Summons is supported by 8 paragraphed affidavit deposed to by one **Aliyu Mashood**, the Deputy Coordinator (Project Tracking) of the Applicant. Attached therewith is an Annexure marked as **Exhibits A1 to A4**. Also in support is a written address where the Applicant formulates the following issues for determination:-

- (i) **Whether by the combined provisions of Sections 1 (1), 7 (1) and 15 (5) of the Constitution of Federal Republic of Nigeria 1999 (as amended) and the decision in the case of Governor, Ekiti State and Ors Vs Prince Sanmi Olubunmo and Ors (2017) 3 NWLR Part 1551 Page 1 the Governor of Kwara State can dissolve/suspend democratically elected Local Government Council.**

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

(ii) Whether by the combined provisions of Sections 1 (1), 7 (1) and 15 (5) of the constitution of Federal Republic of Nigeria 1999 (as amended) and the decision in the case of Governor, Ekiti State and Ors Vs Prince Sanmi Olubunmo and Ors (2017) 3 NWLR Part 1551 Page 1 the Governor of Kwara State can appoint Transitional Implementation Committees/Care Taker or whatsoever name called.

A further affidavit of 19 paragraph deposed to by one **Aliyu Moshood**, Deputy Coordinator (Project Tracking) of the Applicant was also filed on 21/6/2021 with 4 annexure marked as Exhibits B1, C1, C2 and C3 respectively. Also in support is a written address and reply on point of law filed same 21/6/2021.

In swift response, the Respondents filed a Notice of Preliminary Objection on 15/3/2021 against the jurisdiction of the court to entertain this suit on the following grounds:

1. That the Applicant/Respondent does not have the locus standi to sue the Respondent/Applicants.
2. That the court lacks the requisite jurisdiction to entertain this suit.

Filed in support of the said Preliminary Objection is a written address where the sole issue distilled for determination is: -

Whether this honourable court has the requisite jurisdiction to entertain the case of the Applicant/Respondent as presently constituted.

Also filed on 15/3/2021 in response to the main suit by the Respondents is a 5 paragraph counter affidavit deposed to by one **Sulaimon Jamiu**, a Litigation Clerk in the chambers of the 3rd Respondent.

The Respondent formulated in the said address the underlisted issues for determination by this honourable court.

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

1. Whether the provisions of Sections 18, 28 and 29 (1) – (5) of the Kwara State Local Government Law, Cap K. 33, laws of Kwara State, 2006 are in conflict with the provisions of Sections 7 (1) and 15 (b) of the 1999 constitution (as amended).
2. Whether in the circumstance of this case, the reliefs sought are such that can be granted.

However, the Applicant/Respondent to the Preliminary Objection filed a written address against Notice of Preliminary Objection on 21/6/2021 in urging the court to assume jurisdiction and dismiss the preliminary objection.

To start with, procedural requirement that an issue of jurisdiction should be resolved first, does not mean that it must be heard separately. It can be taken along with arguments on the merits of the case. What is important is that the court should first deal with the issue of jurisdiction before considering the merits of the case **see Senate President Vs Nzeribe (2004) 9 NWLR (Pt 878) Page 251 at Page 274 Paragraph D – F Per Oduyemi JCA.**

In view of the fact that the objection raised by the Respondents/Applicants touch on the vital subject of jurisdiction, the court would look into the said Preliminary Objection for the purpose of ascertaining the substantive application. This is because it is trite that anything done, whether by the parties, their counsel or the court in the absence of jurisdiction is an exercise in futility as it is null, void and of no effect whatsoever, ab initio. See the Supreme Court case of **Dangote Vs Civil Service Commission, Plateau State (2001) LPELR – 959 SC Per Karibi – Whyte JSC P. 18 Paragraphs B – E.**

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

I need to state that arguments in respect of all the applications would be taken together going by the respective issues raised.

On the Preliminary Objection filed on 15/6/2021 challenging the Court's jurisdictional competence to entertain this suit, counsel submitted that the Applicant/Respondent does not have the necessary locus standi to institute the present suit hence same cannot be entertained by this court. That it is trite law that a person seeking to institute an action of this nature must show his interest precisely. Such an interest must not be vague, intangible or speculative in nature and that the interest has been adversely affected by the act or omission which he seeks to challenge. Cited in aid is the case of **Re: IJELU (1992) – LPELR 1464 (SC) PP. 14 – 15, Paras.**

D.

