IN THE COURT OF APPEAL
ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN

ON THURSDAY THE 14TH DAY OF APRIL, 2022

BEFORE THEIR LORDSHIPS

UZO NDUKWE-ANYANWU — JUSTICE, COURT OF APPEAL
ISAIAH OLUFEMI AKEJU — JUSTICE, COURT OF APPEAL
KENNETH I. AMADI — JUSTICE, COURT OF APPEAL

CA/IL/122/2021

BETWEEN:

1. KWARA STATE GOVERNMENT
2. GOVERNOR OF KWARA STATE === APPELLANTS
3. ATTORNEY GENERAL OF KWARA STATE

AND

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

JUDGMENT
(DELIVERED BY KENNETH IKECHUKWU AMADI, JCA)

The appeal herein is against the Judgment of the Kwara State High Court, sitting at Ilorin, (Herein after referred to as the trial court) delivered on 8th day of October, 2021 by Hon. Justice H. A. Gegele, in Suit No. KWS/117/2021.

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COURT OF APPEAL
ILORIN.
Falilat. O. Orire Esq
HOD (Litigation)
26/5/22

The Appellants herein were the respondents at the trial Court, while the respondent was the Applicant.

A Brief summary of the facts of this case resulting in this appeal is that, by an Originating Summons dated 15th day of March, 2021 and filed on 18th of March, 2021 the respondent as Applicant at the trial Court sought for the determination of the questions as can be found at pages 1 to 2 of the record of appeal.

Upon the determination of the said questions, the Applicant prays the Court for the reliefs, as can also be found at pages 2 to 3 of the record of appeal. The Originating Summons is supported by an affidavit of 8 paragraphs deposed to by one Aliyu Moshood the Deputy Director (Project Tracking) of the Applicant, attached therewith is an annexure marked as exhibits A1 to A4 supported by a written address. The applicant/respondent also filed a further affidavit dated 21st June, 2021 and a written address in support of the originating summons. Upon the receipt of the originating processes in this matter, the respondents/appellants filed a notice of preliminary objection to the hearing of the suit. The respondent/Applicant at the trial court also filed a written address dated 21st June, 2021 against the notice of preliminary objection. See pages 49-54 of the record of appeal.

The respondents/appellants also filed their counter affidavit of 5 paragraphs dated 15/6/2021 deposed to by one Sulaiman Jamilu the litigation clerk in the chambers of the 3rd respondent, supported by a written address against the originating summons. They also filed a further counter affidavit dated 26/7/2021 against the originating summon.

The parties adopted all their processes, and the trial court adjourned for ruling and judgment on the substantive matter. In its ruling the trial court found that the preliminary objection lacks merit and it is accordingly dismissed. On the substantive matter the trial court granted all the reliefs sought by the applicant/respondent.

Dissatisfied with the said judgment of the trial Court, the Appellants who were the respondents at the trial Court filed their notice of appeal dated 12th day of October, 2021. The notice of appeal which appears on pages 119-130 of the record of appeal contains 21 grounds of appeal.

The record of appeal was compiled and transmitted to the Court on 21/11/2021. The briefs of argument were subsequently filed and exchanged by the parties in accordance with the rules of Court.

On 27th October, 2021, the appeal was heard before the Court. The Appellants Counsel adopted the Appellants brief of argument as well as the Reply Brief to the respondents and urged the Court to allow the appeal. While the Respondent's Counsel on his part adopted the Respondent's brief of argument and urged the Court to dismiss the appeal and upheld the decision of the trial court.

The Appellants from their 21 grounds of appeal distilled five issues for determination as follows:

1. Whether the learned trial judge rightly assumed jurisdiction to try the case presented before it by the Respondent.
2. Whether the learned trial judge was right in relying on uncertified public documents, facts contained in Newspaper publication and computer generated documents to enter judgment in favour of the Respondent.
3. Whether from the affidavit evidence before the trial court, the learned trial judge was right to have held that, the specific allegation of suspending/dissolving democratically elected Local Government Council by the 2nd Appellant and replacing them with TIC was proved by the Respondent
4. Whether the learned trial judge was right to have held that the provisions of Sections 18, 28 and 29(1)-(5) of the Kwara State Local Government Law, are in conflict with the provisions of Sections 1(1), 7(1) and 15 (5) of the 1999 Constitution (as amended).

5. Whether from the affidavit evidence before the trial court, the learned trial court was right to have granted all the reliefs claimed in the case.