It is further submitted that in establishing whether a Claimant has locus standi, it is only the pleadings that a court can look at and that from the process filed by the Applicant/Respondent before this court, being the Originating Summons, affidavit in support and the written address, and more particularly the affidavit in support thereof, it can be clearly seen that the Applicant lacks the legal capacity to institute this action against the Respondents/Applicants and urge the court to so hold.

Counsel contends that going by the 8 paragraphed affidavit, the Applicant/Respondent is not a natural person nor an artificial person known to law, since it has failed to exhibit any evidence of its incorporation or show his legal right to institute this action.

Also, that a cursory look at the affidavit in support of the Originating Summons particularly the introductory paragraph and paragraph 1 and 5 thereof, the personality of the Applicant and his legal interest necessitating this action was not in any way stated or substantiated. That the mere

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

allegation that the Applicant is a civil society organization without more is not sufficient to confer on it the legal capacity to institute this action against the Respondents. He cited the case of **AG Lagos State V Eko Hotels Ltd (2006) LPELR – 3161 (Sc) PP 75 – 76, Paras B – C.**

It is submitted that the Applicant/Respondent has failed to show any iota or the slightest interest in anyway remotely connected to the action. That such an indiscretion cannot be without attendant consequences which in this instance is outright dismissal of the case for want of jurisdiction.

Arguing per contrast, the Applicant/Respondent contend that the argument of the Respondent/Applicants paragraphs 3.9 to 3.14 of the Written Address in Support of Preliminary Objection is misplaced in law and submit that the name of the Applicant/Respondent is clearly written as **The Incorporated Trustees of Elites Network For Sustainable Development** which suggest that the Applicant/Respondent Organization is duly registered under the Incorporated Trustees of CAMA.

Counsel submit that the Applicant/Respondent has deposed in the further affidavit in support of Originating Summon to the effect that the Applicant/Respondent is an Incorporated Trustee Registered under the Company and Allied Matters Act and also attach Copy of the Certificate of Incorporation as **Exhibit B1**. He refereed to paragraph 5 of the further Affidavit.

It is the contention of the Applicant/Respondent that the suit as presently constituted is in the class of public interest litigation and cited in aid the case of **Centre for Oil Pollution Watch vs. N.N.P.C (2019) 5 NWLR Part 1666 Page 518 at 537.**

Counsel submit that in public interest Litigation, the law on locus standi has grown beyond technicality and unnecessary objection. That the

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

law is that public spirited individuals and non-governmental organizations can sue to protect public interest and referred to the case of **Centre for Oil Pollution watch V N.N.P.C (Supra) page 575 Par C** where the Supreme court held. thus –

"In a public interest litigation; the chambers of the Attorney General of the Federation traditionally hold sway. However, the law on locus standi in that regard has grown beyond that and now encompasses public spirited individuals and non-governmental organizations".

It is further submitted that the suit of the Applicant/Respondent is against the Respondents/Applicants interest for appointing and inaugurating Transitional Implementation Committees to oversee the affairs of Local Governments in Kwara State in violation of the clear and unambiguous provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). That violation of constitution is an issue that affects the Applicant/Respondent, its members and the general public at large and therefore urge the court to assume jurisdiction and dismiss the Preliminary Objection with substantial cost.

It is settled Law that locus standi is the legal capacity of a party to institute an action in a court of law. Where a party has no locus standi, the court will have no jurisdiction to hear and determine any claims/action. Also, for a party to have locus standi to sue, he must show sufficient interest in the suit before the court, such as whether the person in question could have been joined as a party to the suit or whether the party seeking relief/redress/remedy will suffer same injury or hardship from the litigation if not joined. **See Uwazuruonye V The Governor of Imo State & Ors (2012) LPELR – 20604 (SC). Per Onnoghen JSC (P. 24, Paras A - E).**

[CERTIFIED TRUE COPY]

Also, it is trite that in order to have locus standi to commence an action a person must have sufficient interest in the action and as well show that his legal rights or obligations have been or are in danger of being infringed. **See Makinde Vs. Orion Engr Services (Uk) Ltd (2014) 11 NWLR (Pt 1471) P. 1.**

I have carefully examined the processes filed in this suit and found that same borders on constitutional matters hence the need to consider determination of locus standi from that perspective.

It is settled that a party who seeks a declaratory relief in the constitution must show that he has a constitutional interest to protect and that the interest is violated or breached to his detriment. The interest must be substantial, tangible and not vague, intangible or caricature. **See Inakoju Vs. Adeleke (2007) 4 NWLR (Pt 1025) 423.**

The Respondents/Applicants in this case argued that going by the 8 paragraphed affidavit, the Applicant/Respondent is not a natural person nor an artificial person known to law since it has failed to exhibit any evidence of its incorporation or show his legal right to institute this action.

I am of the candid opinion that in view of paragraph 5 as contained in the further affidavit filed by the Applicant/Respondent and **Exhibit B1** attached thereto, this line of argument is totally untenable, misconceived and misplaced in law. Paragraphs 5 provide thus:-

"That I know as fact that the Applicant in this case is a registered Civil Society Organization in accordance with company and Allied Matters Act residents in Kwara State. Copy of the Certificate of Incorporation of the Applicant is hereby attached and marked as Exhibit B1".

CERTIFIED TRUE COPY

Having examined **Exhibit B1**, the court is of the view that the Applicant/Respondent organization is duly registered under the Incorporated Trustees of CAMA and therefore possessed the necessary legal capacity to sue and be sued in its corporate name.

The court is also in agreement with the Applicant/Respondent that the suit as presently constituted is in the class of Public Spirited individuals and non governmental organizations. The court therefore found the case of **Centre for Oil Pollution Watch vs. N.N.P.C (2019) 5 NWLR Part 1666 Page 518 at 537 1129** to be relevant and apposite in the circumstance of this case. See also the case of **Babalola Vs. A.G. Federation & Anor (2018) LPELR – 43808 (CA)** where the court held thus:-

"Accordingly I agree with the appellant that the unchallenged pieces of affidavit evidence (Supra) furnished the appellant with the standing to seek for the interpretation of the said constitutional provisions. See again **Fawehinmi V. The President (Supra)** Per Aboki, JCA thus –

" The requirement for locus standi becomes unnecessary in constitutional issues as it merely impedes judicial functions".

X-raying questions for determination and the reliefs sought before the court, it is crystal clear that same borders on the interpretation of the constitution viz a viz the state law in which the interest of the Applicant/Respondent and the general public at large no doubt is at stake.

In the present situation, paragraph 2, 3, 4, 5 and 6 of the Affidavit in support of the Originating Summons and depositions contained in the further affidavit thereto are in my view cogent and sufficient for the court to assume jurisdiction over the matter.

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

I have carefully considered arguments canvassed and all the authorities cited by the Respondent/Applicant in respect of the Preliminary Objection and accordingly discountenance with same, instead countenanced myself with the submissions and authorities cited by the Applicant/Respondent.

The court therefore hold that the Preliminary Objection filed on 15/6/2021 by the Respondents/Applicants lacks merit and same is accordingly dismissed.

Having dismissed the Preliminary Objection, the coast is now clear for the court to consider the substantive suit on its merit.

I have looked at the various issues formulated by the parties and it seems to me that a sole issue identified for determination in this case is –

Whether in the circumstance of this case, the reliefs sought are grantable or not.

By an Originating Summons filed on 16/3/2021, the Applicant seeks for determination of questions and reliefs as earlier produced in this judgment.

Attached to the Affidavits in support of the Originating Summons are annexure marked as **Exhibits A1 – A4, B1 and C1 – C3** respectively.

Learned counsel to the Applicant relied on the depositions as contained in the 2 affidavits and **Exhibits** attached thereto.

Counsel submit that after service of the Originating Summons on the Respondent, they filed Counter – Affidavit and subsequently filed further Counter Affidavit.

That with the said further Counter affidavit and the address in support, the Respondents are busy contradicting themselves thus:-

1. That the Respondents never appointed any TIC.

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

2. That the Respondents appointed TIC after the expiration of the Local Government Council; and

3. That the appointment was as a result of having a case in court with KWASIEC.

He referred the court to paragraph 3 of the further Counter Affidavit and as well specifically paragraph 3 d, e, h and I of the main counter affidavit and same paragraph 3 of the further counter affidavit from 3c, d, e, f and g.

Counsel further submit that the cases referred to in paragraph 3e of the further Counter Affidavit has no nexus with the case at hand. That the Applicant was not a party in the cases mentioned and the Applicant herein is asking for interpretation of the constitution viz a viz Kwara State Local Government Law on the validity or other wise of the appointment of TIC and urge the court to so hold.