The Respondent on his part adopted the five issues as distilled for determination of this appeal by the appellants.

Learned Senior Counsel for the Appellants contended that from the facts and evidence before this Honourable court, the Respondent failed to satisfy the conditions for the lower court to exercise its jurisdiction, and as such, the jurisdiction so exercised by the trial court was an exercise in futility. He referred the court to the case of *Elabanjo v Dawodu (2006) 48-49 Paras G-C.*

He submitted that the Affidavit in support of the Originating Summons is akin to a statement of claim accompanying a writ of summons and it is the only initiating process which the court needs to look into, to determine if it is clothed with jurisdiction to entertain the matter before it. He cited in support the case of *Ajayi v Ariyibi & ORS. (2012) 8 SCM 1 @ 29-30.*

Learned Senior Counsel argued that, as at 15/06/2021 when the jurisdiction of the court was challenged on the competency of the suit filed by the Respondent, the only process which the trial court is competent to consider by law, is the processes filed by the Respondent on 16/3/2021. He referred the court to pages 1-4 of the Record and the case of *Kraftfoods Holding Inc v Allied BiscuitsI Co. Ltd (2010) LPELR-4409 (CA).*

He contended that, *Locus Standi* in the instant case, is determinable from the initiating processes comprising of the Originating Summons and affidavit contained at pages 1-14 of the Record.

He maintained that a cursory examination of the processes filed on 16/3/2021, especially the affidavit in support of the originating summons at pages 4-5 of the Record, will show that none of the paragraphs of the affidavit, evidenced the legal capacity of the Respondent as a juristic person to initiate the action.

That the issue of juristic personality of a Claimant before the Court is not a thing to be left for conjecture or guess work of the parties and the court. The Respondent is under a legal duty to disclose her legal status from the initiating process, failure to do so will entitle the court to declare the process incompetent and strike out the case.

He added further that, the failure of the Respondent to establish her legal status in the initiating process constitute a feature in the case which prevents the court from exercising its jurisdiction. He referred the court to the cases of:

Ezenwaji v U.N.N (2018) ALL FWLR (Pt. 933) 909 @ 941.

B-U (Nig.) Ltd v S.P.D.C Ltd (2016) ALL FWLR (Pt.826) 398 @ 448.

Basico Motors Ltd v Woermann-Line (2009)13NWLR (Pt.1157) 149.

F.R.N. v Edward (2021) 10 NWLR (Pt. 1784)235 @ 247-248.

Learned Senior Counsel insisted that, by the Originating Summons and the affidavit filed thereto, it is evident that the Respondent had failed to satisfy the requirement of the law on its standing to sue. That a trial court cannot go outside the originating processes to determine the issue of the locus standi of the claimant or plaintiff. He referred the court to the case of *Ntung v Longkwang (2021) 8 NWLR (Pt. 1779) 431 @ 487-488 Paras D-A.*

Counsel added that, the question as to the competence of a plaintiff to institute an action is gathered from the facts averred in the statement of claim and not from any evidence that is subsequently led as held by the trial judge in its judgment. He referred the court to the case of *Charles v Governor Ondo State (2013) 2 NWLR (Pt. 1338) 294 @ 310-311, Paras. H-A.*

He maintained that the above judicial exercise of the trial court is an affront to trite position of the law and contrary to the provisions of *Order 11 Rules 19 of the Kwara State High Court (Civil Procedure) Rules, 2005.*

Learned senior counsel argued that to worsen the situation, the learned trial judge relied on Exhibit B1 an uncertified public document not attached to an affidavit, as well as the case of *Babalola v A.G Federation (2018) LPELR-43808* to justify his decision that the Respondent has not disclosed her status, as a legal entity entitled to sue, hence, assuming jurisdiction in the case.

He maintained that Exhibit B1 is therefore, not evidence before the trial court and inadmissible evidence under *Section 90 (1) (c) of the Evidence Act.*

Counsel submitted with respect to the case of *Babalola v A.G Federation (2018) LPELR-43808* (CA) relied upon by the learned trial judge, that, the facts and the principle of law in the said case are clearly not the same and therefore very distinguishable from the case at hand. He referred the court to the cases of;

Ndukwe v U.B.N. (2021) 4 NWLR (Pt. 1765)165@ 188-189.

Samuel v Etubi (2011) LPELR-4200 (CA) Pp. 34-35.

Counsel urged the Court to hold that the Respondent failed to establish that it has the requisite juristic personality to maintain this suit.