Learned Attorney General, Kwara State submit in opposition that, the Respondents filed a 5 paragraph Counter affidavit on 15th June, 2021 accompanied with a written address and also filed a 5 paragraph Further Counter Affidavit against the Originating Summons. Attached to the Counter affidavit are 5 Documents marked as **Exhibits A – E**.

They rely on the facts deposed to in the Counter affidavit and further Counter Affidavit with the accompanied **Exhibits**. A reply on point of law filed on 28/6/2021 was also adopted.

Learned Attorney General submitted that **Exhibits A1 – A4 attached** by the Applicant are purported letters from Ministry of Local Government which means they are Public documents.

Also **Exhibit B1** is a purported Certificate of Incorporation Issued by CAC to the Applicant is also a Public Document. That the **Exhibits** were not

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

certified and that only Certified True Copy are admissible in any proceedings.

He submit that where Public document as required by Section 104 of the Evidence Act are not Certified as in the instant case are not admissible. Reference were made to the cases of **Fawehinmi V IGP (2002) 5 SCNJ 103. Fawehinmi V IGP (2000) 7 NWLR Pt 665 Pg 481 at Page 525. A.G. Taraba State V Selihili Consult Ltd (2016) LPELR – 40817** and the case of **Yahusa V Agu (2017) LPELR – 44028** and urge the court to expunge the said Exhibits.

Learned A.G raised same objection with respect to Exhibit C1 – C3 and urge the court to remove all the **Exhibits** that came with this suit as non of them is admissible. That with those **Exhibits** out of the case, the case becomes a tall tree without a root which will definitely fall and fall flat.

He also submitted that there is no contradiction in paragraph 3 d, h and l of the Counter Affidavit either as between them or viz a viz paragraph 3 c, d, e, f and g of the further Counter Affidavit and urge the court to dismiss the case.

The learned Applicant Counsel while replying submit that all the authorities relied upon by the Respondents are not apposite in this case as the present case is an affidavit evidence basis unlike in other procedure where witness will be in court to give evidence, tender document and same admitted as **Exhibit**.

Counsel further submit that affidavit evidence require not necessarily annexing or attaching Original or Certified True Copy. Ordinary Copy of the document is enough as there is no procedure for admissibility of document in affidavit evidence and urge the court to so hold.

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

I think it is safe and more neater at this juncture to consider the objection raised with respect to admissibility of **Exhibits A1 – A4, B1 and C1 – C3** attached to the affidavit and further affidavit in support of the Originating Summons.

I have carefully considered the arguments for and against. I have equally considered the authorities cited in respect thereto.

The documents objected to by the Respondents are classified as public documents which need Certification before same can be tendered and admitted. This in my view would ordinarily come into play when questions of tendering of documentary evidence and admissibility of same arise and wherein the totality of the dispute is initiated by way of writ of summons. In that instance, a witness would need to enter the witness box to lead evidence that will convert the pleaded documents into evidence.

On the converse and in cases where proceedings are initiated by Originating Summons as in the instant case there is no room for leading evidence in chief and tendering of documents from the witness box. All the evidence needed are already contained in the affidavit and Counter affidavit sworn on oath. All that is left for the court in this regards; is to read and interpret the documents and analyze the affidavit and counter affidavit facts as they are before it.

This position is in consonance with the decision of the court of Appeal, per **Mbaba JCA**, in **Bristish American Tobacco Nig Ltd Vs International Tobacco Co Plc (2013) 2 NWLR Pt. 1339, Pg 493 at 520 – 521** where he found that:

"Public documents exhibited as secondary copies in affidavit evidence cannot necessarily be Certified True Copies and that document exhibited to an affidavit is already an exhibit before the court, being part of the affidavit evidence which a court is

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

entitled to look at, and use. See *Adejumo V Governor of Lagos State* (1970) ALL NLR 187. Where the same position was taken by the Supreme Court. See also *Nwosu V Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt 135) 608, 735 and *Ezechukwu Vs Onwuka* (2016) 5 NWLR (Pt 1506) P. 529 @ 562 SC".

It is not the position of law to expect the exhibited photocopy to be certified by the adverse party before the court can attach probative value to it. It is a clear departure from the case of *Governor of Kwara State Vs. Lawal* (2007) 13 NWLR (Pt 1051) @ PP 360 – 361, Where the court of Appeal held that:

"Where a Public document as opposed to a private document is produced in an attempt to prove facts in issue before a court of law, before it can be considered admissible in evidence, it must be duly certified as required by law, irrespective of whether such a document is being used in an interlocutory application or at the hearing of a substantive suit. In other words, only a Certified True Copy of a Public document must be tendered".