Continuing, learned senior counsel argued further that, a careful look at the originating summons and affidavit in support shows that the Respondent failed to show her interest in anyway on the claims before the court.

He submitted that although the Respondent tried albeit unsuccessfully to hide under the cloak of public interest litigation, it remains evident by the facts of this case that the Respondent failed to meet any such standard. He maintained that, public interest litigation is not without required conditions that ought to be met by persons so claiming. He referred the court to the case of *Centre for Oil Pollution Watch v NNPC (2019) 5 NWLR (Pt.) 518 @ 587 Paras. G-H*

He added that in this case, the Respondent has failed to show any interest in its affidavit in support of the originating summons for which the trial court could have assumed its jurisdiction thereon. He urged the court to so hold.

He insisted, that from the Respondent's affidavit evidence before the trial court, it can be seen that there was absolutely nothing to substantiate the claims of the Respondent. The relaxation of the requirement of locus standi remains only applicable to fundamental human rights cases. He urged the court to so hold and resolve this issue against the Respondent.

Learned counsel for the respondent on his part submitted that, the Respondent by affidavit evidence before the court had satisfied all the necessary condition for the lower court to have assumed jurisdiction. That the Respondent being an Incorporated Trustees duly incorporated under the Company and Allied matters Act with certificate of incorporation is qualified as a person in law and therefore conferred with legal personality to sue and be sued.

That the Respondent by the affidavit evidence has shown both in the affidavit and further affidavit in support of the Originating Summons that the Respondent is an Incorporated Trustees duly registered under Company and Allied Matters Act.

He contended that Further Affidavit becomes part and parcel of originating processes and where a counter affidavit is filed against an affidavit in support of an Originating Application as in this case and such Counter affidavit raises new issues as in this case, further affidavit is inevitable, thus; the only way the Applicant can respond is by filing Further affidavit to answer the new issues raised in the Counter Affidavit. He referred the court to the case of *Ogedengbe Surajudeen Ola v University of Ilorin & 2Ors ORS (2014) 15 NWLR (Pt. 1431)453 @ 459 H. 5-6.*

Learned counsel argued that Affidavit and Further Affidavit in Originating Process which entails affidavit evidence, both affidavit in support and

further affidavit in support of the Application are considered as initiating process contrary to the assertion of the Appellants.

He maintained that two or more Affidavits if filed in support of an Application are allowed if the purpose is to achieve substantial justice.

Continuing counsel added that the Appellants herein failed to show or state specifically any damage caused to them or injustice suffered by the filling of Further Affidavit in response to the Appellants' counter affidavit.

On the appellants' submission that, the court will look at the initiating processes not the defence to determine the jurisdiction of court. Learned counsel contended that the Originating Processes in this case are the Originating Summons and the facts in support of the Originating Summons, which are the Affidavit and Further Affidavit in support as contained in pages 1-14 and 36-48 of the Record of Appeal not the Counter affidavit and or the Preliminary objection itself. He urged the court to so hold.

It is submitted further that the submission of the Appellants on the legal personality of the Respondent is an attempt to place more credence on technicalities over substantial justice.

On the submission of the Appellants in paragraph 5.10 of the Appellants Brief that lower court judgment is an affront to Order 11 Rules 19 of the Kwara State High Court Civil Procedure Rules, 2005, learned counsel submitted that the Order 11 Rule 19, is not relevant to this case at hand and such is quoted out of context by the Appellants.

He maintained that, assuming without conceding that filing further affidavit runs foul of Order 11 Rule 19 of the Kwara State Civil Procedure Rules, 2005, then, such procedure is regarded as a mere irregularity which has been cured by Order 4 Rule 1 the same Rule.

He submitted that, it is too elementary for the Appellants to know that in affidavit evidence proceeding as in this case, exhibits are attached to affidavits not written addresses. He referred the court to paragraph 5 of the Further Affidavit on page 37 of the record of appeal.

Learned counsel argued that, the name of the Respondent who was the Applicant at the lower court was clearly written as "THE INCORPORATED TRUSTEES OF ELITES NETWORK FOR SUSTAINABLE DEVELOPMENT' which suggests that the Respondent organization is duly registered under the Incorporated Trustees of Companies and Allied Matters Act.

More so, the Appellants also recognized same as Respondent participated in the Social Audit program of the 1st Appellant on the Invitation of the 2nd Appellant. The program which was opened to only registered Civil Society Organization.

He argued further that, whether a party is a natural person or artificial is not material to the application of principle in this case. The main issue that calls for determination is whether in an application or originating processes where affidavit evidence are required, any public documents attached thereto needs no certification before the court can rely on same.

On whether the Respondent has shown any interest in its affidavit in support of the originating summons for which the trial court could have assumed its jurisdiction. Learned counsel argued that, the Respondent has by affidavit and further affidavit in support of Originating Summon established substantial nexus between herself and the cause of action concerning her rights and obligations.

He maintained that the reliefs of the Respondent before the lower court is not only clear and substantial but also that public interest which the Respondent was sought to protect had been infringed upon and grossly violated by the Appellants.

He referred the court to the cases of:

Omonyahuy & 0rs v THE I G P & Ors. (2015) LPELR-25581 (CA);

Babalola v AGF (2018) LPELR-43808 (CA)

Centre for Oil Pollution Watch v N.N.P.C (2019) 5 NWLR (Pt. 1666) 518 @ 537 H.30:

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It is submitted that, in Public Interest litigation, the law is that public spirited individuals and non-governmental organizations can sue to protect public interest.

Learned counsel insisted that the Suit of the Respondent against the Appellants at the lower court was against the appointment and inauguration of 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 Federal Republic of Nigeria, 1999, (as amended). That the violation of Constitution is an issue that affects the Respondent, its members and the general public at large. Individual or Corporate body can institute an action where interpretation of law is involved.

He added that the, Respondent cannot close it eyes for Kwara money and other resource to be channel toward illegality.

He urged the court to hold that the lower court rightly assumed jurisdiction and resolve this issue against the Appellants.

On the respondent's contention that Further Affidavit becomes part and parcel of originating processes, the Appellants in their reply brief submitted that this argument is a misconception of the law. That the law on further affidavits filed in response to a counter affidavit can never assume such position. He referred the court to the cases of;

Anyanwu v Ogunewe & Ors. 2014 LPELR-22184 SC.

Ikpeazu v Ekeagbara & Ors 2015 LPELR-25004 CA.

Ahmed v Ahmed 2013 NWLR (Pt. 1377) 274 @ 331-332.

James v INEC & ORS 2015 LPELR-24494 SC.

On the Respondent's argument on waiver, counsel submitted that a party cannot waive, consent or acquiesce to conferring jurisdiction on a court. He referred the court to the case of *Nigercare Dev. Co. Ltd v Adamawa State Water Board 2008 3 NSCJ 28.*

That it is not sufficient for a plaintiff being a corporate or a defendant for that matter to establish its juristic personality by mere stating its name, the status must be proved except it is admitted by the opposing party. He referred the court to the case of *Reptico S.A. Geneva v Afribank Nig.Plc 2013 9 SCM 85; (2013) ALL FWLR (Pt. 702)1652.*

He insisted that the respondent failed to establish any nexus between it and the cause of action. Counsel urged this Honourable Court to allow this appeal.

RESOLUTION

I shall adopt the five issues raised by counsel to the Appellants which issues were adopted by the learned counsel for the Respondent.

1. Whether the learned trial judge rightly assumed jurisdiction to try the case presented before it by the Respondent.
2. Whether the learned trial judge was right in relying on uncertified public documents, facts contained in Newspaper publication and computer generated documents to enter judgment in favour of the Respondent.
3. Whether from the affidavit evidence before the trial court, the learned trial judge was right to have held that, the specific allegation of suspending/dissolving democratically elected Local Government Council by the 2nd Appellant and replacing them with TIC was proved by the Respondent
4. Whether the learned trial judge was right to have held that the provisions of Sections 18, 28 and 29(1)-(5) of the Kwara State Local Government Law, are in conflict with the provisions of Sections 1(1), 7(1) and 15 (5) of the 1999 Constitution (as amended).
5. Whether from the affidavit evidence before the trial court, the learned trial court was right to have granted all the reliefs claimed in the case.

In respect of issue one; that is whether the learned trial judge rightly assumed jurisdiction to try the case presented before it by the Respondent.

The arguments of the Appellants here are that the Respondent is not a juristic personality and that it has no locus standi to sue in this matter.