Also in *Fawehinmi Vs. IGP* (2000) 7 NWLR (Pt 665) @ P. 525 which was upheld by the Supreme Court.

Interestingly, the Supreme court in *Ezechukwu V Onwuka* (2016) 5 NWLR (Pt 1506) P. 529 @ 562 SC departed from the cases of *Governor of Kwara State Vs Lawal* (2007) 13 NWLR (Pt 1051) @ PP 360 – 361 and *Fawehinmi V IGP* (2000) 7 NWLR (Pt 665) @ P. 525 and then set the ball rolling for the decision in *British American Tobacco Nig Ltd Vs International Tobacco Co. Plc* Cited Supra.

The conclusion I have come to is that Originating Summons as in the instant case are fought on the platform of affidavit and Counter Affidavit evidence, documents annexed thereto i.e. Exhibits A1 – A4, B1, C1 – C3

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

respectively have equally become evidence before the court thereby dispensing with the question of their admissibility. The objection is misconceived and same is accordingly overruled.

The next thing is to dispassionately consider whether or not Transition Implementation Committees (TIC) of Local Governments in Kwara State is recognized by any law and if not in conflict with the extant provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended) with respect to the Local Government Councils.

The position of the law is, that in the process of interpretation of statute, a court must not give an interpretation which would defeat the intention and purpose of the law makers and should rather adopt a holistic approach and interpret the provisions dealing with a subject matter together so as to give true intention of the law makers. **See Gana Vs. SDP & Ors (2019) LPELR – 43884 (SC).**

"Ours, as the *judex*, is to interpret the law and declare what it is. In interpreting a statute, the object is to discover the intention of the Legislature and bring it out. The intention of the statute is usually deduced from the language used in the statute. We cannot therefore go outside the words in language of the statute. Therefore, as this court held in *Mallam Abubakar Abubakar & Ors Vs. Saidu Usman Usman & Ors* (2012) LPELR – 7826 (SC) – where the words used are clear and unambiguous they must be given their ordinary plain meaning, so as to avoid reading into the provisions meanings not intended by the Law makers. See also *Ishola V Ajiboye* (1995) 1 NWLR (Pt 352) 506; *P.D.P V C.P.C & Ors* (2011) LPELR – 2909 (SC). Accordingly, in its interpretative jurisdiction the court does not, and must not interpret a statute by placing a gloss on the provisions by reading into the provisions words neither used, contemplated nor included therein. Thus, as I stated elsewhere in *Obi V Ojukwu & Anor*

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

(2009) LPELR 8511 (CA), when the words of a statute are plain and unambiguous, the plain duty of the court interpreting the statute, is to bring out its overriding objective. The court does not have inherent powers to say that the provision, which are quite plain, mean what do not actually mean nor the plain meaning should be ignored. The statute must be constructed to mean what it means or to mean what it is intended to mean and not to mean what it clearly means. See *Vinos V MARKS & Spencer* (2001) 3 All E.R. 784".

For ease of reference, I need to reproduce relevant Sections of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Kwara State Local Government Laws as submitted by parties for interpretation thus:-

1999 constitution (As amended)

Sections 1 (1) –

"This constitution is Supreme and Its Provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria".

ENatSuD

7 (1) –

"The system of Local Government by democratically elected Local Government Councils is under this constitution guaranteed; and accordingly, the Government of every state shall subject to Section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure composition, finance and functions of such councils

15 (5) –

"The State shall abolish all corrupt practices and abuse of power".

CERTIFIED TRUE COPY

Kwara State Local Government Law, Cap K. 33, 2005

Sections 29 (1) – (5) thus: -

- "(1) Notwithstanding the provisions of Section 28 of this Law, the Governor may suspend from office, the Chairman or Vice Chairman or both the Chairman and Vice Chairman of any Local Government for Misconduct, after due investigation; and upon a resolution supported by the votes of simple majority of the members of the House of Assembly that he be so suspended.
- (2) The resolution of the House of Assembly referred to in Sub Section (1) of this Section shall be passed within seven working days of the receipt of the report, failing which the recommendation of the Governor shall be deemed as accepted.
- (3) The period of suspension referred to in subsection (1) of this section shall not exceed three months at any given time.
- (4) Notwithstanding the provisions of subsection (3) of This section, the Governor may at the expiration of the period of suspension referred to in subsection (1) of this section extend the suspension period for another three months, subject to the provisions of Section 28 of this law.
- (5) Whenever
 - (a) The chairman is suspended, the vice – chairman shall hold the office of the chairman of the Local Government;
 - (b) The chairman and the vice chairman are both suspended from office, the council speaker shall hold the office of the chairman of the Local Government for the period of the suspension of the Chairman and Vice – Chairman of the Local Government."