It is trite that a non-juristic person cannot sue or be sued. This Court in the case of *Akas v Manager (2001) 8 NWLR (Pt. 715) 436* defined a juristic person in law as follows:

"*A juristic person is either a natural person in the sense of a human being of the requisite capacity or an entity created by the law which includes an incorporated body and special artificial being created by legislation and vested with the capacity to sue and be sued.*"

See Abia State University v Anyaibe (1996) 3 NWLR (Pt. 439) 649, Okafor v Agoh (1999) 3 NWLR (Pt. 593)35

It follows therefore that no action can be brought by or against any party other than a natural person except where such a party has been conferred by a statute expressly or impliedly with a legal capacity.

See the case of *Lion of Africa Insurance Co. Ltd v Esan (1999) 8 NWLR (Pt.614) 197 @ 201.*

In this case the Respondent/Applicant deposed to in paragraph 5 of its further affidavit in support of the originating summons thus;

That I know as a fact that the applicant in this case is a registered civil society organization in accordance with Company and Allied Matters, Act resident in Kwara State. Copy of the certificate of incorporation of the applicant is hereby attached and marked exhibit B1.

There is no evidence that the Appellants categorically denied any such fact by their further counter affidavit against the originating summons. It is settled law that where evidence which is admissible and relevant to the fact in issue is not successfully contradicted/challenged or controverted such evidence will be accepted as proof of the facts that it seeks to establish, see *American Cyanamid v. Vitality Pharm. Ltd* [1991] 2 NWLR (Pt. 171) 15 at 28 – 30 and *Nanna v. Nanna [2006] 3 NWLR (Pt. 966) 1.*

One of the effects of the registration of the trustees of the Respondent and the issuance of the certificate of incorporation to her as a body corporate, under Part C of the Company and Allied Matters Act (CAMA), is that the said registered trustees have the power to sue and be sued in its corporate name. See *Adegoke v. Ona Iwa Mimo C & S (2000) FWLR (pt.28) 2136; Opara v. Registered Trustees C.M.Z.C (2004) FWLR (Pt.190) 1419.*

On the issue of locus standi of the Respondent, the term locus standi denotes the legal capacity to institute an action or proceedings in a court of law in respect of a particular issue or matter. The principle focuses on the interest of the party seeking to get its complaint laid before the court in respect of the subject matter. In *Governor of Ekiti State & Ors v Hon. Kola Fakiyesi & Anor (2009) LPELR-8353* this Court defined "locus standi as the legal right or standing of a party to an action to ventilate his grievance(s) before a court of law or tribunal without any impediment, inhibition and/or restriction from any person or quarters." Per Agube, J.C.A. (P. 30, paras. A-G) Locus standi and jurisdiction are interwoven. If a party lacks the locus standi to institute a case, then a court of law is divested of the jurisdiction to try his matter, see *Emezi v. Osuagwu (2005) 12 NWLR (Pt.939) 340/(2005) 30 WRN 1; A.-G., Anambra State v. A..G.,Fed. (2007) 11 NWLR (Pt.1047) 4; Admin./Exec. Estate, Abacha v. Eke-Spiff (2009) 17 NWLR (Pt.1171) 614; Ajayi v. Adebiyi (2012) 11 NWLR (Pt.1310) 137; Uwazuruonye v. Gov. Imo State (2013) 8 NWLR (Pt.1355) 28; Adebayo v. PDP (2013) 17 NWLR (Pt.1382) 1;*

It is not in dispute that, this case bothered on constitutional matter and/or public interest litigation. Courts in Nigeria adopted the test of 'sufficient interest' in determining whether a party has the requisite locus standi to commence an action in court in respect of a given subject matter. Even in constitutional law cases, the plaintiff must plead sufficient constitutional interest to sustain and meet locus standi requirement.

In *M.C.S. (Nig.) Ltd. /Gte v. Adeokin Records (2007) ALL FWLR, 1624 at 1637 - 1638, paras. G - A (SC);* the term 'sufficient interest' is a broad and generic term that lacks a precise and legal meaning. It is better determined

in the light of the facts and circumstances of the particular case. In arriving at a decision one way or the other, the court will be guided by the overall interest of the parties in the litigation process in the absence of enabling statute.

This court in *Centre for Oil Pollution Watch v NNPC [2013] 15 NWLR (Pt. 1378) 556 at 582 per Bage JCA* relying on the Supreme Court's decision in *Pam v Mohammed (2008) 16 NWLR (Pt. 1112) 1* exposited on the requirement of sufficient interest as the law, in these words:

> *"It is the law that to have locus standi to sue, the plaintiff must show sufficient interest in the suit or matter. One criterion of sufficient interest is whether the party could have been joined as a party in the suit. Another criterion is whether the party seeking redress or remedy will suffer some injury or hardship arising from the litigation. If the Judge is satisfied that he will so suffer, then he must be heard, as he is entitled to be heard. A party who is in imminent danger of any conduct of the adverse party has the locus standi to commence action.*

His Lordship, Agube JCA, further expressed his views on the factors that are to be taken into consideration in constitutional matters that may involve public interest litigation in *Governor of Ekiti State & Ors v Hon. Kola Fakiyesi & Anor*(supra) thus:

> *"Thus the factors which should be taken into consideration in the determination of locus standi generally and especially in constitutional matters are:-*
>
> 1. *Whether the Applicant can show some sincere concern for constitutional issues and that there has been substantial default or abuse as in this case where the Respondents complained of the violation of Section 105(1) of the 1999 Constitution and not whether his personal rights or interests are involved.*

2. The importance of vindicating the rule of law which is one of the cardinal agenda of the present administration, as in this case.

3. The importance of the issue raised in the claim of the Respondents - in this case the constitutional issue of the exercise of the legislative powers of the Ekiti State House of Assembly which tenure had allegedly expired.

4. The likely absence of any other challenger of the act complained of - in this case the fact that the 1st and 2nd Plaintiffs/Respondents were/are an ex-Legislator and party chieftain respectively in Ekiti State who have challenged the act of the defunct Assembly in the absence of other challengers.

5. The nature of the breach of duty against which relief is sought - in this case the alleged breach of section 105 of the 1999 Constitution by the defunct Ekiti State House of Assembly; and

6. The prominent role the Respondents as members of a political party with thirteen legislators in the Ekiti State House of Assembly ought to play in the screening of the 5th - 16th Appellants and the unnamed twelve Special Advisers appointed by the 1st Appellant. Even then, the submission by the Appellants that the 1st Respondent did not sue in representative capacity of the Action Congress, is ridiculous to the extremes since he has shown from his affidavits that he is a member of that political party and an ex-legislator who is now a senior citizen of Ekiti State and can bring an action of that nature to defend the Constitution and the rule of law.

From the foregoing, I am of the considered view that in public interest cases, the emphasis should not be on the injury suffered or to be suffered by the claimant, rather it is on the injury suffered or likely to be suffered by the group or class of persons the Suit sought to protect that grounds Locus standi. In this case, the claimant's interest is stated as to ensure that the democratically elected Local Government Council guaranteed by the 1999 Constitution as amended is not violated by the Appellants by appointment and inauguration of Transitional Implementation Committees to oversee the affairs of Local Governments in Kwara State. I am of the view that the trial court was right in clothing the Respondent with the required locus standi to maintain this Suit, and I so hold. This issue is resolved against the Appellant and in favour of the Respondent.

In respect of issue two, that is; whether the learned trial judge was right in relying on uncertified public documents, facts contained in Newspaper publication and computer generated documents to enter judgment in favour of the Respondent.

The quarrel of the Appellants here is that exhibit B1 attached to the further affidavit of the Respondent at the lower court is an uncertified public document. It is their argument that being an uncertified public document it is inadmissible in law under section 105 of the Evidence Act 2011. There is no dispute that only certified copies of public documents are admissible in evidence in legal proceedings. See the cases of *Shell Dev. Co. Ltd. v Nwolu (1991) 3 NWLR (Pt.180) 496, and Jolayemi v Olaoye (1999) 10 NWLR (Pt.624) 600*

However, it is also not disputed that all documents attached to an affidavit forms part of the affidavit evidence adduced by the deponent and is deemed to be proper before the court to be used, once the court is satisfied and it is credible. It is not possible to raise objection to its admissibility by the respondent without running counter to Sections 85 and 87 of the Evidence Act, 2011. See *Cross-River State Property Investment Company Limited v Enor Ibor Obongha (2000) 8 (NWLR Pt. 670) 751.*

Sections 85 & 87 of the Evidence Act, 2011 provide thus;

"85. The contents of documents may be proved either by primary or by secondary evidence.

87. Secondary evidence includes –

(a) Certified copies given under the provisions hereafter contained in this Act;

(b) Copies made from the original by mechanical or electronic processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(c) Copies made from or compared with the original;

(d) Counterparts of documents as against the parties who did not execute them;

(e) Oral accounts of the contents of a document given by some person who has himself seen it."