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

It is the contention of the Applicant that by virtue of Section 7 (1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) the system of Local Government Councils is guaranteed. That it is the duty of State Government to ensure the existence of Local Government under a law which will provides for the establishment, structure, composition, finance and functions of such councils.

The Applicant submit that by the combined effect of Section 18 of Kwara State Local Government Law, 2006, democratically elected Local Government Council's Tenure cannot be abridged without violating the constitution. Cited in aid is the case of **Governor, Ekiti State and Ors V Prince Sanmi Olubunmo And Ors (2017) 3 NWLR Part 1551 Page 1 at 7 H. 2.**

It is further submitted that it is a settled principle of law that where any law or part of any law is in conflict with the constitution, such law or any part thereof is to be treated as null and void. That Section 29 of the Kwara State Local Government Law, Cap. K 33, 2005 is in conflict with the express provision of Section 7 (1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) and finally pray the court to answer in the affirmative and grant the reliefs sought.

Worthy of note in the just determination of this case are paragraphs 2, 3 and 4 of the depositions contained in the Applicant's affidavit thus:

Paragraph 2 –

That I know as a fact that sometimes on 5th March, 2021 letters were issued to some Kwara State Indigenes by the Kwara State Government appointing them as Transition Implementation Committees (TIC) of Local Governments in Kwara State. Copies of some of the said Letters are attached herewith and Marked as Exhibits A 1 – A4 respectively.

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

paragraph 3 –

That I know as a fact that appointment of Transition Implementation Committees (TIC) of Local Governments is not allowed by the constitution of Federal Republic of Nigeria 1999 (as amended).

paragraph 4 –

That I know as a fact that Kwara State Government has appointed Transition Implementation Committees/Care taker to take over the control and administration of Local Government in Kwara State.

Arguing per contrast, the Respondent posited that the provisions of Sections 18 and 28 of the Kwara State Local Government Law is not in conflict with Section 7 (1) of the 1999 Constitution. That Section 18 of the Law provides for the tenure of the Local Government Councils while Section 28 thereof, is on the removal of Chairman or Vice – Chairman by the Legislative arm of the Local Government Council.

The Respondents further contend that the facts deposed to under paragraphs 3 (g) (h) and (i) of the Counter Affidavit amply address the speculation of the Applicant and also urge the court to discountenance with the specific questions of the Applicant with respect to the provisions of Section 29 (1) – (5) of the Kwara State Local Government Law being contrary to the Provisions of Section 7 (1) or any Provisions of the 1999 Constitution (as amended), as same is misguided and totally unfounded in law and in fact.

Also worthy of note for the just determination of this case is paragraph 3 (i) of the Respondent Counter Affidavit and 3 (b) (c) (d) (e) (f) (g) (k) (l) and (m) of the Further Counter Affidavit against the Originating Summons which provide thus:

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

Respondents Counter Affidavit

Paragraph 3 (i) –

That against the deposition in paragraph 6 of the affidavit in support of the Originating Summons, the Respondents have not and did not dissolve or suspend any Local Government Council to appoint the alleged TIC of Local Governments in Kwara State.

Respondents' Further Counter Affidavit

Paragraph 3 (b) –

That contrary to the deposition in paragraph 4 of the further affidavit, the tenure of the last Local Government Council in the State came to an end on 26th November, 2020 and by virtue of which their tenure of office lapsed by effluxion of time.

Paragraph 3 (c) –

That I know as a fact that prior to the end of the last Local Government Council tenure, there was a petition on misappropriation of Public funds against the Executive and Legislative Arms of the Councils involving Thirty Three Billion Naira (₦33,000,000,000.00) and Ten Billion Naira (₦10,000,000,000.00) of both the Federal Allocation and Internally Generated Revenue of each Local Government respectively.