Also, in the case of *British American Tobacco Nig. Ltd v International Tobacco Co. Plc, (2012) LPELR-14057, (2013) 2 NWLR (Pt.1339) 493*, this Court held that :

"...public documents, exhibited as secondary copies in affidavit evidence, cannot, necessarily, be certified true copies, and that a document, exhibited to an affidavit, is already an exhibit before the Court, being part of the affidavit evidence which a Court is entitled to look at, and use.

See also the decision of this Court in the case of: *Ilorin East Local Government v Alhaji Woli Alasinrin & Anor.* Unreported Appeal NO: CA/IL/38/2001 judgment of which was delivered on 20/2/2011 wherein it stated:

"I do not think the issue of certification of a secondary evidence (photocopy) as in Exhibit C, can arise in this case, being one fraught on affidavit evidence, and the Respondents not claiming to have obtained it from the Appellant lawfully... I have already held that the document attached to or exhibited with affidavit, forms part of the evidence adduced by the deponent and is deemed to be properly before the Court to be used, once the Court is satisfied and it is credible. Being already an evidence

before the Court (on oath), the formality of certification for admissibility, (if it required certification) had been dispensed with. Of course, the reason for this is easy to deduce, the first being that affidavit evidence is already an admitted evidence before the Court, unlike pleading, which must be converted to evidence at the trial, at which time issues of admissibility of an exhibit is decided. The second point is that an exhibited copy of a document, attached to an affidavit evidence, must necessarily be a photocopy or secondary copy (except where the document was executed in several parts or counter parts and the deponent has many of the parts to exhibit in the original forms).

It is therefore unthinkable to expect the exhibited photocopy to be certified by the adverse party before the Court can attach probative value to it... For the purpose of this application, Exhibits WO1, WO2 and WO3 must certainly be photocopies, and cannot be expected to be certified true copies, since the Applicant was expected to photocopy the originals of those documents given to them by the issuing registry, as exhibited copies for the application....."

Consequently, this issue is also resolved against the Appellants and in favour of the Respondent.

In respect of issue three, that is; whether from the affidavit evidence before the trial court, the learned trial judge was right to have held that, the specific allegation of suspending/dissolving democratically elected Local Government Council by the 2nd Appellant and replacing them with TIC was proved by the Respondent. The complaints of the Appellants are basically two, first is that there is no evidence to support the allegation of the Respondent that the Appellants dissolved or suspended the democratically elected Local Government Councils and replacing them with Transition Implementation Committees/Caretakers. That apart from paragraph 17 of the further affidavit of the Respondent at page 38 of the record there is no evidence to support that allegation.

The second complaint is that the cases of *Eze & 147 Ors., v. Governor of Abia State (supra) and Governor Ekiti State v. Olubunmi* relied upon by the lower court are inapplicable in this case.

In respect of the first complaint the Appellants in paragraph 3(i) of their counter affidavit denied the dissolution of the elected Local Government councils, see page 24 of the record. Thereafter, in paragraph 3(e) of their further counter affidavit they deposed to the fact that the 'suspension' of Local Government Council in the state was challenged in Suit No: *KWS/115/2019* and *KWS/216/2019*. Then in paragraph 3(g) they deposed thus 'Instead, the council were being managed by the DPM of the Local Government council' from the foregoing it is obvious that the sanctity of the democratically elected Local Government councils was indeed violated.

In respect of the second complaint, it is very clear that the interpretation of section 7(e) of the 1999 Constitution (as amended) was the subject matter and issue in controversy in the aforementioned 2 (two) cases. It is the interpretation of the same section 7(e) of the 1999 Constitution that is equally in controversy in this case. Therefore, the two cases are applicable to this case. This issue is equally resolved against the Appellants and in favour of the Respondents.

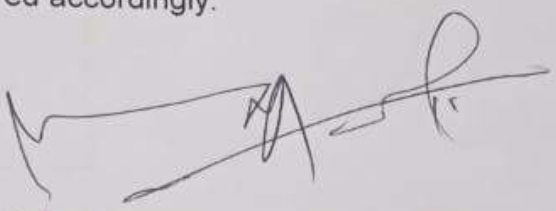
Issue four is whether the learned trial judge was right to have held that the provisions of Sections 18, 28 and 29(1)-(5) of the Kwara State Local Government Law, are in conflict with the provisions of Sections 1(1), 7(1) and 15 (5) of the 1999 Constitution (as amended).While issue five is; whether from the affidavit evidence before the trial court, the learned trial court was right to have granted all the reliefs claimed in the case. Both issues will be treated together.

It is the contention of the learned counsel for the Appellants that the lower court was wrong in holding that sections 18, 28 and 29(1) – (5) of the Kwara State Local Government Law 2005 Cap K33 are in conflict with the provisions of Sections 1(1), 7 (1) and 15(5) of the 1999 Constitution. I must state clearly that the lower court did not so hold. The record is clear at page 177 paragraphs 1 and 2. It is improper to input words or sentences to judgments and order of a court when there was no such order, because a party is not permitted to read into an order of Court what the order does not, in fact, contain, see *Kalu v. FRN (2014) 1 NWLR (Pt.1389) 379 at 544 and Onwuka v. Ediala (1989) 1 NWLR (Pt.96) 182.*

The trial court declared 'Section 29 of the Kwara State Local Government Law Cap K33, 2005' as unconstitutional, null, void and of no effect. No other section of that Law was so mentioned. I must say clearly that, the lower court was right in holding so because that Section 29 of the Kwara State Local Government Law Cap K33, 2005' is clearly in conflict with the provisions of Section 7 of the 1999 Constitution as amended which guaranteed the system of democratically elected Local Government Council system. While the said section 29(1) – (5) empowered the Governor of Kwara State to 'suspend' the Chairman or Vice Chairman of any Local Government for misconduct.

These issues are resolved against the Appellants. In all, this appeal is lacking in merit. It is hereby dismissed. No order as to costs.

Judgment is entered accordingly.



KENNETH IKECHUKWU AMADI (*PH.D*)
JUSTICE, COURT OF APPEAL

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ILORIN.

Falilat, O. Orire Esq
Hos (Litigation)
26/5/22

APPEARANCE:

AYINLA SALMAN JAWONDO, SAN. (Attorney General, Kwara State) With him **MUSA IDRIS ESQ. (Solicitor General, Kwara State) & A. M. BELLO ESQ., (Director Civil Litigation, Kwara State) A. A. DAIB, ESQ., O. MICHAELS (MRS), B. L. ABDULSALAM** and **M. Z. USMAN** For the Appellants.

LUKMAN RAJI, ESQ., with him **O. Y. GOBIR ESQ.** For the Respondent.

TC of Judgment ₦30,000

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Falilat O. Oire Esq
HOD (Litigation)
26/5/22

APPEAL NO. CA/IL/122/2021

DELIVERED BY UZO I. NDUKWE-ANYANWU, JCA

I had the privilege of reading in draft form the judgment just delivered by my learned brother **KENNETH IKECHUKWU AMADI, Ph.D, JCA**. I believed that the vexed issue is whether the Respondent is a juristic person capable of suing and being sued.

The court in the case of **FUT MINNA VS OKOLI (2011) LPELR 90531** held defined the *Meaning of "juristic person"*
"This Court in the case **of AKAS v. MANAGER (2001) 8 NWLR (715) 436 at 444** had defined who a juristic person is in law, as follows:-

> **"A juristic person is either a natural person in the sense of a human being of the requisite capacity or an entity created by the law which includes an incorporated body and special artificial being created by legislation and vested with the capacity to sue and be sued"**
>
> See also: **ABIA STATE UNIVERSITY v. ANYAIBE (1996) 3 NWLR (439) 649. OKAFOR v. ASOH (1999) 3 NWLR (593) 35."**

My learned brother in the lead judgment had determined that the Respondent was a juristic person and was therefore capable of suing and being sued.

The Respondent also had locus to sue the Appellant for their infractions against elected Local Government Chairmen and deputy Chairmen. The lower court rightly held that section 29 of the Kwara State Local Government Law Cap K33 2005 was unconstitutional being in conflict with section 7 of the 1999 Constitution.

For this and the more comprehensive reasoning in the lead judgment I also find this appeal unmeritorious. It is hereby dismissed. I affirm the judgment of the lower court.

UZO I. NDUKWE-ANYANWU
JUSTICE, COURT OF APPEAL

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26/5/22

CA/IL/122/2021
ISAIAH OLUFEMI AKEJU, JCA

I agree with the reasoning and conclusion of my learned brother, **KENNETH IKECHUKWU AMADI, JCA,** that this appeal lacks merit. I dismiss it and abide by the consequential order.

ISAIAH OLUFEMI AKEJU
JUSTICE, COURT OF APPEAL

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