Paragraph 3 (d) –

That due to paragraph c above and for the sake of transparency, the Local Government Chairman and Councilors had to step aside for the conduct of proper enquiry into the petition and to prevent any form of interference with investigation by the State House of Assembly to which the Petition was addressed.

CERTIFIED TRUE COPY

paragraph 3 (e) –

That I know as a fact that the issue of suspension became subjudice until the tenure of the Last Local Government Council Lapsed by effluxion of time on 26th November, 2020.

paragraph 3 (g) –

That from the above facts, it is illogical to simply state that, the Local Government council in the state was suspended and Transition Implementation Committee was appointed by the Respondents as alleged under paragraph 4 of the further affidavit as nothing of such happened. Instead, the Councils were being managed by the DPM of the Local Government Councils.

Paragraph 3 (k) –

That sometime in August 2019, the membership of the State Electoral Commission were removed from office upon the breach of their respective oath of office and the removal was subsequently challenged at the National Industrial Court vide Suit No: NICN/IL/11/2019 and NICN/IL/16/2019. The Originating Processes filed in both cases are annexed hereto and marked as Exhibit B and Exhibit C respectively.

Paragraph 3 (L) –

That the judgment of the National Industrial court on the removal of the members of the State Electoral Commission is now subject of pending Appeals before the court of Appeal in Appeal Nos: CA/IL/37M/2021 and CA/IL/49M/2021 respectively. The Notices of Appeal are annexed herewith and marked as Exhibit D and Exhibit E respectively.

Paragraph 3 (M) –

That the pending litigation has impaired the constitution of the State Electoral Commission that is expected to conduct election of Local Government Council when the tenure of the last Local Government administration lapsed by effluxion of time on 26th November, 2020.

CERTIFIED TRUE COPY

Before I proceed further, there is the very need to quickly juxtapose the position of the Applicant and that of the Respondents as to the existence of the Transition Implementation Committee for all the Local Government Councils in the State with **Exhibits A1 – A4** as evidence among others.

The Respondents on the other hand, stated in paragraph 3 (i) of the Counter Affidavit that they have not and did not dissolve or suspend any Local Government Council to appoint the alleged TIC of Local Government Councils in Kwara State.

While in paragraph 3 (e) and (f) of the further Counter Affidavit maintained that the issue of suspension of the Local Government Councils in the State was challenged in **Suit No: KWS/115/2019** and **KWS/216/2019** with the Notice of Appeal filed in respect thereto attached as **Exhibit A**. Also, that the issue of suspension became subjudice until the tenure of the Last Local Government lapsed by effluxion of time on 26th November, 2020.

Surprisingly, only for the Respondents to still maintain in paragraph 3 (g) of the said further Counter Affidavit that it is illogical to simply state that the Local Government Council in the State was suspended and TIC appointed, instead strongly maintained that the councils were being managed by the Director Personnel Management (DPM).

In view of the above stated position, I have no difficulty in coming to a conclusion that the tenure of the last democratically elected Local Government Council had lapsed and presently being managed by undemocratically elected council members either in the name of TIC or DPM.

The next thing is for the court to determine the legality or other wise of the appointment of Transition Implementation Committee (TIC) by the

CERTIFIED TRUE COPY

Respondents in running the affairs of the Local Government Council in the State as in the instant case.

Upon a careful reading of Section 7 (1) of the 1999 Constitution (as amended) it is clear beyond per adventure that it is the duty of the Governor to ensure that the system of Local Government continues unhindered.

Going by the Supreme Court decision in **Eze & 147 Ors Vs. Gov Abia State & 2 Ors (2014) 5 – 7 Sc (Pt. 1) P. 171** it was clearly stated that dissolving Local Government Councils and replacing them with Caretaker Committees amounts to the Governor acting on his whims and fancies unknown to our laws, clearly illegal. It is the duty of the Governor to ensure their existence rather than being responsible for destroying them. It amounts to executive recklessness for the Governor to remove from office democratically elected chairmen and councilors under whatever guise. It is illegal and wrong.

I have carefully consider the Kwara State Local Government Council Law, Cap K 33 Laws of Kwara State 2005 and in particular Sections 18, 28 and 29 (1) – (5) and noticed the appointment of Transition Implementation Committee (TIC) as an imposition not recongnized by the extant law.

In line with Section 7 (1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) and the pronouncement of the Supreme Court in **Governor, Ekiti State & Ors Vs. Prince Sanmi Olubunmo & Ors (2017) 3 NWLR Part 1551 – p 35 Paras F – H**. It was held that when a Governor takes the Oath of office, the Governor swears to protect, and not to supplant, the constitution of the Federal Republic of Nigeria.

I am therefore of the view that the Respondents in the instant case relying on the Kwara State Local Government Law, Cap K 33, 2005 to justify the appointment of Transition Implementation Committee is against the

CERTIFIED TRUE COPY

spirit of Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and I so hold.

It is trite that any provision of an existing law which is in conflict with the provisions of the 1999 Constitution as in the instant case must be pronounced void to the extent of such inconsistency. **See Oloruntoba – Oju & Ors V Dopamu & Ors (2008) LPELR – 2595 (SC).**

The Supreme Court also in the case of **Saraki V FRN (2016) LPELR – 40013 (SC)** held thus –

"The time honoured principle of law is that wherever and whenever the constitution speaks any provision of an Act/Statute, on the same subject matter, must remain silent. See INEC Vs. Musa (2003) 3 NWLR (Pt 806) 72; A.G. Ogun State Vs. A.G. Federation (1982) 2 NCLR 166".

It is well settled that the Constitution is the source of our laws. The rights, privileges and the protection of the citizens are derived from its provisions. As it was decided in **Governor, Ekiti State & Ors V Prince Sanmi Olubunmo & Ors (Supra)** where the Supreme Court held thus-

"By employing the mandatory auxiliary verb "shall" in Section 7 (i) of the constitution of Federal Republic of Nigeria, 1999, the drafts person intended to impose (and actually imposed) an obligation on the state to ensure the continued existence of Local Government Councils which are democratically elected. The use of the auxiliary verb "shall in the section connote command,.... Section 23B of the Local Government Administration (Amendment) Law of Ekiti State which was not intended to ensure the existence of such democratically elected council, but to snap their substitution with Caretaker Council, but to snap their continued existence by their substitution with Caretaker Councils was enacted in clear breach of the Provision of Section 7 (1) of the Constitution".

CERTIFIED TRUE COPY

In view of the above decision, I agree with the submission of the Applicant that Section 29 of the Kwara State Local Government Law, Cap K 33, 2005 is in conflict with the express Provision of Section 7 (1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended). It was made to deny elected Officers of Local Government of their mandate. It donate such excessive power to the Governor which has now become subject of abuse and at the end amounts to what I may simply describe as executive arrogance or recklessness. To hold otherwise would amount to judicial rascality.

Accordingly, I declared Section 29 (1) to (5) of the Kwara State Local Government Law, 2006 as unconstitutional, null, void and of no effect whatsoever to the extent that it empowered Governor of Kwara State to dissolve the democratically elected Local Government Councils and replace them with Transition Implementation Committees.

I hold the view that since Section 7 (1) of the 1999 Constitution guarantees a system of Local Government by democratically elected Local Government Councils, the dissolution of Local Government Council in Kwara State by the 2nd Respondent and the appointment of Transition Implementation Committee is inconsistent with Section 7 (1) of the constitution and therefore null and void it is clearly unconstitutional, illegal and ultra vires the powers of the 2nd Respondent.

Although it is within the Legislative Power of a State House of Assembly to make a law to regulate a Local Government Council in the plagued with crises, or to make a law to prescribe for an event upon which happening a Local Government Council is dissolved, or the Chairman or Vice-Chairman of Local Government is removed or vacate his office, any law made by the House of Assembly which provides for nomination of

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

membership of a Council or appointment of an administrator or caretaker committee to replace a democratically elected council as in the instant case is inconsistent with the clear and unambiguous provisions of Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and I so hold.

Accordingly, the case of the Applicant succeeds and all the reliefs sought are granted as prayed.

Court: Judgment read and delivered in the Open Court.

H.A. Gegele

HON. JUSTICE H.A. GEGELE
JUDGE

8/10/2021

APPEARANCES:

Lukman Raji Esq for the Applicant
Salaman Jawondo Esq (Attorney General of Kwara State) with A.M. Bello Esq, (Director of Civil Litigation), B.L Abdul Salam Esq (Senior State Counsel) and O. M Micheals (Mrs) (Senior State Counsel) for the Respondents.

C-T-C - ₦100,00

for 10:04 am
P.m

12/10/2021

- Lukman Abdullateef

1361883

12/10/21

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY